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–EMERALD–2023–18 and should be submitted on or before August 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.15

Sherry R. Haywood, Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


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


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 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 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.3 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.4 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.5

Currently, a reverse stock split is considered a “Substitution Listing Event” under Listing Rule 5005(a)(44).6 Listing Rule 5250(b)(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 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...

2 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.

3 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)(3)(A) and a complete Company Event Notification Form by 12:00 p.m. ET on Monday, July 17, and provide the public disclosure by 12:00 p.m. ET by Thursday, July 20. Note that this exposure period presumely that there are no holidays during these dates.

4 Listing Rule 5505(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.

submitting a complete Company Event Notification Form 9 no later than 12:00 p.m. ET five (5) business days prior to the proposed market effective date.10 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. 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.11 However, proposed Listing Rule 5250(e)(7) will specify that where Nasdaq does not receive a timely and complete notification 12 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), 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 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 may often be easier to manage. 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.13

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

7 See Nasdaq FAQ #317, available at https://listingcenter.nasdaq.com/Material_search.aspx?material=3177&mdc=LQx/erlier=2%3Cid%3C1%3C45%3C108 %2C157%3C214%3C222 %2C126%3C2142%3C9%3C107%3C24 %2C31%3C110%3C245 %2C16%3C110%3C52%3C71%3C156 %2C69%3A5%3A. These announcements are published as Equity Corporate Action Alerts on https://www.nasdaqltrader.com/ (the “Nasdaq Trader website”).

8 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; 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.

9 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.

10 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).

11 See note 4, supra. If that proposed rule filing is approved, then Nasdaq will publish 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.13

12 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 information previously provided to Nasdaq.

13 Nasdaq represents that the five business day timeframe still provides sufficient time for Nasdaq to process the notification.
proposed amendment 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 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 those 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 Burden on Competition That is Not Incidental to the Objectives of the Act

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. 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.
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.9(f) To Allow Match Trade Prevention Between Users That Access the Exchange With Both a Direct Connection and Sponsored Access


Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),1 and Rule 19b–4 thereunder, notice is hereby given that on July 26, 2023, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to 15 U.S.C. 78s(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(6) thereunder.2 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

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") proposes to amend Exchange Rule 11.9(f) ("Match Trade Prevention ("MTP") Modifiers") to permit individual firms with Users that access the Exchange through a direct connection only to access the Exchange through Sponsored Access to enable Match Trade Prevention at the firm level. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/filings/byx/), at the Exchange’s Office of the Secretary, 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 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

The Exchange proposes to amend Rule 11.9(f) ("Match Trade Prevention ("MTP") Modifiers") to add the term "Multiple Access identifier" to the definition of "Unique Identifier" while also codifying how a User may utilize the Multiple Access identifier. Adding a Multiple Access identifier to MTP functionality on the Exchange would allow Users that electronically access the Exchange via their own Membership and Exchange connection(s), as well as Sponsored Participants3 that access the Exchange via a Sponsored Access6 arrangement, to enable MTP at the firm level, in addition to the current MTP functionality based on market participant identifier ("MPID"). Exchange Member identifier, trading group identifier, Exchange Sponsored Participant identifier, or affiliate identifier (any such existing identifier, a "Unique Identifier").7 Currently, the Exchange’s MTP functionality prevents certain contra side orders entered by a User6 from executing, provided that each order has been marked with the same Unique Identifier.8 MTP functionality is currently available only to individual or affiliated Users on the Exchange and cannot be enabled by Users who choose

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5 See Exchange Rule 1.5(s). The term “Sponsored Participant” shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3.
6 See Exchange Rule 11.3(a). “Sponsored Access” shall mean “an arrangement whereby a Member permits its customer to enter orders into the System that bypass the Member’s trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.”
7 See Exchange Rule 11.9(f).
8 See Exchange Rule 1.5(cc). “User” is defined as “any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” The “System” is “the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.” See Exchange Rule 1.5(aa). The term “Member” means any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(b).
9 Supra note 7.

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