

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99044; File No. SR-NASDAQ-2023-049)

November 30, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New LSTY Routing Option Under Rule 4758

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 November 16, 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 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 adopt a new LSTY routing option under Rule 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 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

The Exchange proposes to amend Equity 4, Rule 4758 to add subsection (a)(1)(A)(x)b. for a new routing option³ called LSTY. The proposed LSTY voluntary routing option arose out of client interest in Nasdaq amending its rules to create a new routing strategy similar to the existing LIST strategy.⁴ Clients currently using the LIST routing strategy have requested that Nasdaq provide a version of this strategy that will look to access available liquidity at their limit price or better by rerouting to away market centers in the event their order is locked or crossed by an away market center while the order is on the book. This proposed change will introduce a new variation of the LIST strategy, called LSTY, that will share all existing functionality with LIST with the exception of routing to away market centers after an order is booked.

After the security has opened on its primary listing market, a LIST order that has not been designated opening only and that has not been fully executed, rejected, or cancelled will be returned to the Nasdaq system (the “System”). Thereafter, the order will check the System for available shares and simultaneously route the remaining shares to destinations on the System

³ Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies (also called “routing options”) offered by Nasdaq, as described in Rule 4758; such an Order may be referred to as a “Routable Order.” Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on Nasdaq in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to Nasdaq, where they will (i) again attempt to access liquidity available on Nasdaq and (ii) post to the Nasdaq Book or be cancelled, depending on the Time-in-Force of the Order. See Rule 4703(f).

⁴ LIST is a routing option designed to allow orders to participate in the opening and/or closing process of the primary listing market for a security. See Nasdaq Rule 4758(a)(1)(A)(x).

routing table. Any remaining shares are posted on the Nasdaq book. In addition, if a LIST order is entered after the security has opened on the primary listing market (but prior to two minutes before market close) and the order has not been designated to participate in the opening only, Nasdaq will check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table, with remaining shares posted on the book.

Once the order is on the book, orders entered with the LIST routing option do not route the order to the locking or crossing market center. With the proposed LSTY routing option, once on the book, should the order subsequently be locked or crossed by another market center, the System will route the order to the locking or crossing market center.

Two minutes before market close, all LIST orders on the book will begin routing to the security's primary listing market for participation in its closing process. If a LIST order is received at or after a time that is two minutes before market close but before market close, Nasdaq will check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table; remaining shares will be routed to the security's primary listing market to participate in its closing process.

In sum, LSTY is a routing option that is a variation of the LIST routing option and shares all the existing functionality with the exception that after an order is booked, if the order is subsequently locked or crossed by another market center, the System will route the order to the locking or crossing market center. The System will only route an order to the locking or crossing market center after the security has opened on the primary listing market and prior to two minutes before market close.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ 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.

In particular, the proposed rule change will satisfy the objectives of Section 6(b)(5) of the Act by providing market participants with an additional voluntary routing strategy that is similar to the existing LIST strategy, except where that System will route an order to the locking or crossing market center should the order subsequently be locked or crossed by another accessible market center once the order is on the book. The proposed change is designed to route to locking or crossing quotations, which clears locked or crossed market conditions and helps support fair and orderly markets that protects investors and the public interest.

Nasdaq also believes the proposal is not designed to permit unfair discrimination among market participants because the proposal is for a voluntary routing option and will be available to any market participant that so chooses to use it. Additionally, as the Exchange notes above, the LSTY routing option is similar to the existing LIST routing option already offered by the Exchange.

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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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 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, the proposed routing option is voluntary and similar to an existing routing option.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)(iii) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may 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 immediately upon filing. The Exchange states that it wants to implement the LSTY routing option during the 4th quarter of 2023 and granting the waiver would allow market participants and their customers to benefit more immediately from the increased order handling flexibility provided by the LSTY routing option. In addition, the Exchange stated that the proposed rule change presents no unique or novel issues that have not already been addressed by the Commission. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

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 the Exchange to give the Commission written notice of the Exchange's 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).

upon filing.¹³

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹⁴ of the Act 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-049 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-2023-049. This file number should be included on the subject line if email is used. To help the Commission process and

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

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2023-049 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.¹⁵

Sherry R. Haywood,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).