

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99297; File No. SR-NASDAQ-2023-057)

January 8, 2024

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”),¹ and Rule 19b-4 thereunder,² 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 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 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 4758.³

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 RFTY⁴ routing strategy, where the routing process will be based on the RFTY routing strategy, and allows for the User to elect to designate or exclude⁵ 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.⁶ If the User Specific routing option is applied, the User may elect to route to additional destinations and may elect to

³ See Nasdaq Rule 4703 and Rule 4758.

⁴ See Nasdaq Rule 4758(a)(1)(A)(v)b..

⁵ 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.

⁶ 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.

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,⁷ 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.

⁷ 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”)⁸ filing (the “EDGX Filing”)⁹ that, in turn, was based on a BATS routing strategy.¹⁰ 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.¹¹ 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.¹²

Nasdaq’s proposed User Specific routing option also incorporates EDGX’s Destination Specified order instruction, set forth in EDGX Rule 11.6(n)(5),¹³ 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 routing away, it will be processed by EDGX as described in EDGX Rule 11.10(a)(4),¹⁴ unless the user has provided instructions that

⁸ The former EDGX Exchange, Inc. is now known as the Cboe EDGX Exchange, Inc.

⁹ 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.

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

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

¹² 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.”

¹³ See EDGX Rule 11.6(n)(5).

¹⁴ See EDGX Rule 11.10(a)(4).

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,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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 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

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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,¹⁷ 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 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

¹⁷ 15 U.S.C. 78f(b).

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 exchanges¹⁸ 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

¹⁸ 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)).

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ 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 Act²¹ and Rule 19b-4(f)(6)(iii) thereunder.²²

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 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

A proposed rule change filed under Rule 19b-4(f)(6)²³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),²⁴ 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 RFTY during the first quarter of 2024 and granting the waiver would allow market participants and their customers to benefit more immediately from the increased order handling flexibility provided by the RFTY 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 upon filing.²⁵

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)²⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

²⁵ 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).

²⁶ 15 U.S.C. 78s(b)(2)(B).

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-2023-057 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-2023-057. 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.²⁷

Sherry R. Haywood,

Assistant Secretary.

²⁷ 17 CFR 200.30-3(a)(12).