

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71931; File No. SR-NASDAQ-2014-032)

April 11, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Rule 4120(c)(8) with Respect to Initial Pricing of Certain Securities Not Subject to an Initial Public Offering

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 April 7, 2014, 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 4120(c)(8). Such rule will allow, under certain circumstances, the process for halting and initial pricing of a security that is the subject of an initial public offering to be used for the initial pricing of other securities that have not been listed on a national securities exchange or traded on the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing. NASDAQ proposes to implement the change immediately.

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

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4120. Limit Up-Limit Down Plan and Trading Halts

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(a) – (b) No change.

(c) Procedure for Initiating and Terminating a Trading Halt

(1) – (7) No change.

(8) For purposes of this Rule and Rule 4753, the process for halting and initial pricing of a security that is the subject of an initial public offering shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(7)(B) that are performed by an underwriter with respect to an initial public offering.

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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 to add a new Rule 4120(c)(8) to modify the process by which trading commences in the securities of certain companies listing on NASDAQ

that are not conducting an initial public offering of securities (“IPO”) at the time of listing on NASDAQ. Under the proposed amendment, securities of companies that have not previously been listed on a national securities exchange or traded in the over the counter market immediately prior to listing on NASDAQ could also be launched for trading using the same crossing mechanism currently available for IPOs.

Securities of companies listing on NASDAQ in an IPO are released for trading in the IPO Halt Cross process outlined in Rule 4120(c)(7)(B) and (C) and Rule 4753. The IPO Halt Cross is designed to facilitate an orderly start to trading in an unseasoned security by providing additional time for quoting activity prior to launch (at least 15 minutes) and allowing significant underwriter involvement in determining when to launch trading. 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 defined in the rule).

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. We believe the process has worked successfully in providing a stable environment at the time trading commences.

By contrast, the securities of companies that list on NASDAQ that are not conducting IPOs are launched using a different crossing mechanism. These securities are released using the same Halt Cross used whenever securities are halted on NASDAQ for any reason. This process, outlined in Rule 4120(c)(7)(A), has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market

appears likely to have a material impact the security, unless there is an order imbalance as defined in the rule. While this process has worked reasonably well for most issuers listing on NASDAQ for the first time, there have been situations where unseasoned issues have been subject to significant price fluctuation due to limited market interest, confusion about certain aspects of the security or other unforeseen circumstances.

NASDAQ believes that it is important to extend the safeguards contained in the IPO Halt Cross to unseasoned issuers that have not previously been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to trading on NASDAQ.³ As proposed in Rule 4120(c)(8), these securities would become eligible for the IPO Halt Cross. In situations where the issuer is not conducting an offering of securities at the time of listing, NASDAQ proposes that a broker-dealer serving in the role of financial advisor to the issuer would, if willing, serve in the same capacity under the rule as the underwriter for purposes of IPOs. NASDAQ believes such an advisor, with market knowledge of the book and an understanding of the company and its security, would be well placed to provide advice on when the security should be released for trading. Other issuers coming to NASDAQ that did not meet the terms of Rule 4120(c)(8) would continue to commence trading under Rule 4120(c)(7)(A). NASDAQ believes that these seasoned issuers, which previously traded on other national securities exchange or in the over-the-counter market, do not present the same concerns as the unseasoned issuers covered by the proposal.

³ FINRA Form 211 is used by a member firm to request the exemption afforded by Rule 15c2-11 to trade a security on the over-the-counter markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(5) of the Act,⁵ 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 providing a mechanism to promote the orderly opening of trading in a security that is not the subject of an IPO, but that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initiation of trading on NASDAQ. NASDAQ believes that its IPO Cross is well suited for use in such circumstances, provided a broker-dealer that is serving in the capacity of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(7)(B) with respect to the timing of the initiation of trading that are normally performed by the underwriter. NASDAQ believes that the rule change will promote fair and orderly markets by helping to protect against volatility in the pricing and initial trading of the unseasoned securities covered by the proposed rule change.

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. Specifically, NASDAQ believes that the change is not relevant to competition, but

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

rather is designed to promote fair and orderly markets. The change does not impact the ability of any market participant or trading venue to compete.

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

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 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 Act⁶ and Rule 19b-4(f)(6)(iii) thereunder.⁷

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay will immediately promote orderly trading and reduce potential volatility in an initial trading. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.⁸

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6)(iii). 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.

⁸ 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. If the Commission takes such action, the 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-2014-032 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-2014-032. 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-2014-032, 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.⁹

Jill M. Peterson
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).