



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98014; File No. SR-NASDAQ-2023-025]

### **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish Listing Standards Related to Notification and Disclosure of Reverse Stock Splits**

July 28, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 21, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to establish listing standards related to notification and disclosure of reverse stock splits.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has observed that the current market environment has led to an increase in reverse stock split activity. In 2022, Nasdaq processed 196 reverse stock splits, compared to 31 in 2021 and 94 in 2020. As of June 23, 2023, Nasdaq has processed 164 reverse stock splits, and projects significantly more throughout 2023. Reverse stock splits are often effected by smaller companies that do not have broad media or research coverage. In most cases, the companies are listed on the Capital Market tier and are conducting reverse stock splits to achieve compliance with Nasdaq’s \$1 bid price requirement.<sup>3</sup>

Nasdaq believes that the increase in companies effecting reverse stock splits warrants amendments to the listing rules to enhance the ability for market participants to accurately process these events, and thereby maintain fair and orderly markets. As such, Nasdaq is proposing amendments to its rules regarding notification and disclosure of reverse stock splits and regulatory halts.<sup>4</sup> Specifically, Nasdaq is proposing to adopt additional listing rules requiring a company conducting a reverse stock split to notify Nasdaq about certain details of the reverse stock split at least five (5) business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date, and make public disclosure about the reverse stock split at least two (2) business days (no later than 12:00 p.m. ET) prior to the anticipated market effective date.<sup>5</sup>

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<sup>3</sup> Rule 5550(a)(2) specifies that a Company that has its Primary Equity Security listed on the Capital Market must have a minimum bid price of at least \$1 per share. See also Rule 5450(a)(1) (Global and Global Select Markets). Companies are afforded a grace period pursuant to Rule 5810(c)(3)(A) to regain compliance.

<sup>4</sup> Nasdaq intends to separately submit a rule filing to adopt a new regulatory halt specific to the pre-market trading and opening of a Nasdaq-listed security undergoing a reverse stock split.

<sup>5</sup> For example, if a company desires to effect a reverse stock split with a market effective date of Monday, July 24, the company would have to provide Nasdaq with a draft of the disclosure required by proposed Rule 5250(b)(4) and a complete Company Event Notification Form by 12:00 p.m. ET on Monday, July 17,

Currently, a reverse stock split is considered a “Substitution Listing Event” under Listing Rule 5005(a)(44).<sup>6</sup> Listing Rule 5250(e)(4) requires a company to notify Nasdaq about any “Substitution Listing Event (other than a re-incorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by Nasdaq.” Although there is no dedicated requirement for public disclosure of a reverse stock split under Nasdaq’s current rules, Listing Rule 5250(b)(1) requires the company to make “prompt disclosure” of “any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions,” which includes reverse stock splits. While promptly is not defined, Nasdaq has published an FAQ clarifying that “[t]his disclosure should be disseminated prior to, or in conjunction with, the announcements that Corporate Data Operations will make on the day prior to the market effective date at approximately 1:00 p.m.”<sup>7</sup>

Nasdaq proposes to delete the existing reference to a reverse stock split in Listing Rule 5005(a)(44) and adopt new provisions to set forth the timeframe and requirements for notification and disclosure related to reverse stock splits within its listing rules. Specifically, Nasdaq proposes to add new Listing Rules 5250(b)(4), 5250(e)(7) and IM-5250-3. Nasdaq also proposes to amend Listing Rule 5250(b)(1) to specify that a company should refer to Rule 5250(b)(4) and Rule 5250(e)(7) for the disclosure and notification requirements related to a reverse stock split and to clarify that existing times in that rule refer to Eastern Time.

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and provide the public disclosure by 12:00 p.m. ET by Thursday, July 20. Note that this example presumes that there are no holidays during these dates.

<sup>6</sup> Listing Rule 5005(a)(44) states, in part, that a “Substitution Listing Event” means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2, a change in the obligor of a listed debt security, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

<sup>7</sup> See Nasdaq FAQ #317, available at [https://listingcenter.nasdaq.com/Material\\_search.aspx?materials=317&mcd=LQ&criteria=2&cid=120%2C1%2C145%2C108%2C157%2C14%2C22%2C126%2C142%2C29%2C107%2C34%2C37%2C38%2C45%2C16%2C110%2C52%2C71%2C156%2C69%0A%0A](https://listingcenter.nasdaq.com/Material_search.aspx?materials=317&mcd=LQ&criteria=2&cid=120%2C1%2C145%2C108%2C157%2C14%2C22%2C126%2C142%2C29%2C107%2C34%2C37%2C38%2C45%2C16%2C110%2C52%2C71%2C156%2C69%0A%0A). These announcements are published as Equity Corporate Action Alerts on <https://www.nasdaqtrader.com/> (the “Nasdaq Trader website”).

Proposed Listing Rule 5250(b)(4) will specify that a company must provide public notice about a reverse stock split using a Regulation FD compliant method no later than 12:00 p.m. ET at least two (2) business days prior to the proposed market effective date. As is currently required under IM-5250-1, and as with other news, prior notice of this disclosure must be made to the MarketWatch Department through the electronic disclosure submission system available at <https://www.nasdaq.net>, except in emergency situations,<sup>8</sup> when notification may instead be provided by telephone or facsimile. Proposed Listing Rule 5250(b)(4) will also specify that the company shall provide notice of such disclosure to Nasdaq's MarketWatch Department at least ten minutes prior to public announcement if the public release of the material information is made between 7:00 a.m. to 8:00 p.m. ET. If the public release of this information is made outside the hours of 7:00 a.m. to 8:00 p.m. ET, Nasdaq Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET.

Proposed Listing Rule 5250(e)(7) will specify that, for a reverse stock split, the company must notify Nasdaq by submitting a complete Company Event Notification Form<sup>9</sup> no later than 12:00 p.m. ET five (5) business days prior to the proposed market effective date.<sup>10</sup> The submission must include all information required by the form and a draft of the disclosure required by proposed Rule 5250(b)(4).

Proposed IM-5250-3 repeats the requirements of proposed Rules 5250(b)(4) and (e)(7) to provide issuers and market participants with additional transparency by having all information related to the reverse split process in one location in the rulebook.

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<sup>8</sup> See IM-5250-1, which states that examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or Nasdaq system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to MarketWatch is important based on the material event.

<sup>9</sup> The text of this section of the proposed Company Event Notification Form is included as Exhibit 3 to Nasdaq's rule filing submitted to the Commission on Form 19b-4, which includes information such as the split ratio; new CUSIP number; dates of board approval, shareholder approval, and DTC eligibility; and the effective date of the reverse stock split.

<sup>10</sup> Nasdaq will review the form to determine whether the submission includes all information required by the form and a draft of the disclosure required by proposed Rule 5250(b)(4).

Where Nasdaq receives a timely and complete notification of a reverse stock split, which is also timely disclosed, as required by proposed Listing Rules 5250(b)(4) and 5250(e)(7), Nasdaq will process the reverse stock split for the identified market effective date.<sup>11</sup> However, proposed Listing Rule 5250(e)(7) will specify that where Nasdaq does not receive a timely and complete notification<sup>12</sup> or where the reverse stock split is not timely and accurately disclosed, as required by proposed Listing Rule 5250(b)(4), Nasdaq will not process a reverse stock split until those requirements have been satisfied. If a company takes legal action, such as under state law or in any other manner, to effect a reverse stock split notwithstanding its failure to timely satisfy these requirements, or Nasdaq determines that the company has provided incomplete or inaccurate information about either the timing or ratio of the reverse stock split in the public disclosure required under proposed Rule 5250(e)(4) [sic], Nasdaq will halt the stock in accordance with the procedure set forth in Equity 4, Rule 4120(a)(1), which provides Nasdaq with the authority to halt trading to permit the dissemination of material news.

Nasdaq believes the proposed amendments will provide additional transparency and clarity to companies and market participants by specifying the notification and disclosure requirements related to reverse stock splits. The requirement for companies to submit a completed Company Event Notification Form no later than 12:00 p.m. ET five business days prior to the market effective date will help ensure that Nasdaq has timely and complete information to process the reverse stock split prior to the effective date, such as the split ratio; new CUSIP number; dates of board approval, shareholder approval, and DTC eligibility; and the effective date of the reverse stock split. Moreover, by shortening the deadline for the notification

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<sup>11</sup> See note 4, *supra*. If that proposed rule filing is approved, then, as described in that rule filing, Nasdaq would halt the pre-market trading of the security in accordance with the procedure set forth in proposed Equity 4, Rule 4120A(c), and open the security for trading in accordance with the procedure set forth in proposed Equity 4, Rule 4120A(d).

<sup>12</sup> See proposed Rule 5250(e)(7) requiring the company to “file a complete Company Event Notification Form” containing “all information required by the form....” Thus, for example, Nasdaq will not process a proposed reverse stock split if the Company Event Notification Form does not include the new CUSIP number or a split ratio if the press release contains a split ratio or market effective date that is inconsistent with the draft submission previously provided to Nasdaq.

from 15 calendar days to five business days, Nasdaq believes that companies will be able to provide complete information in a single submission of the form, which they often cannot do today. For example, currently some companies may submit a form without CUSIP information, and then will email the CUSIP information to Nasdaq a few days later. Other companies may not yet have received confirmation of DTC eligibility, and receive it closer to the market effective date of the reverse stock split. Furthermore, where a company is conducting a reverse stock split to demonstrate compliance with the minimum \$1 bid price requirement, a company may need to modify the ratio of the reverse stock split after providing initial notice due to changes in market conditions and the company's stock price. As such, the shorter time frame will simplify a company's ability to provide the information required by the form because all relevant information can be provided in one submission closer to the action date and thereby improve Nasdaq's processing of the forms and reduce the possibility of errors resulting from multiple updates to the forms through various communication channels.<sup>13</sup>

The requirement under proposed Rule 5250(e)(7) for companies to submit a draft of the Regulation FD disclosure required by proposed Rule 5250(b)(4) will help ensure that the information disseminated to the market by the company aligns with Nasdaq's announcement, including the split ratio and market effective date. The requirement under proposed Rule 5250(b)(4) for a company to make public disclosure about a reverse stock split no later than 12:00 p.m. ET two business days prior to the market effective date will help ensure that sufficient notice is provided to market participants, thereby allowing them to process the event in their systems. Currently, the Nasdaq Trader website announcement and the company's press release are published the day prior to the reverse split, and includes material information such as the CUSIP number and split ratio. If a market participant inadvertently misses the announcement, they may continue to accept orders at the pre-split price, rather than the post-split

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<sup>13</sup> Nasdaq represents that the five business day timeframe still provides sufficient time for Nasdaq to process the notification.

adjusted price, which could lead to volatility in the stock price and trading inaccurate share amounts.<sup>14</sup> In connection with the proposed amendments, Nasdaq would publish an announcement through the Nasdaq Trader website one and two business days prior to the market effective date.<sup>15</sup> Therefore, proposed Rule 5250(b)(4) would provide market participants with at least one additional business day to review the company's public disclosure about the reverse stock split and update their systems. Accordingly, Nasdaq believes that the proposed rule changes will help maintain fair and orderly markets, protect investors and the public interest.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>17</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Further, the Exchange believes that this proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that shortening the current notification requirement from 15 days to five will allow companies to provide complete submissions, whereas the current 15-day requirement results in incomplete submissions that must be updated. As discussed in more detail above, this will simplify Nasdaq's processing of the forms and reduce the possibility of errors resulting from these multiple updates through multiple communication mediums. Nasdaq also believes that the

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<sup>14</sup> For example, if a company conducts a 1-for-10 reverse stock split, and the pre-split price was \$1, the post-split price should be approximately \$10. However, if a market participant fails to update its systems, it could input orders to sell the security for \$1, which could negatively impact the stock's trading price and cause market confusion. This could also result in a broker selling more shares than customers held in their accounts, resulting in a temporary short position.

<sup>15</sup> A company may publish a press release earlier than two business days prior to the market effective date of the reverse stock split. However, Nasdaq will only publish an announcement through the Nasdaq Trader website one and two business days prior to the reverse stock split. For example, if a company publishes a press release on Monday announcing a reverse stock split with a market effective date on Friday, Nasdaq will only publish an announcement through the Nasdaq Trader website on Wednesday and Thursday.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

minimum two business day public notice will allow market participants to timely update their systems, which will help to reduce the risk that investors and brokers inadvertently miss the public announcement of the reverse split, and continue to make or accept trades at the pre-split price, as described above. Therefore, requiring additional notification and disclosure requirements for reverse stock splits will help to support fair and orderly trading, which will reduce trading volatility and potential price mistakes, thereby protecting investors and the public interest.

Nasdaq believes the proposal is not designed to permit unfair discrimination among companies because the proposal will apply to all companies instituting a reverse stock split. Any disclosure burden placed on these companies, as opposed to companies that are not effecting a reverse stock split, is reasonable and not unfairly discriminatory because reverse stock splits present unique potential risks to investors and market participants if they fail to adjust their quotes and orders or are not aware of the accurate split ratio. This creates the potential for substantial financial, operational, client, reputational and regulatory impacts should an error occur. Therefore, Nasdaq believes that it is not unfairly discriminatory to require greater transparency to investors through public disclosure containing material information, such as the company's split ratio and market effective date, thereby maintaining fair and orderly trading, protecting investors and promoting the public interest consistent with Section 6(b)(5) of the Act.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, not necessary or appropriate in furtherance of the purposes of the Act, because the proposed listing standards will apply to all listed companies. Further, the Exchange believes the proposal will not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is designed to protect investors and facilitate a fair and

orderly market, which are both important purposes of the Act. To the extent that there is any impact on intermarket competition, it is incidental to these objectives. Moreover, other exchanges can adopt rules similar to the Exchange's proposal if they believe the proposed disclosures would create a competitive advantage for Nasdaq.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2023-025 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2023-025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-025 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>18</sup> 17 CFR 200.30-3(a)(12).