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Page 1 of \* 27

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 057

Amendment No. (req. for Amendments \*)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to amend Nasdaq Rule 4758(a)(1)(A) regarding Nasdaqs routing options to add a user specific routing option that can be applied to the RFTY routing strategy, as well as to correct typographical errors in Equity 4, Rules 4703 and 4758

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Jonathan Last Name \* Cayne

Title \* Principal Associate General Counsel

E-mail \* Jonathan.Cayne@Nasdaq.com

Telephone \* (301) 978-8493 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/26/2023


(Title \*)

By John Zecca

EVP and Chief Legal Officer

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2023.12.26 12:08:45 -05'00'

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

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SR-NASDAQ-2023-057 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-NASDAQ-2023-057 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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SR-NASDAQ-2023-057 Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Nasdaq Rule 4758(a)(1)(A) regarding Nasdaq’s routing options to add a user specific routing option that can be applied to the RFTY<sup>3</sup> routing strategy, as well as to correct typographical errors in Equity 4, Rules 4703 and 4758.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Jonathan F. Cayne  
Principal Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8493

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

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

<sup>3</sup> See Nasdaq Rule 4758(a)(1)(A)(v)b.

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

a. Purpose

The purpose of the proposed rule change is to amend Equity 4, Rule 4758(a)(1)(A) to add a user specific routing option, as well as to correct several typographical errors in Nasdaq Rules 4703 and 4758.<sup>4</sup>

Specifically, the Exchange proposes to amend Rule 4758 by adding subsection (a)(1)(A)(xvii) to add a new routing option called “User Specific”. The User Specific routing option can be applied to the RFTY<sup>5</sup> routing strategy, where the routing process will be based on the RFTY routing strategy, and allows for the User to elect to designate or exclude<sup>6</sup> one or more destinations in the Nasdaq Market Center’s (the “System”) routing table and elect the sequence in which destinations are accessed, including the option to not post to the book. The User may also elect the price and peg instructions with which to route on a per venue basis. The User may not elect to route the order to locking or crossing market centers once an order is on the book.

The routing destinations are listed on the System’s routing table.<sup>7</sup> If the User Specific routing option is applied, the User may elect to route to additional destinations and may elect to not route to destinations that would otherwise be accessed by the strategy, subject to Reg NMS and trade through protections. The User may also elect the

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<sup>4</sup> See Nasdaq Rule 4703 and Rule 4758.

<sup>5</sup> See Nasdaq Rule 4758(a)(1)(A)(v)b.

<sup>6</sup> While the destinations included in the proprietary System routing table are not disclosed, a User may elect to exclude a destination and the System routing table for the User Specific option will be amended, if necessary.

<sup>7</sup> See Equity 1, Section 1(a). The Nasdaq Market Center, or System, means the automated system for order execution and trade reporting owned and operated by The Nasdaq Stock Market LLC.

price and peg instructions with which to route on a per venue basis. The User may not elect to route the order to locking or crossing market centers once an order is on the book. When electing the User Specific routing option, Users will continue to use the RFTY routing strategy, but will provide a Nasdaq defined unique custom routing value on an order by order basis to denote that the User Specific option has been invoked and will be used based on the User's specifications.

The RFTY strategy is a routing option available for an order that qualifies as a Designated Retail Order,<sup>8</sup> under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. RFTY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. One example of the application of the User Specific routing option is a User electing to route to designated destinations with mid-point peg instructions to seek price improvement opportunities before cancelling back any remaining shares without posting to the book. A User may also elect the User Specific routing option to exclude one or more non-NMS destinations that the strategy would otherwise route to because they already access them using other means.

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<sup>8</sup> A "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

Although they are not currently offered on the Exchange, all customization options offered by Nasdaq's proposed rule change to add a User Specific routing option are not novel and already exist within the national market system and are non-controversial. The concept is similar to the routing option included in an EDGX Exchange, Inc. ("EDGX")<sup>9</sup> filing (the "EDGX Filing")<sup>10</sup> that, in turn, was based on a BATS routing strategy.<sup>11</sup> The routing option added by the EDGX Filing (since renumbered as EDGX Rule 11.11(g)(10)) is the destination specific ("Destination Specific") routing option.<sup>12</sup> As with Nasdaq's proposed User Specific routing option, the EDGX Destination Specific routing option is one in which an order checks the System for available shares and then is sent to an away trading center or centers specified by the user.<sup>13</sup>

Nasdaq's proposed User Specific routing option also incorporates EDGX's Destination Specified order instruction, set forth in EDGX Rule 11.6(n)(5),<sup>14</sup> in that both allow the user to select the destination to where the order will be routed. The only differences are that under EDGX's Destination Specific order instruction the order is first exposed to the EDGX Book before routing, and if the order is not executed in full after

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<sup>9</sup> The former EDGX Exchange, Inc. is now known as the Cboe EDGX Exchange, Inc.

<sup>10</sup> EDGX filed its proposal to amend certain of its rules to adopt or align system functionality with what was offered by BATS Exchange, Inc. and BATS Y Exchange, Inc. (collectively, "BATS") so as to provide a consistent technology offering amongst EDGX and its affiliates.

<sup>11</sup> See e.g., Cboe BZX Exchange, Inc. Rule 11.13(b)(3)(E) (formerly, BATS Rule 11.13(a)(3)(E).

<sup>12</sup> See Securities Exchange Act Release No. 73468 (Oct. 29, 2014), 79 FR 65450 (Nov. 4, 2014) (SR-EDGX-2014-18).

<sup>13</sup> See EDGX Rule 11.11(g)(10) states that Destination Specific is "a routing option under which an order checks the System for available shares and then is sent to an away trading center or centers specified by the User."

<sup>14</sup> See EDGX Rule 11.6(n)(5).

routing away, it will be processed by EDGX as described in EDGX Rule 11.10(a)(4),<sup>15</sup> unless the user has provided instructions that the order reside on the book of the relevant away trading center. Also, Nasdaq’s proposed User Specific routing option permits the User not only to elect to route to additional destinations, but also allows a User to elect to not route to destinations that would otherwise be accessed by the strategy, subject to Reg NMS and trade through protections.

Additionally, the Exchange proposes to correct two typographical errors in Rule 4703(a), one typographical error in Rule 4703(a)(7), and two typographical errors in Rule 4758(a)(1)(A)(v)b., in each instance the text mistakenly refers to “RFTY” as “RTFY” and this amendment will rectify these typographical errors.

#### Implementation Date

The Exchange will issue an Equities Trader Alert to provide notification of the change and intends to implement the proposed change in the fourth quarter of 2023.

#### b. 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.

The Exchange believes the proposed rule change will satisfy the objectives of Section 6(b)(5) of the Act, in particular, to perfect the mechanism of a free and open

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<sup>15</sup> See EDGX Rule 11.10(a)(4).

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

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

market through supporting fair and orderly markets that protects investors and the public interest. Specifically, the proposed rule change achieves this through providing market participants with a voluntary routing option that is applicable to the RFTY routing strategy that will provide them with additional control over the execution of their orders, as well as support price improvement, to the benefit of retail market participants.

Additionally, the Exchange believes that while the level of customization by the User for a routing option does not exist explicitly within any single routing choice on the Exchange, or the BATS' Destination Specific order type, the options embedded in the User Specific routing option are available throughout the national market system.

For example, it is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act by providing retail market participants with a voluntary routing option that is similar in concept to one offered by EDGX that, in turn, was based on a BATS routing strategy, that benefits retail market participants through increased optionality and helps to support fair and orderly markets that protects investors and the public interest.

The Exchange notes that the level of customization by the User goes beyond the Destination Specific or other Exchange routing options, but the choices that the User may employ, and the outcomes of having greater control over the order handling of the orders are not novel. Although the optionality may not currently exist explicitly on the Exchange, it does exist within the national market system and is non-controversial and allows for a similar degree of optionality (e.g., ability to opt in/opt out of routing an order, electing the price level to access) and is already available to broker/dealers and has

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<sup>18</sup> 15 U.S.C. 78f(b).



proven to be non-disruptive. The Exchange believes that the proposed rule change thus serves 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 because it benefits retail market participants through increased optionality and supporting price improvement.

The correction to two typographical errors in Rule 4703(a), one typographical error in Rule 4703(a)(7), and two typographical errors in Rule 4758(a)(1)(A)(v)b., in each instance the text mistakenly refers to “RFTY” as “RTFY”, is consistent with Section 6(b)(5) of the Act because the clarification will reduce potential confusion and removes 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.

For the foregoing reasons, the Exchange believes that the proposed rule change is consistent with the Act.

#### 4. 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. As discussed above, while the level of customization by the User for a routing option does not exist explicitly within any single routing choice on the Exchange, or the BATS’ Destination Specific order type, the options embedded in the User Specific routing option are available throughout the national market system. The proposed functionality is based on existing functionality available on competitor exchanges<sup>19</sup> and

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<sup>19</sup> See EDGX Rules 11.6(n)(5) and 11.11(g)(10) as described above that, in turn, was based on a BATS routing option (based on Cboe BZX Exchange, Inc. Rule 11.13(b)(3)(E) (formerly, BATS Rule 11.13(a)(3)(E)).

the additional allowance for customization by the User is non-controversial and consistent with Section 6(b) of the Act.

Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

For the foregoing reasons, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>20</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>21</sup> in that it effects a change

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition because the rule change is designed to provide market participants with a wider variety of choices when availing themselves of the Exchange's order routing and execution services. By offering additional routing options, the Exchange hopes to benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs.

The Exchange also believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4 because it is based on similar routing option offered by EDGX. While the level of customization by the User for a routing option does not exist explicitly within any single routing choice on the Exchange, or the BATS' Destination Specific order type, the options embedded in the User Specific routing option are available throughout the national market system. The level of customization by the User goes beyond the Destination Specific or other Exchange routing options, but the choices that the User may employ, and the outcomes of having greater control over the order handling of the orders are not novel have already been addressed by the Commission. The Exchange has accordingly designated this rule filing as "non-controversial" under

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<sup>21</sup> 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A)<sup>22</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>23</sup>

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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 should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii). Waiver of the 30-day operative delay would allow the Exchange to implement the proposed change by early in the fourth quarter of 2023. As noted above, the proposed rule change presents no unique or novel issues that have not already been addressed by the Commission and granting the requested waiver would benefit market participants and

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based, in part, on EDGX Rules 11.6(n)(5) and 11.11(g)(10) as described above that, in turn, was based on a BATS routing option.<sup>24</sup>

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

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<sup>24</sup> See Cboe BZX Exchange, Inc. Rule 11.13(b)(3)(E) (formerly, BATS Rule 11.13(a)(3)(E)).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2023-057)

December \_\_, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add the User Specific Routing Option

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 December 26, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 amend Nasdaq Rule 4758(a)(1)(A) regarding Nasdaq’s routing options to add a user specific routing option that can be applied to the RFTY routing strategy, as well as to correct typographical errors in Equity 4, Rules 4703 and 4758.

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.

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

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

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 purpose of the proposed rule change is to amend Equity 4, Rule 4758(a)(1)(A) to add a user specific routing option, as well as to correct several typographical errors in Nasdaq Rules 4703 and 4758.<sup>3</sup>

Specifically, the Exchange proposes to amend Rule 4758 by adding subsection (a)(1)(A)(xvii) to add a new routing option called "User Specific". The User Specific routing option can be applied to the RFTY<sup>4</sup> routing strategy, where the routing process will be based on the RFTY routing strategy, and allows for the User to elect to designate or exclude<sup>5</sup> one or more destinations in the Nasdaq Market Center's (the "System") routing table and elect the sequence in which destinations are accessed, including the option to not post to the book. The User may also elect the price and peg instructions

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<sup>3</sup> See Nasdaq Rule 4703 and Rule 4758.

<sup>4</sup> See Nasdaq Rule 4758(a)(1)(A)(v)b.

<sup>5</sup> While the destinations included in the proprietary System routing table are not disclosed, a User may elect to exclude a destination and the System routing table for the User Specific option will be amended, if necessary.

with which to route on a per venue basis. The User may not elect to route the order to locking or crossing market centers once an order is on the book.

The routing destinations are listed on the System's routing table.<sup>6</sup> If the User Specific routing option is applied, the User may elect to route to additional destinations and may elect to not route to destinations that would otherwise be accessed by the strategy, subject to Reg NMS and trade through protections. The User may also elect the price and peg instructions with which to route on a per venue basis. The User may not elect to route the order to locking or crossing market centers once an order is on the book. When electing the User Specific routing option, Users will continue to use the RFTY routing strategy, but will provide a Nasdaq defined unique custom routing value on an order by order basis to denote that the User Specific option has been invoked and will be used based on the User's specifications.

The RFTY strategy is a routing option available for an order that qualifies as a Designated Retail Order,<sup>7</sup> under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. RFTY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. One example of the

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<sup>6</sup> See Equity 1, Section 1(a). The Nasdaq Market Center, or System, means the automated system for order execution and trade reporting owned and operated by The Nasdaq Stock Market LLC.

<sup>7</sup> A "Designated Retail Order" is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.



application of the User Specific routing option is a User electing to route to designated destinations with mid-point peg instructions to seek price improvement opportunities before cancelling back any remaining shares without posting to the book. A User may also elect the User Specific routing option to exclude one or more non-NMS destinations that the strategy would otherwise route to because they already access them using other means.

Although they are not currently offered on the Exchange, all customization options offered by Nasdaq's proposed rule change to add a User Specific routing option are not novel and already exist within the national market system and are non-controversial. The concept is similar to the routing option included in an EDGX Exchange, Inc. ("EDGX")<sup>8</sup> filing (the "EDGX Filing")<sup>9</sup> that, in turn, was based on a BATS routing strategy.<sup>10</sup> The routing option added by the EDGX Filing (since renumbered as EDGX Rule 11.11(g)(10)) is the destination specific ("Destination Specific") routing option.<sup>11</sup> As with Nasdaq's proposed User Specific routing option, the EDGX Destination Specific routing option is one in which an order checks the System for available shares and then is sent to an away trading center or centers specified by the user.<sup>12</sup>

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<sup>8</sup> The former EDGX Exchange, Inc. is now known as the Cboe EDGX Exchange, Inc.

<sup>9</sup> EDGX filed its proposal to amend certain of its rules to adopt or align system functionality with what was offered by BATS Exchange, Inc. and BATS Y Exchange, Inc. (collectively, "BATS") so as to provide a consistent technology offering amongst EDGX and its affiliates.

<sup>10</sup> See e.g., Cboe BZX Exchange, Inc. Rule 11.13(b)(3)(E) (formerly, BATS Rule 11.13(a)(3)(E)).

<sup>11</sup> See Securities Exchange Act Release No. 73468 (Oct. 29, 2014), 79 FR 65450 (Nov. 4, 2014) (SR-EDGX-2014-18).

<sup>12</sup> See EDGX Rule 11.11(g)(10) states that Destination Specific is "a routing option under which an order checks the System for available shares and then is sent to an away trading center or centers specified by the User."

Nasdaq's proposed User Specific routing option also incorporates EDGX's Destination Specified order instruction, set forth in EDGX Rule 11.6(n)(5),<sup>13</sup> in that both allow the user to select the destination to where the order will be routed. The only differences are that under EDGX's Destination Specified order instruction the order is first exposed to the EDGX Book before routing, and if the order is not executed in full after routing away, it will be processed by EDGX as described in EDGX Rule 11.10(a)(4),<sup>14</sup> unless the user has provided instructions that the order reside on the book of the relevant away trading center. Also, Nasdaq's proposed User Specific routing option permits the User not only to elect to route to additional destinations, but also allows a User to elect to not route to destinations that would otherwise be accessed by the strategy, subject to Reg NMS and trade through protections.

Additionally, the Exchange proposes to correct two typographical errors in Rule 4703(a), one typographical error in Rule 4703(a)(7), and two typographical errors in Rule 4758(a)(1)(A)(v)b., in each instance the text mistakenly refers to "RFTY" as "RTFY" and this amendment will rectify these typographical errors.

#### Implementation Date

The Exchange will issue an Equities Trader Alert to provide notification of the change and intends to implement the proposed change in the fourth quarter of 2023.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> in particular,

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<sup>13</sup> See EDGX Rule 11.6(n)(5).

<sup>14</sup> See EDGX Rule 11.10(a)(4).

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

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.

The Exchange believes the proposed rule change will satisfy the objectives of Section 6(b)(5) of the Act, in particular, to perfect the mechanism of a free and open market through supporting fair and orderly markets that protects investors and the public interest. Specifically, the proposed rule change achieves this through providing market participants with a voluntary routing option that is applicable to the RFTY routing strategy that will provide them with additional control over the execution of their orders, as well as support price improvement, to the benefit of retail market participants.

Additionally, the Exchange believes that while the level of customization by the User for a routing option does not exist explicitly within any single routing choice on the Exchange, or the BATS' Destination Specific order type, the options embedded in the User Specific routing option are available throughout the national market system.

For example, it is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act by providing retail market participants with a voluntary routing option that is similar in concept to one offered by EDGX that, in turn, was based on a BATS routing strategy, that benefits retail market participants through increased optionality and helps to support fair and orderly markets that protects investors and the public interest.

The Exchange notes that the level of customization by the User goes beyond the Destination Specific or other Exchange routing options, but the choices that the User may

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<sup>16</sup> 15 U.S.C. 78f(b)(5).

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

employ, and the outcomes of having greater control over the order handling of the orders are not novel. Although the optionality may not currently exist explicitly on the Exchange, it does exist within the national market system and is non-controversial and allows for a similar degree of optionality (e.g., ability to opt in/opt out of routing an order, electing the price level to access) and is already available to broker/dealers and has proven to be non-disruptive. The Exchange believes that the proposed rule change thus serves 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 because it benefits retail market participants through increased optionality and supporting price improvement.

The correction to two typographical errors in Rule 4703(a), one typographical error in Rule 4703(a)(7), and two typographical errors in Rule 4758(a)(1)(A)(v)b., in each instance the text mistakenly refers to “RFTY” as “RTFY”, is consistent with Section 6(b)(5) of the Act because the clarification will reduce potential confusion and removes 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.

For the foregoing reasons, the Exchange believes that the proposed rule change is consistent with 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. As discussed above, while the level of customization by the User for a routing option does not exist explicitly within any single routing choice on the Exchange, or the BATS’ Destination Specific order type, the options embedded in the User Specific

routing option are available throughout the national market system. The proposed functionality is based on existing functionality available on competitor exchanges<sup>18</sup> and the additional allowance for customization by the User is non-controversial and consistent with Section 6(b) of the Act.

Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

For the foregoing reasons, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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<sup>18</sup> See EDGX Rules 11.6(n)(5) and 11.11(g)(10) as described above that, in turn, was based on a BATS routing option (based on Cboe BZX Exchange, Inc. Rule 11.13(b)(3)(E) (formerly, BATS Rule 11.13(a)(3)(E)).

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)(iii) of the Act<sup>19</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>20</sup>

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 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 (<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-2023-057 on the subject line.

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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-2023-057. 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-2023-057 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>21</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>21</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**THE NASDAQ STOCK MARKET LLC RULES**

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**Equity Rules**

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**Equity 4: Equity Trading Rules**

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**4703. Order Attributes**

As described in Rule 4702, the following Order Attributes may be assigned to those Order Types for which they are available.

**(a) Time-in-Force**

The "**Time-in-Force**" assigned to an Order means the period of time that the Nasdaq Market Center will hold the Order for potential execution. Participants specify an Order's Time-in-Force by designating a time at which the Order will become active and a time at which the Order will cease to be active. The available times for activating Orders are:

- The time of the Order's receipt by the Nasdaq Market Center;
- the Nasdaq Opening Cross (or 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs);
- Market Hours, beginning after the completion of the Nasdaq Opening Cross (or at 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs);
- the Nasdaq Closing Cross (or the end of Market Hours in the case of a security for which no Nasdaq Closing Cross occurs);
- 7:00 a.m. ET, in the case of an Order using the SCAN or [RTFY]RFTY routing strategy that is entered prior to 7:00 a.m. ET;
- 8:00 a.m. ET, in the case of an Order using the SCAN or [RTFY]RFTY routing strategy that is entered prior to 8:00 a.m. ET
- the beginning of the Display-Only Period, in the case of a security that is the subject of a trading halt and for which trading will resume pursuant to a halt cross; and

- the resumption of trading, in the case of a security that is the subject of a trading halt and for which trading resumes without a halt cross.

The available times for deactivating Orders are:

- "Immediate" (i.e., immediately after determining whether the Order is marketable);
- the end of Market Hours;
- the end of System Hours;
- one year after entry; or
- a specific time identified by the Participant; provided, however, that an Order specifying an expire time beyond the current trading day will be cancelled at the end of the current trading day.

Notwithstanding the Time-in-Force originally designated for an Order, a Participant may always cancel an Order after it is entered.

The following Times-in-Force are referenced elsewhere in Nasdaq's Rules by the designations noted below:

(1) – (6) No change.

(7) A Participant entering an Order using the SCAN or [RTFY]RFTY routing strategy may designate the Order to activate upon entry, at 7:00 a.m. ET if entered prior to 7:00 a.m. ET on the same day, or at 8:00 a.m. ET if entered prior to 8:00 a.m. ET on the same day.

(8) No change.

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## **4758. Order Routing**

### **(a) Order Routing Process**

(1) The Order Routing Process shall be available to Participants during System Hours, unless otherwise noted in these rules, and shall route orders as described below. All routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.

(A) The System provides a variety of routing options. Routing options may be combined with all available Order Types and Times-in-Force, with the exception of Order Types and Times-in-Force whose terms are inconsistent with the terms

of a particular routing option. The System will consider the quotations only of accessible markets. The term "**System routing table**" refers to the proprietary process for determining the specific trading venues to which the System routes Orders and the Order in which it routes them. Nasdaq reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The System routing options are:

(i) – (iv) No change.

(v) a. **TFTY** is a routing option under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain un-executed after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

b. [**RTFY**]**RFTY** is a routing option available for an order that qualifies as a Designated Retail Order under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. [**RTFY**]**RFTY** is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security.

(vi) – (xvi) No change.

(xvii) User Specific. User Specific is a routing option that can be applied to the RFTY routing strategy, where the routing process will be based on the RFTY routing strategy and allows for the User to elect to designate or exclude one or more destinations in the System routing table and elect the sequence in which destinations are accessed, including the option to not post to the book. The User may also elect the price and peg instructions with which to route on a per venue basis. The User may not elect to route the order to locking or crossing market centers once an order is on the book.

(B) No change.

(b) – (d) No change.

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