

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69322; File No. SR-NASDAQ-2013-061)

April 5, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 4120

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 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 adopt NASDAQ Rule 4120(c)(7)(D) concerning the extension of the Display Only Period conducted prior to the IPO Halt Cross under NASDAQ Rule 4753. The Exchange has designated the proposed changes herein as immediately effective.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

4120. Trading Halts

(a) – (b) No change.

(c) Procedure for Initiating a Trading Halt

(1) - (6) No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(7)

(A) A trading halt or pause initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10), (11) or Rule 4120(b) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 5-minute Display Only Period during which market participants may enter quotations and orders in that security in Nasdaq systems. At the conclusion of the 5-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for an additional 1-minute period pursuant to subparagraph (C) below. At the conclusion of the Display Only Period, trading shall immediately resume pursuant to Rule 4753.

(B) A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute Display Only Period during which market participants may enter quotes and orders in that security in Nasdaq systems. In addition, beginning at 7 a.m., market participants may enter Market Hours Day Orders in a security that is the subject of an Initial Public Offering on Nasdaq and designate such orders to be held until the beginning of the Display Only Period, at which time they will be entered into the system. At the conclusion of the 15-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for up to six additional 5-minute Display Only Periods pursuant to subparagraph (C) or (D) below. At the conclusion of the Display Only Period(s), there shall be an additional delay of between zero and 15 seconds (randomly selected) and then trading shall resume pursuant to Rule 4753.

(C) If at the end of a Display Only Period, Nasdaq detects an order imbalance in the security, Nasdaq will extend the Display Only Period as permitted under subparagraphs (A) and (B) above. Order imbalances shall be established when (i) the Current Reference Prices, as defined in Rule 4753(a)(2)(A), disseminated 15 seconds and immediately prior to the end of the Display Only Period differ by more than the greater of 5 percent or 50 cents, or (ii) all buy or sell market orders will not be executed in the cross.

(D) At any time within the last five minutes prior to the end of a Display Only Period, Nasdaq may extend the Display Only Period as permitted under subparagraph (B) above at the request of an underwriter of an IPO.

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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 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 Exchange proposes to adopt Rule 4120(c)(7)(D) to describe an additional basis for extending the Display Only Period as permitted by Rule 4120(c)(7)(B), and is

making a conforming change to Rule 4120(c)(7)(B). Rule 4120(c)(7)(B) governs the orderly launch of trading of a company's securities approved for listing on NASDAQ in an initial public offering ("IPO"). Rule 4120(c)(7)(B), provides a fifteen-minute "Display Only Period" prior to terminating the halt imposed on an IPO security before it opens for trading for the first time on NASDAQ pursuant to the IPO Halt Cross of Rule 4753. Under Rule 4120(c)(7)(B), at the conclusion of the fifteen-minute Display Only Period NASDAQ may extend the period for up to six additional five-minute Display Only Periods, pursuant to the basis described under Rule 4120(c)(7)(C). Rule 4120(c)(7)(C) allows an extension when NASDAQ detects an order imbalance in the security.

In May 2007, nearly a year after the launch of the IPO Halt Cross, NASDAQ determined to change its internal procedures to consider requests by underwriting firms involved in an IPO to extend the Display Only Period by five minutes, up to a maximum of six five-minute extensions. NASDAQ made the change based on its experience with operating the IPO process and in an effort to ensure the orderly operation of the IPO process. NASDAQ found that underwriters possess valuable information about the pending IPO given their unique position in the market, including the state of IPO orders resting on the underwriter's book, and believed that it is in the best interest of the markets to extend the 15-minute Display Only Period upon the request of a market maker. Accordingly, pursuant NASDAQ's internal procedures it relies on the underwriter's reasonable judgment as to whether a five-minute extension of the Display Only Period will improve the price discovery process of the IPO Halt Cross, and thereby help to ensure a fair and orderly launch of trading in the IPO security.

NASDAQ is amending its rules to memorialize the underwriter-requested extension process under Rule 4120(c)(7)(D). NASDAQ developed criteria for determining whether to grant an underwriter-requested extension of the Display Only Period, and applies such criteria consistently in every IPO wherein an underwriter makes an extension request. NASDAQ may change such criteria from time to time in the interest of improving the IPO process for market participants.

NASDAQ notes that other markets also recognize the importance of allowing underwriters to extend the IPO auctions of their markets. For example, BATS Exchange, Inc. permits an extension to its IPO Auction Quote-Only period upon the request of an underwriter, with no limit on the number or length of extensions. Affording underwriters the ability to request an extension is consistent with NASDAQ's goal of promoting a fair and orderly market and NASDAQ believes that it is appropriate to include its long-standing procedure in its rules. Doing so will provide market participants with a better understanding the operation of the Display Only Period of the IPO process. Accordingly, NASDAQ is proposing to adopt new Rule 4120(c)(7)(D) to reflect that it may consider the request of an underwriter of an IPO to extend the Display Only Period by five minutes, up to a maximum six five-minute extensions.

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,

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(5).

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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change promotes this goal by establishing in NASDAQ's rules an IPO process that protects investors and the public interest by ensuring an orderly opening of trading in IPOs on NASDAQ. NASDAQ believes that underwriters of IPOs have unique insight into the investor interest in the IPO, and therefore are uniquely positioned to evaluate the book and make extension decisions to ensure an orderly IPO launch. NASDAQ notes that the criteria it applies in considering an underwriter-requested extension are applied consistently to every IPO, and therefore do not permit NASDAQ to discriminate in any manner.

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

The Exchange 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. The Exchange believes that the proposal is irrelevant to competition because it is not driven by, nor impactful to, competition.

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

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 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)(ii) of the Act⁵ and Rule 19b-4(f)(6) thereunder.⁶

A proposed rule change filed under Rule 19b-4(f)(6)⁷ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)⁸ 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. NASDAQ believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change provides an additional means by which NASDAQ may extend the Display Only Period, which is in the interest of providing a fair and orderly launch of trading in an IPO security. The Exchange also notes that other markets allow underwriter-requested extensions of their pre-IPO quote periods. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it may aid in the fair and orderly launch of trading in an IPO security. For this reason, the Commission designates the proposed rule change to be operative upon filing.⁹

⁵ 15 U.S.C. 78s(b)(3)(a)(ii).

⁶ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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-2013-061 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-2013-061. 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 the 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-2013-061 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).