

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69897; File No. SR-NASDAQ-2013-092)

July 1, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rule 4120(c)(7) to Modify the Parameters for Releasing IPO Securities for Trading Pursuant to the IPO Halt Cross under NASDAQ Rule 4753

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 June 25, 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, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend NASDAQ Rule 4120(c)(7)³ to modify the parameters for releasing IPO securities for trading pursuant to the IPO Halt Cross under NASDAQ Rule 4753. NASDAQ will implement the proposed changes in mid-to-late August 2013. Public notice of the implementation date will be provided by NASDAQ in an Equity Trader Alert at least one week prior to implementation.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The rule text reflects changes that are effective as of June 14, 2013, but not yet operative. See SR-NASDAQ-2013-086 (pending publication in the Federal Register). The text of the 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.

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

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4120. Limit Up-Limit Down Plan and Trading Halts

(a) – (b) No change.

(c) Procedure for Initiating and Terminating a Trading Halt

(1) - (6) No change.

(7)

(A) A trading halt or pause initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10), (11), or (12)(F) shall be terminated when Nasdaq releases the security for trading. For any such security listed on Nasdaq, prior to terminating the halt or pause, there will be a 5-minute Display Only Period during which market participants may enter quotations and orders in that security in Nasdaq systems. In addition, in instances where a trading halt is in effect prior to the commencement of the Display Only Period, market participants may enter orders in a security that is the subject of the trading halt on Nasdaq and designate such orders to be held until the beginning of the Display Only Period. Such orders will be held in a suspended state until the beginning of the Display Only Period, at which time they will be entered into the system. 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 4:00 a.m., market participants may enter orders in a security that is the subject of an Initial Public Offering (“IPO”) 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]After the conclusion of the 15-minute Display Only Period (the time after conclusion of the Display Only Period is hereafter referred to as the “Pre-Launch Period”), the security shall be released for trading by Nasdaq at such time as both of the following conditions are simultaneously met: (i) Nasdaq receives notice from the underwriter of the IPO that the security is ready to trade and (ii) there is no order imbalance in the security as defined in subparagraph (C) below. The underwriter, with concurrence of Nasdaq, may determine at any point during the IPO Halt Cross process up through the Pre-Launch Period to postpone and reschedule the IPO.[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.] Market participants may continue to enter orders and order cancellations for participation in the cross auction during the Pre-Launch Period up to the point that the cross auction process commences.

(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 subparagraph[s] (A) [and (B) above]. In the case of subparagraph (B), any order imbalance during the Pre-Launch Period will result in a delay of the release for trading of the IPO until the end of the order imbalance and satisfaction of the other requirements for release of the IPO contained in subparagraph (B). Order imbalances under subparagraph (A) 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. Order imbalances under subparagraph (B) shall be established when (i) the Current Reference Prices, as defined in Rule 4753(a)(2)(A), disseminated 15 seconds and immediately prior to commencing the release of the IPO for trading during the Pre-Launch 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 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.

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

1. Purpose

The Exchange proposes to amend Rule 4120(c)(7)(B) and (C) and to delete Rule 4120(c)(7)(D) to modify the process by which a company's securities approved for listing on NASDAQ in an initial public offering ("IPO") are released for trading pursuant to NASDAQ's IPO Halt Cross under NASDAQ Rule 4753. Rule 4120(c)(7)(B) governs the orderly launch of trading of IPO securities approved for listing on NASDAQ in an initial public offering. 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. 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. Rule 4120(c)(7)(D) permits NASDAQ to extend any of these Display-Only Periods for an additional five-minute Display Only Period (up to the maximum of six additional periods) at the request of an underwriter of the IPO.

NASDAQ believes that the existing rule has worked well in matching investor interest in an auction to establish the price at which the security is released for trading on NASDAQ. The rule also recognizes the critical role played by the underwriter, with its unique knowledge of the issuer and the market, in establishing the appropriate time to release the security for trading. While issuers and underwriters have provided positive feedback on the current process that NASDAQ believes has worked successfully in hundreds of IPOs, we have periodically heard suggestions regarding potential changes to the IPO Halt Cross. For example, certain market participants have questioned whether the six extension limit to the Display Only Period—limiting the launch process to a total of 30 minutes—creates an unnecessary deadline within which the IPO must be launched or otherwise rescheduled. NASDAQ has had one situation where all six extensions have been used and several where four or five extensions have occurred and it is possible that underwriters in the future would want to extend beyond six Display Only Periods if permitted by the rule.

Others have questioned whether there should be more flexibility with respect to the Display Only Periods, which under the current rule can only be extended in fixed five-minute increments. The current rule would prevent trading from commencing if conditions improve within the five-minute period. NASDAQ agrees that the rule should be modified to permit the launch of trading whenever conditions are appropriate.

NASDAQ believes that its proposed changes to Rule 4120(c)(7) will increase its flexibility to commence trading when appropriate while retaining a transparent process that has been the hallmark of the rule. In particular, NASDAQ proposes to delete the requirement in Rule 4120(c)(7)(B) that limits the number of extensions of the Display

Only Period to six five-minute periods. Instead, IPOs coming out of the initial 15-minute Display Only Period would enter what is defined as the “Pre-Launch Period” that will not be of a fixed duration. The Pre-Launch Period will continue until:

(1) the IPO is released when the following two conditions are simultaneously met:

- Nasdaq receives notice from the underwriter of the IPO that the security is ready to trade, and
- there is no order imbalance in the security (as discussed below); or

(2) the underwriter, with concurrence of Nasdaq, determines at any point during the IPO Halt Cross process up through the Pre-Launch Period to postpone and reschedule the IPO.

The underwriter’s involvement in timing the commencement of trading is consistent with current practice. In administering the IPO cross process since 2006, NASDAQ has found that underwriters possess valuable information about the pending IPO given their unique position in the market, including the status of IPO orders on the underwriter’s book. NASDAQ believes that it is in the best interest of the markets to give underwriters input into the timing of the IPO Halt Cross to help to ensure the fair and orderly launch of trading in the IPO security. The condition that there be no order imbalance in the security is designed to ensure that the security price is reasonably stable at the time trading commences. Under Rule 4120(c)(7)(C), an order imbalance occurs when (1) the Current Reference Prices⁴ 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

⁴ The Current Reference Price is defined in Rule 4753(a)(2)(A) as the price at which the maximum number of shares can be paired. In situations where more than one price exists, the rule establishes the Current Reference Price in a number of scenarios.

cents, or (2) all buy or sell market orders will not be executed in the cross. This protection, as modified below to extend to the Pre-Launch Period, would also prevent circumstances where a misunderstanding by the underwriter as to the state of the order book risked launching trading at a time of material volatility in the book for the security. As is currently the case, this measurement would be calculated by the IPO Halt Cross system, which would automatically prevent launch of the IPO when an order imbalance existed. The proposed language allowing an underwriter to postpone and reschedule the IPO with the concurrence of NASDAQ is designed to allow flexibility if unforeseen market events make it inadvisable to proceed with the IPO.

NASDAQ also proposes to modify the language of Rule 4120(c)(7)(C) to extend the protections in the event of an order imbalance to the Pre-Launch Period. The proposed modification is not designed to substantively modify how order imbalances are handled in the IPO Halt Cross. It is instead designed to apply the same principles to the Pre-Launch Period which, unlike in the existing Display Only Period, has no fixed duration. Therefore, the existing language with respect to element (1) of the definition of order imbalance— measuring two points in time 15 seconds before and immediately before the end of the period— would not work during the Pre-Launch Period. The proposed language would use a rolling measurement point during the Pre-Launch Period and compare the Current Reference Price at that point in time against the Current Reference Price 15 seconds earlier. The system would prevent launch of the IPO in the event of an order imbalance at any point in the Pre-Launch Period until the end of the

order imbalance, whereupon the IPO would launch once the requirements of Rule 4120(c)(7)(B) are satisfied.⁵

NASDAQ proposes to delete several elements of the existing Rule 4120(c)(7). The existing language in Rule 4120(c)(7)(B) that provides for a randomization period of between zero and 15 seconds at the conclusion of the Display Only Period would be eliminated. The randomization period was designed to reduce the risk that market participants might try to game the system around the end of a Display Only Period, the timing of which is fixed in the rule. Because the proposed changes would eliminate fixed Display Only Periods and make it harder for someone with malicious intent to time activity to influence the IPO Halt Cross, NASDAQ believes that the current randomization language is duplicative and unnecessary. NASDAQ also proposes to delete Rule 4120(c)(7)(D) that memorializes the ability of underwriters to request an extension of the Display Only Period. The underwriter's role in the process has been moved to the proposed language of Rule 4120(c)(7)(B), as discussed above.

NASDAQ's proposed changes would not alter pricing and cross information publicly available to market participants seeking to participate in the IPO Halt Cross. NASDAQ would continue to disseminate throughout the Display Only Period and the Pre-Launch Period updated electronic messages in five second intervals containing information on the eligible interest and the price at which such interest would execute at time of dissemination.⁶ Market participants will continue to be able to submit and cancel

⁵ Order imbalances in crosses other than IPO Halt Crosses would continue to be handled in the same manner as is currently the case under Rule 4120(c)(7)(A).

⁶ The information disseminated in accordance with Rule 4753(a)(2) includes the Current Reference Price, the shares paired at the Current Reference Price, any order imbalance (shares that are not paired), the buy/sell direction of any

orders during the Pre-Launch Period as they are currently able to do during Display Only Periods and any extensions. Messages to submit or cancel orders will not be eligible to participate in the cross auction once the cross auction process commences, as is currently the case.

The changes to NASDAQ's IPO process are consistent with how we understand IPOs are handled at other exchanges. For example, we understand that the New York Stock Exchange ("NYSE") operates a similar process that includes substantial input from underwriters and does not contain fixed time limits within which to launch the IPO.⁷ During this indefinite period the NYSE disseminates similar information concerning the state of the auction as that disseminated by NASDAQ.⁸ Similarly, BATS Exchange permits extension to its IPO Auction Quote-Only period upon the request of an underwriter and for other reasons similar to those contained in Rule 4120(c)(7)(B) and (C), with no limit on the number or length of extensions.⁹ We believe these changes to NASDAQ's IPO Halt Cross will assist market participants and underwriters who participate in IPOs on several exchanges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Section 6(b)(5) of the Act,¹¹ in

imbalance and the indicative price at which the cross would occur at that point in time.

⁷ NYSE Rule 123D. See NYSE, Inside the IPO Process, available at <https://usequities.nyx.com/page/inside-nyse-ipo-process>.

⁸ NYSE Rule 15(a).

⁹ BATS Exchange Chapter XI, Rule 11.23(d)(2)(B)(ii).

¹⁰ 15 U.S.C. 78f.

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, 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 and eliminates unnecessary fixed time limits that could impact the success of IPOs. NASDAQ also believes that the proposal is consistent with rules of other exchanges and will avoid confusion among participants in the process. NASDAQ notes that the criteria it applies in launching IPOs 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

Written comments were neither solicited nor received.

¹¹ 15 U.S.C. 78f(b)(5).

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)(ii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Exchange has provided the Commission written notice of its 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 change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

¹² 15 U.S.C. 78s(b)(3)(a)(ii).

¹³ 17 CFR 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2013-092 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-2013-092. 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-2013-092 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

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).