

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69151; File No. SR-NASDAQ-2013-033)

March 15, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pre-Market Hours of the Exchange to 4:00 a.m. EST

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 March 5, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I 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

NASDAQ proposes to extend the pre-market hours of the Exchange to 4:00 a.m. EST, from the current opening time of 7:00 a.m. EST.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

Background. NASDAQ's equities trading day is divided into three sessions: (1) the pre-market session which runs from 7:00 a.m. to 9:29:59 a.m.; (2) the regular session which runs from 9:30 a.m. to 4:00 p.m.; and (3) the post-market session which runs from 4:00:00:01 p.m. to 8:00 p.m. The vast majority of trading occurs during the regular session; over 91 percent of average daily trading volume in NASDAQ-listed equities is executed during the regular session. Nonetheless, the pre-market and post-market sessions provide critical price formation and trading opportunities for a small group of equities market participants. For those equities and market participants, the presence of a transparent, liquid, and efficient market during the pre-market or post-market session is vital to public investors, and to the firms themselves.

The NYSE Arca Exchange is currently the only U.S. equities exchange that operates a pre-market trading session for equities beginning at 4:00 a.m. Increasingly, the trading period between 4:00 a.m. and 7:00 a.m. provides a significant opportunity for certain investors and traders. A meaningful percentage of total daily trading volume in NASDAQ-listed securities is reported as executed before 7:00 a.m., especially for individual stocks that experience material news or other trading events overnight. Additionally, NASDAQ understands from its members that an increasing number of limit orders are entered into the NYSE Arca system before 7:00 a.m. and execute after 7:00 a.m. While it is difficult to quantify the total number of orders and shares in this category based on available trade reporting limitations, NASDAQ believes that significant liquidity comes to rest prior to 7:00 a.m.

Accordingly, NASDAQ believes that opening its system at 4:00 a.m. will benefit investors, the national market system, NASDAQ members and the NASDAQ market. Opening

at 4:00 a.m. will benefit investors and the national market system by increasing competition for order flow and executions, and thereby spurring product enhancements and lowering prices.

Opening at 4:00 a.m. will benefit NASDAQ members and the NASDAQ market by increasing trading opportunities between 4:00 a.m. and 7:00 a.m. without increasing ancillary trading costs (telecommunications, data, connectivity, etc.) and, thereby, decreasing average trading costs per share. Opening NASDAQ at 4:00 a.m. will also benefit NASDAQ members that choose not to participate in the early hours but nonetheless gain the opportunity to interact with liquidity entered by other members during the early session.

Operations. From the members' operational perspective, NASDAQ's goal is to permit trading for those that choose to trade, without imposing burdens on those that do not. Thus, for example, NASDAQ will not require any NASDAQ member to participate in the extended session, including not requiring registered market makers to make two-sided markets between 4:00 a.m. and 7:00 a.m. NASDAQ will minimize members' preparation efforts to the greatest extent possible by allowing members to trade beginning at 4:00 a.m. with the same equipment, connectivity, order types, and data feeds they currently use from 7:00 a.m. onwards.

Opening Process. NASDAQ will offer no opening cross at 4:00 a.m., just as it offers no Opening Cross at 7:00 a.m. today. Instead, at 4:00 a.m., the NASDAQ system will "wake up" by loading in price/time priority all open trading interest carried over from the previous trading day. Also at 4:00 a.m., NASDAQ will open the execution system and accept new eligible orders, just as it currently does at 7:00 a.m. Members will be permitted to enter orders beginning at 4:00 a.m. Market makers will be permitted but not required to open their quotes beginning at 4:00 a.m. in the same manner they open their quotes today beginning at 7:00 a.m.

Order Types. Every NASDAQ order type that is currently available beginning at 7:00 a.m. will be available beginning at 4:00 a.m. All other order types, and all order type behaviors, will otherwise remain unchanged. NASDAQ will not extend the expiration times of any orders. For example, an order that is currently available from 7:00 a.m. to 4:00 p.m. will be modified to be available from 4:00 a.m. to 4:00 p.m. An order that is available from 7:00 a.m. to 9:30 a.m. will be modified to be available from 4:00 a.m. to 9:30 a.m. In the future, display and non-display characteristics will operate beginning at 4:00 a.m., as they do today beginning at 7:00 a.m.

Routing Services. NASDAQ will route orders to away markets between 4:00 a.m. and 7:00 a.m., just as it does today between 7:00 a.m. and 9:30 a.m. All routing strategies set forth in NASDAQ Rule 4758 will remain otherwise unchanged, performing the same instructions they perform between 4:00 a.m. and 7:00 a.m. today.

Order Processing. Order processing under NASDAQ Rule 4757 will operate beginning at 4:00 a.m. just as it does today beginning at 7:00 a.m. There will be no changes to the ranking, display, execution algorithms, or decrementation processes or rules.

Data Feeds. NASDAQ will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning 7:00 a.m. NASDAQ proprietary data feeds will be disseminated beginning at 4:00 a.m. using the same formats and delivery mechanisms with which NASDAQ currently disseminates them beginning at 7:00 a.m.

Trade Reporting. Trades executed between 4:00 a.m. and 7:00 a.m. will be reported to the appropriate network processor with the “.T” modifier, just as they are reported today beginning at 7:00 a.m.

Adjustment of Open Orders. NASDAQ will adjust open orders for the 4:00 a.m. opening pursuant to the requirements of NASDAQ Rule 4761 just as it does today for the 7:00 a.m. opening.

Fees. NASDAQ is changing no fees in connection with this proposal.

Market Surveillance. NASDAQ's commitment to high quality regulation at all times will extend to 4:00 a.m. NASDAQ will offer all surveillance coverage currently performed by NASDAQ MarketWatch beginning at 3:45 a.m. In other words, surveillance coverage will begin 15 minutes pre-open, just as it does today.

Personnel. Quality surveillance begins with quality personnel. Highly trained primary and back-up regulatory personnel will be in place at 3:45 a.m. and the NASDAQ Call Center will open at 4:00 a.m.

Systems. All MarketWatch surveillance systems will launch by the time trading starts. At 4:00 a.m. NASDAQ personnel will begin conducting alert reviews, clearly erroneous trade processing, and member firm contacts just as they do today beginning at 7:00 a.m.

Trading Halts. Currently MarketWatch institutes trading halts from 7 a.m. to 8 p.m. NASDAQ plans to institute a subset of trading halts between 4:00 a.m. and 7:00 a.m. First, NASDAQ will halt trading at the request of an issuer, which NASDAQ believes is also the practice of the NYSE across its affiliated exchanges for its listed companies. Second, NASDAQ will halt trading in conjunction with a trading halt imposed by a foreign listing market. As described below, NASDAQ does not plan to review issuer disclosures during the 4:00 a.m. to 7:00 a.m. period, obviating the need for material news halts.

Clearly Erroneous Trade Processing. NASDAQ will process trade breaks beginning at 4:00 a.m. pursuant to NASDAQ Rules 4762 and 11890 just as it does today beginning at 7:00 a.m.

Issuer Disclosure Requirements. To avoid burdening issuers, NASDAQ will not extend the current issuer disclosure requirements set forth in NASDAQ Rule 5250 and NASDAQ IM-5250, which require overnight material disclosures to be forwarded to MarketWatch by 6:50 a.m. This will allow issuers to continue the practice of disclosing material news between 4:00 a.m. and 7:00 a.m. to avoid triggering a halt by NASDAQ or another listing market. Issuers prefer to avoid triggering material news halts because the halt process involves interaction between NASDAQ and designated officials at the issuer. Our proposed policy would obviate the need for these officials to be available at unexpected hours. This also limits the need for trade halt coordination between NASDAQ and the NYSE Arca Exchange between 4:00 a.m. and 7:00 a.m.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Section 6(b)(5) of the Act,⁴ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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 proposed rule change promotes this goal by offering additional trading opportunities to NASDAQ members that desire them, without imposing burdens on NASDAQ

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(5).

members that do not. The proposal will facilitate a well-regulated, orderly, and efficient market during a period of time that is currently underserved.

NASDAQ notes that the proposed trading period has been available for years on the NYSE Arca Exchange. NASDAQ believes that the availability of trading between 4:00 a.m. and 7:00 a.m. has been beneficial to market participants including investors and issuers on other markets. The Exchange believes that offering a competing trading session will further benefit investors by promoting competition and order interaction, while imposing no added costs on investors or other market participants that choose not avail themselves of these benefits.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that 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, as amended. To the contrary, NASDAQ believes that offering a competing early trading session is pro-competitive in that it will increase competition for order flow, for execution services and for listings. The fact that the early trading session is itself an identical response to the competition provided by another market is proof of its pro-competitive nature. NASDAQ fully expects that other listing venues will respond by further extending their trading sessions as well.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor 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 Act⁵ and Rule 19b-4(f)(6) thereunder.⁶ Because the proposed rule change does not: (i)

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(6).

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 Act⁷ and Rule 19b-4(f)(6)(iii) thereunder.⁸

The Exchange has asked the Commission to waive the 30-day operative delay.⁹ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change does not appear to raise any novel regulatory issues for the Commission to consider.¹⁰ In addition, according to NASDAQ, the introduction of competition during the hours of 4:00 a.m. and 7:00 a.m. will benefit investors by offering alternative execution venues and spurring improvements in pricing and functionality. Accordingly, the Commission designates the proposal operative upon filing.¹¹

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

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6)(iii). 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.

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ See Securities and Exchange Act Release No. 51014 (January 10, 2005), 70 FR 2918 (January 18, 2005) (SR-PCX-2004-83).

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2013-033 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-033. This file number should be included on the subject line if e-mail 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, D.C. 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2013-033 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).