

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75517; File No. SR-NASDAQ-2015-082)

July 24, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Introduce an Additional Data Element to the IPO Indicator Service

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 July 15, 2015, 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 the Substance of the Proposed Rule Change

The Exchange proposes to introduce an additional data element to its IPO Indicator Service. The text of the proposed rule change is available on the Exchange’s website at <http://nasdaq.cchwallstreet.com>, 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 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

Nasdaq is proposing to introduce an additional data element – to be known as the “IPO Book Viewer” – to its IPO Indicator Service, which currently assists Nasdaq Participants in monitoring the Orders they have entered for execution in the Nasdaq Halt Cross for an IPO. The Nasdaq Halt Cross is an auction process designed to provide an orderly, single-priced opening of securities subject to an intraday halt, including securities that are the subject of an IPO. Prior to the execution of the Nasdaq Halt Cross for an IPO (the “IPO Cross”), Participants enter Orders eligible for participation in the IPO Cross, and Nasdaq disseminates certain information regarding buying and selling interest entered and indicative execution price information, with such information known collectively as the Net Order Imbalance Indicator or “NOII”. The NOII is disseminated every five seconds during a period prior to the completion of the IPO Cross, in order to provide Participants with information regarding the possible price and volume of the IPO Cross execution. The NOII information includes, among other things, the Current Reference Price,³ which is the price at which the IPO Cross would occur if it executed at the time of the NOII’s dissemination. The IPO Indicator Service in turn provides a Participant with information about the number of shares of its Orders that would execute in the IPO Cross at the Current Reference Price.⁴ The IPO Cross executes and regular market trading commences in the IPO security when the designated representative of the underwriting syndicate for the IPO informs Nasdaq that the IPO security is ready to commence trading and the parameters of the

³ See Rule 4753(a)(3)(A).

⁴ The IPO Indicator Service is available either as a feature of the Nasdaq Workstation product, or through a standalone product known as the Nasdaq IPO Workstation. See Rule 7015.

IPO Cross pass validation checks pertaining to the price of the execution and the execution of all entered market Orders.⁵ The representative of the underwriting syndicate that serves this function – usually the lead underwriter – also serves as the stabilizing agent for the IPO.

Following the execution of the IPO Cross, the stabilizing agent engages in permissible “stabilizing”, as defined in Rule 100 under SEC Regulation M,⁶ for the IPO. As provided by Rule 104 under Regulation M,⁷ stabilizing of an offering is permitted only to the extent that the person engaging in the activity complies with limitations described in that rule. These limitations include a requirement that stabilizing must be solely for the purpose of preventing or retarding a decline in the market price of the security, limitations on the maximum price of a stabilizing bid, and a requirement that a syndicate engaging in an offering maintain no more than one stabilizing bid at the same price and time in a given market.

As discussed above, the stabilizing agent has responsibility for monitoring the submission of buying and selling interest into the IPO Cross and informing Nasdaq when the IPO security is ready to initiate trading. In addition, following the completion of the IPO Cross, the stabilizing agent may enter a stabilizing bid into the market for the purpose of supporting the price of the IPO security during the remainder of its first day of trading. Thus, the stabilizing agent stands ready during the course of the day to commit its capital in support of the IPO security, buying from investors that wish to sell the IPO security to realize short-term gains (or to minimize short-term losses). The stabilizing agent thereby serves to dampen volatility in the IPO security and promote the maintenance of a fair and orderly market. Because the function performed by the stabilizing agent is unique on the day of the IPO, Nasdaq has concluded that providing additional

⁵ See Rule 4120(c)(8).

⁶ 17 CFR 242.100.

⁷ 17 CFR 242.104.

information about pre-opening interest in the stock to the stabilizing agent will help it to optimize the opening of the stock and manage its own risk, thereby assisting it in promoting a fair and orderly market for the IPO security. Accordingly, Nasdaq is proposing to introduce the IPO Book Viewer, a specialized data product that will be made available solely to the stabilizing agent.

Access to the IPO Book Viewer data element will be limited through a secure entitlement process to designated individuals employed by the stabilizing agent. On the day of an IPO, beginning with the start of the Display-Only Period described in Nasdaq Rule 4120 and ending upon the completion of the IPO Cross for an IPO security, the IPO Book Viewer will display aggregated buying and selling interest information for the IPO security, reflecting all Orders on the Nasdaq Book, and consisting of the total number of Orders and the aggregate size of all Orders, grouped in \$0.05, \$0.10, or \$0.25 price increments. The pricing increments may be adjusted by the stabilizing agent during the period that the IPO Book Viewer is available.⁸ Thus, for example, if the IPO Book Viewer was configured to show \$0.05 increments and the Nasdaq Book had 100 Orders to buy with a size of 200 shares each at each price from \$39.99 to \$39.95; and 100 Orders to buy with a size of 100 shares each at each price from \$39.94 to \$39.90, the IPO Book Viewer would show 500 Orders with an aggregate size of 100,000 shares for the \$39.99 to \$39.95 price band; and 500 Orders with an aggregate size of 50,000 shares for the \$39.94 to \$39.90 price band. The IPO Book Viewer would also show comparable information with respect to Orders to sell. The aggregated information provided through this data element would include all Orders and Size, including Orders with a Time-in-Force of Immediate or

⁸ However, the stabilizing agent cannot view multiple increments at the same time. For example, the viewer could view all \$0.05 increments or all \$0.25 increments, but could not view a \$0.05 increment for prices near the NOII and wider increments for prices further away.

Cancel (i.e., Orders designated to execute in the IPO Cross, if possible, or to cancel if not); Orders with Reserve Size; and Non-Displayed Orders. The placement of the price bands will be standardized, beginning at \$0. Thus, for example, a user selecting \$0.05 increments would always see Orders priced from \$20.00 to \$20.04 and from \$20.05 to \$20.09, but could not modify the starting point of the price band to see Orders priced from \$20.01 to \$20.05. Information provided through the IPO Book Viewer will be updated every five seconds, along with updates to the NOII.

The IPO Book Viewer will provide no information other than that described above, unless Nasdaq submits a proposed rule change to add additional data to it. In particular, the IPO Book Viewer will not provide any information regarding IOC or Non-Displayed Orders or Reserve Size other than in the aggregated format described above, and will not provide any information regarding the identity of Participants posting Orders.

Nasdaq believes that providing this information to the stabilizing agent will provide the stabilizing agent with insights into the scope of demand for, and supply of, the IPO Security, in a manner that will allow it to make more informed decisions about the appropriate time to initiate the opening of the IPO security through the IPO Cross. In addition, the information will allow the stabilizing agent to respond in a more informed way to questions from its customers and other participants regarding expectations that an Order to buy or sell with a stated price and size may be executable in the IPO Cross. Finally, the information will assist the stabilizing agent in making decisions about the appropriate level of capital to commit to support the IPO security once trading commences.

Once the IPO Cross executes, the IPO Book Viewer will cease to be available, both with respect to the state of the Nasdaq Book during the continuous market and with respect to

retrospective information about the state of the Nasdaq Book leading up to the IPO Cross. Thus, the stabilizing agent will not be provided with any information not available to other market participants once continuous market trading in the IPO security commences.

Nasdaq believes that providing the information contained in the IPO Book Viewer is not a novel proposal, but rather is similar to established New York Stock Exchange (“NYSE”) practices with respect to the flow of information to market participants during an IPO. Currently, as provided in NYSE Rule 104, the Designated Market Maker (“DMM”) for a security has access to aggregated and order-specific information about securities for which it is the DMM, not only in the process of opening an IPO but at all times throughout the day of an IPO and on subsequent days. Moreover, the DMM is permitted to share this information with floor brokers; such sharing is subject to no restriction with respect to aggregated information, while the sharing of order-specific information must be made “in response to a specific request.” When an IPO is being conducted at NYSE, the DMM therefore has access to aggregated order book information and is free to share it with the floor broker for the firm acting as stabilizing agent for the IPO. Using this information, the DMM and the stabilizing agent collaborate to determine when the IPO security should commence trading; the stabilizing agent may use the information to respond to requests from its customers and others regarding expectations about the commencement of trading; and the stabilizing agent may use the information to inform decisions about committing capital in support of the IPO security. In fact, information from the DMM remains available not only prior to the commencement of trading, but throughout the trading day.

While Nasdaq’s market structure differs in significant respects from NYSE’s, Nasdaq believes that the IPO Book Viewer will allow it to provide benefits to stabilizing agents for IPOs

conducted on Nasdaq comparable to those provided for IPOs on NYSE, without altering the competing market maker model that Nasdaq employs. In the time before its IPO Cross, Nasdaq possesses order book information comparable to the information transmitted by NYSE to a DMM prior to the commencement of trading in an IPO security on NYSE. Thus, the IPO Book Viewer will allow Nasdaq to share with the stabilizing agent information that is comparable to the information shared by NYSE with the DMM and by the DMM with the stabilizing agent for a NYSE IPO.

In approving NYSE Rule 104 in its current form, the Commission did not express any concerns regarding the availability of aggregated order information of the sort that would be provided through the IPO Book Viewer; rather, the Commission analyzed the potential for abuse associated with the DMM sharing disaggregated order information, because some of this order-specific information was available solely to the DMM.⁹ Because Nasdaq is not proposing that the IPO Book Viewer will contain any disaggregated order information, the concerns analyzed, and ultimately resolved in favor of the NYSE, by the Commission are simply not present in the case of the IPO Book Viewer.

Nevertheless, since the aggregated information provided through the IPO Book Viewer is unique and directly available only to the stabilizing agent, Nasdaq believes that it is appropriate to adopt safeguards in order to ensure that the aggregated information is not misused. Accordingly, Nasdaq's proposed rule will require the stabilizing agent receiving the IPO Book Viewer to maintain and enforce written policies and procedures reasonably designed to achieve the following purposes:

⁹ Securities Exchange Act Release No. 71175 (December 23, 2013), 78 FR 79534 (December 30, 2013) (SR-NYSE-2013-21; SR-NYSEMKT-2013-25).

- Restrict electronic access¹⁰ to aggregated information only to associated persons of the stabilizing agent who need to know the information in connection with establishing the opening price of an IPO security and stabilizing the IPO security;
- Except as may be required for purposes of maintaining books and records for regulatory purposes,¹¹ prevent the retention of aggregated information following the completion of the IPO Cross for the IPO security; and
- Prevent persons with access to aggregated information from engaging in transactions in the IPO security other than transactions in the IPO Cross; transactions on behalf of a customer; or stabilizing. Thus, for example, the stabilizing agent or its affiliates would not be permitted to use the information to engage in proprietary trading other than in support of bona fide stabilizing activity.

However, for the avoidance of doubt regarding appropriate uses of the aggregated information, the proposed rule will also provide that nothing contained in the rule shall be construed to prohibit the member acting as the stabilizing agent from (i) engaging in stabilizing consistent with that role, or (ii) using the information provided from the IPO Book Viewer to respond to inquiries from any person, including, without limitation, other members, customers, or associated persons of the stabilizing agent, regarding the expectations of the member acting as the stabilizing agent with regard to the possibility of executing stated quantities of an IPO security at stated prices in the IPO Cross. Nasdaq believes that these permitted uses are entirely consistent with established practices at NYSE, under which the DMM may display aggregated and certain unique, order-specific disaggregated information to the floor broker acting as

¹⁰ As discussed below, electronic access to the IPO Book Viewer will be available on a displayed basis only.

¹¹ See, e.g., SEC Rule 17a-4(a)(4), 17 CFR 240.17a-4(a)(4).

stabilizing agent, who is then free to discuss this information with other members, customers, and associated persons of the stabilizing agent.

The aggregated information provided through the IPO Book Viewer will be available solely for display on the screen of a computer for which an entitlement has been provided by Nasdaq. Under no circumstances may a member redirect aggregated information to another computer or reconfigure it for use in a non-displayed format, including, without limitation, in any trading algorithm. If a member becomes aware of any violation of the restrictions contained in the proposed rule, it must report the violation promptly to Nasdaq.

The IPO Indicator Service is currently provided free of charge through the IPO Workstation, and at no additional charge to users of the Nasdaq Workstation. Although Nasdaq may, in the future, institute a charge for the IPO Indicator Service, it is not proposing a fee at this time. Accordingly, the additional IPO Book Viewer element would likewise be provided free of charge at this time. The proposed rule change also adds to Rule 7015 definitions of “IPO security”, “stabilizing”, “stabilizing agent”, “IPO Indicator Service”, and “IPO Book Viewer”. The added definitions are intended to promote a clear understanding of the rule text by delineating the products addressed by the rule and the scope of activities to which they pertain.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Section 6(b)(5) of the Act¹³ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, 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 transactions

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

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. Nasdaq further believes that the introduction of the IPO Book Viewer element without a fee at this time is consistent with Sections 6(b)(4) and (5) of the Act,¹⁴ in that it provides for the equitable allocation of reasonable dues, fees and other charges among recipients of Nasdaq data and is not designed to permit unfair discrimination between them.

Nasdaq believes that the proposed rule change will promote the goals of the Act by assisting the stabilizing agent for an IPO security in promoting a fair and orderly market. Specifically, by providing unique, aggregated information concerning all Orders on the Nasdaq Book prior to the commencement of an IPO Cross, the IPO Book Viewer will give the stabilizing agent information that will assist it in achieving a range of goals. Specifically, by being able to share aggregated information with other members and customers, the stabilizing agent will enable greater participation in the IPO Cross because it will be able to provide more certain information about the ability of investors to execute Orders at particular sizes and prices. Moreover, being able to compare information about potential interest in participating in the IPO Cross with more detailed information about the state of the Nasdaq Book will enable the stabilizing agent to determine with more certainty the appropriate time to allow the IPO Cross to execute. Finally, having greater knowledge about the range of trading interest in the Nasdaq Book prior to the execution of the IPO Cross will enable the stabilizing agent to make more informed decisions about the extent of capital it may need to commit after the commencement of trading in order to stabilize the price of the IPO security and thereby dampen volatility that might undermine investor confidence.

¹⁴ 15 U.S.C. 78f(b)(4), (5).

Nasdaq further believes that the restrictions it proposes to impose on the use of the IPO Book Viewer will protect against possible misuse of the provided information. Notably, the information will be provided only prior to the completion of the IPO Cross and may not be retained thereafter, except to the extent necessary for record-retention purposes. The information will be disseminated in a display format only and may not be redirected or reconfigured for non-display usage (such as usage by a trading algorithm). Moreover, electronic access to the information will be available only to certain designated individuals with a role in conducting stabilizing activities, and persons with access may not engage in transactions other than stabilizing or transactions in the IPO Cross or on behalf of a customer. Although the Commission has not expressed any concerns about the availability of aggregated information to DMMs and floor brokers (including stabilizing agents) with whom they share such information, Nasdaq believes that the safeguards it proposes around the use of such aggregated information by its members will provide added assurance to members and the investing public that the IPO Book Viewer will not be misused.

Finally, Nasdaq notes that although the IPO Book Viewer will be available only to stabilizing agents, this limitation is consistent with the protection of investors because the stabilizing agent plays a unique role on the day of an IPO because it must decide when the IPO security should commence trading and must commit capital in support of the IPO security once trading begins. Because the IPO Book Viewer will assist the stabilizing agent in performing these functions, which are performed by no other broker, Nasdaq believes that it is reasonable to limit access to the IPO Book Viewer to the stabilizing agent. Moreover, because the IPO Book Viewer will cease to be available once regular trading in the IPO security commences and the information provided therein will quickly become stale, Nasdaq does not believe that access to

the information will provide the stabilizing agent with any unfair advantage.

Nasdaq believes that the proposal to add certain defined terms to Rule 7015 is consistent with the Act because the definitions are intended to promote a clear understanding of the rule text by delineating the products addressed by the rule and the scope of activities to which they pertain. Nasdaq further believes that the proposal to make the IPO Book Viewer available to eligible recipients at no additional charge is reasonable because it will not result in any increase in the costs incurred by a stabilizing agent to receive the additional information. Nasdaq further believes that the proposal is consistent with an equitable allocation of fees and not unfairly discriminatory because additional information is being provided to a limited group of potential users in order to assist in the promotion of fair and orderly markets during an IPO. Accordingly, the absence of an additional fee is designed to encourage eligible members to accept the information in order to ensure that the goals of the proposal are advanced to the greatest extent possible.

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. In fact, Nasdaq believes that the proposal will help to redress an anti-competitive disparity that exists at present due to the availability of order book information to stabilizing agents conducting IPOs on NYSE through the DMM. Given that the proposal will result in a stabilizing agent on Nasdaq receiving less information than is available on NYSE, and that the usage of the information will be subject to greater restrictions, Nasdaq does not believe that there can be any reasonable objection to the proposal on competitive grounds.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2015-082 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-2015-082. 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, 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 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-2015-082, 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.¹⁵

Robert W. Errett
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).