

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88868; File No. SR-NASDAQ-2020-024]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Implementation Date for a Recent Rule Change Modifying the Delisting Process for Certain Securities With a Bid Price at or Below \$0.10 or That Have Had Reverse Stock Splits With a Cumulative Ratio of 250 or More to One Over the Prior Two-Year Period

May 14, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 1, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 modify the implementation date and process for rule changes adopted in SR-Nasdaq-2020-001.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaq.cchwallstreet.com>, 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

On January 2, 2020, Nasdaq filed with the Commission a proposed rule change to modify the delisting process for securities with a bid price at or below \$0.10 and for securities that have had one or more reverse stock splits with a cumulative ratio of 250 shares or more to one over the prior two year period.³ The Commission approved this proposed rule change on April 21, 2020.⁴

In its filing, Nasdaq stated that this rule change would be implemented for companies that first receive notification of noncompliance with the bid price requirement after the date of the Commission’s approval of the changes. However, Nasdaq does not believe it is appropriate to implement this new requirement, which would affect low priced stocks, during a time when the U.S. and global equities markets have experienced unprecedented market-wide declines as a result of the ongoing spread of the COVID-19 virus and companies face highly unusual market conditions.⁵ Accordingly, Nasdaq is filing this rule change to delay the implementation date and process for the changes adopted in SR-Nasdaq-2020-001.

As revised, Nasdaq will implement these rule changes for companies that first receive notification of noncompliance with the bid price requirement on or after September 1, 2020. A company that receives notification of non-compliance prior to that date will not be subject to the rule changes.

While Nasdaq rules may allow a company two 180-day periods to regain compliance with the bid price requirement in certain circumstances, a company is not eligible for the second compliance period “if it does not appear to Nasdaq that it is possible for the Company to cure the deficiency.”⁶ As is currently the case, Nasdaq may rely

upon this language to deny the second compliance period to a company with a very low stock price or that has engaged in significant prior reverse stock splits, even though the company is not yet subject to the rule changes.

Until all companies are subject to the rule changes, Nasdaq will include a statement at the start of Rule 5810 and Rule 5815 explaining that the rule was recently amended, describing the nature of the amendment, and specifying the effective date for the rule changes, along with a link to the revised rules. Starting September 1, 2020, Rules 5810 and 5815 will reflect the rule changes, but until all companies are subject to the rule changes Nasdaq will include a statement at the start of Rule 5810 and Rule 5815 explaining that the rule was recently amended, describing the nature of the amendment, and specifying the effective date for the rule changes, along with a link to the rules as they existed before the amendment.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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, by delaying the implementation date of the rule changes in light of market declines and disruptions as a result of the COVID-19 virus and actions taken to address the pandemic. Until these rule changes are implemented, Nasdaq will continue to apply its prior rules and, notwithstanding the proposed delay in implementing the effective date of the rule changes, would not provide a company with a second 180-day compliance period for a bid price deficiency if it does not appear to Nasdaq that it is possible for the company to cure the deficiency.

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 rule change impacts unique Nasdaq listing rules. While Nasdaq does not believe there will be any impact on competition from the rule changes or the proposed change to the

³ Securities Exchange Act Release No. 87982 (January 15, 2020), 85 FR 3736 (January 22, 2020) (SR-Nasdaq-2020-001).

⁴ Securities Exchange Act Release No. 88716 (April 21, 2020), 85 FR 23393 (April 27, 2020).

⁵ See Securities Exchange Act Release No. 88685 (April 17, 2020), 85 FR 22777 (April 23, 2020) (permitting companies a longer period of time to regain compliance with Nasdaq’s bid price and market value of publicly held shares continued listing requirements by tolling the compliance periods through and including June 30, 2020, due to market disruptions caused by the COVID-19 virus).

⁶ Listing Rules 5810(c)(3)(A)(i) and (ii).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

implementation schedule of the rule changes, any impact on competition that does arise from the revised implementation schedule is necessary to reflect concerns about market conditions in light of the COVID-19 pandemic.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹¹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange stated that such waiver would ensure that there is no confusion about the implementation schedule for the rule change. The Exchange further stated that it believes waiver is consistent with the protection of investors and the public interest because it would merely provide a delay, until September 1, 2020, in the implementation of an approved rule change due to the highly unusual market conditions resulting from the ongoing spread of the COVID-19 virus. The Exchange further noted that investors will continue to be protected by Nasdaq's other bid price rules, which will continue to apply during that time,

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

subject to a temporary tolling of compliance periods through and including June 30, 2020, as described above.

The Commission notes that the proposal is a temporary measure to delay the effectiveness of an approved rule change until September 1, 2020 in light of current market conditions. Further, Nasdaq's existing bid price rules will continue to apply, including its ability to deny a company a second compliance period if it does not appear to Nasdaq that it is possible for the company to cure the deficiency. The waiver of the operative delay will also help to ensure that all companies have the same rules applied to them as to bid price deficiencies as of the date of the filing of this rule change to delay the implementation date of the new rules. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

¹³ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2020-024. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-024 and should be submitted on or before June 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-180, OMB Control No. 3235-0247]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Extension:

¹⁴ 17 CFR 200.30-3(a)(12).