

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69880; File No. SR-NASDAQ-2013-090)

June 27, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 4754 Governing the NASDAQ Closing Cross (“Cross”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on June 20, 2013, 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 Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend Exchange Rule 4754 governing the NASDAQ Closing Cross (“Cross”) to specify contingency plans for determining the NASDAQ Official Closing Price (“NOCP”) in the event NASDAQ experiences a system disruption that precludes normal execution of the Cross pursuant to Rule 4754.

The text of the proposed rule change is attached as Exhibit 5.³

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. The text of these statements may be examined

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that Exhibit 5 is attached to the filing, not to this Notice.

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

Background. Since June of 2002, NASDAQ has published contingency plans in the event the NASDAQ closing process was to be disrupted during the annual reconstitution of the Russell indexes. The Russell-targeted contingency plans began as a series of scenarios, and the set has accreted new scenarios from year to year as NASDAQ's system and the market-wide trading ecosystem have evolved. NASDAQ has established a pattern of communication and testing of contingency plans to ensure that NASDAQ, its members, and the public are prepared to implement the contingency plans if needed.

While NASDAQ has communicated the contingency plans broadly to its members and to the investing public, NASDAQ has never included those contingency plans in NASDAQ's rule manual. NASDAQ has determined to approach contingency planning differently than in the past, and it has also determined to add the contingency plans to NASDAQ's rule manual.

The Contingency Closing Cross process begins with communication. Under the proposal, when NASDAQ experiences a disruption that will preclude execution of the standard Closing Cross, the President of NASDAQ or any Executive Vice President designated by the President will be authorized to invoke the Contingency Procedures. When that occurs, NASDAQ will at the earliest possible time communicate to members and the public its determination to implement the Contingency Closing Cross process. NASDAQ will communicate with members and the public via system status alerts on NASDAQTrader.com, as well as via Equity Trader Alerts and emails to pre-established notification lists.

NASDAQ is proposing to use a single method for determining the NOCP in response to any situation in which NASDAQ's standard closing cross process fails to operate properly. NASDAQ will employ a single offline process to determine the price, size, and component executions for the closing cross trade in any and all affected securities on a security-by-security basis. NASDAQ believes that a single offline process will address potential failures in the NASDAQ execution system due to its separation from that system and its ability to draw on stored order files regardless of any impairment to the execution system.⁴

The first step in NASDAQ's proposed Contingency Closing Cross is to determine the proper closing price. If the standard closing cross process fails in any security, NASDAQ will identify the last consolidated regular way trade reported by the network processor before 4:00:00:00 p.m. for an NMS Security and it will use that price as the NOCP. In the event an impacted security has no consolidated last sale price (*i.e.* the security has not traded during the day), NASDAQ will have no NOCP and no Contingency Cross for that security. NASDAQ will report each NOCP to the network processor as soon as practical using existing closing modifiers.

Once NASDAQ has identified the NOCP for a given security, NASDAQ will operate a modified closing cross to determine the number of shares and the specific orders that can be executed at the NOCP. Only "on close" orders will participate in the Contingency Closing Cross. All Market-on-Close ("MOC"), Limit-on-Close ("LOC") and Imbalance Only orders received and not cancelled prior to 3:50 p.m., as well as all Imbalance Only orders received between 3:50 and 4:00 p.m. will be eligible to participate. Resting DAY orders will *not* be

⁴ NASDAQ maintains a database of all orders entered into the execution system, as well as other data regarding order processing. The database is independent of and isolated from the execution system and network and, as a result, it can operate regardless of impairment to those systems. NASDAQ will operate the contingency process from a server that is also independent of and isolated from the execution system and network, and that is supported by multiple redundant backups.

eligible to participate because the contingency closing cross will be an offline process and it will be unable to interact with the continuous book.

Once NASDAQ has identified orders eligible to participate in the Contingency Closing Cross and able to execute at the NOCP, NASDAQ will execute on a price-time priority basis, the maximum number of shares able to execute at the NOCP. If an order imbalance exists in the MOC and LOC interest that is marketable at the NOCP, NASDAQ will select Imbalance Only orders on the side of the market that is short of trading interest (in price/time priority) in order to maximize the number of paired shares to execute at the NOCP.

Once NASDAQ has completed the Contingency Closing Cross, it will report the results to the appropriate network processor and deliver execution reports to members. NASDAQ will publish the NOCP and total shares executed in the Contingency Closing Cross using the proper trade report modifiers already utilized by the processors.⁵ Additionally, NASDAQ will deliver component executions to participants via a flat data file formatted in DROP protocol.⁶

After hours trading will begin either as scheduled at 4:00 p.m. or upon resolution of the disruption that triggered NASDAQ to operate the Contingency Closing Cross.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the

⁵ NASDAQ will report both an official closing price and a bulk trade report for each Closing Cross.

⁶ “DROP” is a proprietary protocol that NASDAQ uses to deliver real-time execution information to members using the NASDAQ system. It facilitates members’ efforts to monitor, track, enter, and cancel orders.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposal is consistent with this provision in that it will ensure that the Exchange continues to operate a fair and orderly market and to provide for an effective pricing mechanism for the critical period of the market close. The proposed independent, off-line process improves NASDAQ's ability to maintain a fair and orderly market when the NASDAQ execution system or network is impaired for any reason.

The proposed Contingency Procedures for the Closing Cross are designed to preserve NASDAQ's ability to move quickly to establish a reliable closing price under unusual conditions. By simplifying and codifying the Contingency Procedures, NASDAQ also enables NASDAQ members to plan for the contingencies, including the ability to test their systems and how they will interact with NASDAQ's systems in the event NASDAQ triggers the Contingency Procedures.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is specifically designed to protect the other markets and investors from harm that a NASDAQ disruption could impose. In actuality, the proposal is pro-competitive because it promotes fair and orderly markets and investor protection, which in turn will buttress investor confidence and attract more investors into U.S. equities markets. NASDAQ has never used contingency planning by other exchanges as a competitive weapon; nor has any competitor used NASDAQ's planning against it.

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

Written comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹² The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can establish this process prior to the Russell Reconstitution on June 28, 2013 and notes that there is significant benefit to investors from providing certainty prior to that date. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule will provide certainty regarding the contingency procedures to market participants prior to the date of the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² Id.

Russell Reconstitution. Therefore, the Commission designates the proposal operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

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-2013-090 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-2013-090. 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

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).

website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. 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-2013-090, 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).