

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73950; File No. SR-NASDAQ-2014-100)

December 29, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change to Amend NASDAQ Rule 7015(d) to Include the IPO Indicator As a New Enhancement to the NASDAQ Workstation

I. Introduction

On October 29, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to include a new feature, the IPO Indicator, that is designed to assist Exchange member firms in monitoring their orders during the NASDAQ Halt Cross process leading up to the launch of an initial public offering (“IPO”). The proposed rule change was published for comment in the Federal Register on November 18, 2014.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 7015(d) to include the IPO Indicator as a new enhancement to the NASDAQ Workstation. According to the Exchange, the NASDAQ Workstation provides order entry and quote functionality and includes several features to assist subscribers with managing and monitoring their trading activity.⁴ The Exchange proposes to include the IPO Indicator as a new feature that is designed to assist member firms in monitoring

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73574 (November 12, 2014), 79 FR 68745 (“Notice”).

⁴ See id. at 68745.

their orders during the NASDAQ Halt Cross process.⁵

According to the Exchange, the NASDAQ Halt Cross (“Cross”) is designed to provide for an orderly, single-priced opening of securities subject to an intraday halt, including securities that are the subject of an IPO.⁶ Prior to the Cross execution, the Exchange states that market participants enter quotes and orders eligible for participation in the Cross, and the Exchange disseminates certain information regarding buying and selling interest entered and the indicative execution price information, known as the Net Order Imbalance Indicator (“NOII”).⁷ The Exchange further states that the NOII is disseminated every five seconds during a designated period prior to the completion of the Halt Cross, in order to provide market participants with information regarding the possible price and volume of the Cross. According to the Exchange, the information provided in the NOII message includes the Current Reference Price⁸ and the number of shares of Eligible Interest.⁹

The Exchange also disseminates information about the size and buy/sell direction of an Imbalance,¹⁰ which the Exchange defines as the number of shares of Eligible Interest with a limit price equal to the Current Reference Price that may not be matched with other order shares at a

⁵ See id.

⁶ See id.

⁷ See id.

⁸ See Exchange Rule 4753(a)(3)(A). The Exchange describes the Current Reference Price as the price at which the Cross would occur if it executed at the time of the NOII’s dissemination. See Notice, supra note 3, at 68745.

⁹ See Exchange Rule 4753(a)(5) (defining Eligible Interest as “any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Halt Cross”).

¹⁰ See Exchange Rule 4753(a)(1).

particular price at any given time.¹¹ The Exchange states that the disseminated information reflects all shares eligible for participation in the Cross, regardless of time-in-force (including non-displayed shares and reserve size) and is meant to indicate the degree to which available liquidity on one or the other side of the market would not be executed if the Cross were to occur at that time.

In the case of an IPO, the Exchange states that the Halt Cross operates as follows: first, the underwriters to the IPO make a determination to launch the IPO during the Pre-Launch Period¹² when the underwriters believe the security is ready to trade.¹³ Second, once the underwriter informs the Exchange that it is ready to launch the IPO, the NASDAQ system calculates the Current Reference Price at that time (the “Expected Price”) and displays it to the underwriter.¹⁴ If the underwriter then approves proceeding, the NASDAQ system conducts two validation checks: (1) the NASDAQ system determines whether all market orders will execute in the cross; and (2) whether the Expected Price and the price calculated by the Cross differ by an amount in excess of the price band selected by the underwriter.¹⁵ According to the Exchange, if either of the validation checks fails, the security will not be released for trading and the Pre-

¹¹ See Notice, supra note 3, at 68745. The Exchange states that it also disseminates a Market Order Imbalance, which the Exchange defines as the number of shares of Eligible Interest entered through market orders that would not be matched with other order shares at the time of the dissemination of a NOII, if in fact there are such unexecutable market order shares. See Exchange Rule 4753(a)(2). When there is a Market Order Imbalance, the Exchange notes that it disseminates the imbalance and the buy/sell direction of the imbalance. See Notice, supra note 3, at 68745.

¹² The Exchange explains that the Pre-Launch Period is the second phase of a two-phase process that NASDAQ uses for launching IPOs. See id. at 68746. According to the Exchange, the Pre-Launch Period follows a 15-minute Display Only Period and is of no fixed duration. See id. In addition, the Exchange states that the NOII is disseminated every five seconds during both periods. See id.

¹³ See id. at 68745.

¹⁴ See id. at 68746.

¹⁵ See Notice, supra note 3, at 68746.

Launch Period will continue until all requirements are met.¹⁶

The Exchange proposes to offer the IPO Indicator to provide information about the number and price at which shares of a member firm's orders entered for execution in an IPO Halt Cross ("IPO shares") would execute in an IPO if it were to price at the present time.¹⁷ Under the proposal, the IPO Indicator would be offered through the NASDAQ Workstation and would use the NOII information already currently available through a Workstation subscription together with the information about the member firm's orders on NASDAQ.¹⁸ Under the proposal, the Exchange states that member firms using the IPO Indicator would be able to see the Current Reference Price, the number of paired shares, the number of imbalance shares, the total number of IPO shares the member firm has entered for execution in the IPO Halt Cross, the nature of such shares (buy or sell), and the number of IPO shares that would be executed in the Halt Cross at that time for each of those categories.¹⁹ In addition, the Exchange states that member firms using the IPO Indicator would also be able to see details about its IPO shares presented by individual orders or order blocks, which would include the number of IPO shares in a particular order or order block, the number and percentage of IPO shares of the order or order block that would be executed in the Halt Cross if it occurred at any given time in the process, based on the NOII disseminated every five seconds, and the price at which the order or order block was submitted.²⁰

¹⁶ See id. Alternatively, the underwriter may, with the concurrence of the Exchange, determine to postpone and reschedule the IPO. See id.

¹⁷ See id.

¹⁸ The Exchange states that the information provided by the IPO Indicator is limited to the subscribing member firm's orders. See id.

¹⁹ See Notice, supra note 3, at 68746.

²⁰ See id.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²² which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 Section 6(b)(8) of the Act,²³ which requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

As described above, the Exchange proposes to adopt an IPO Indicator as a new feature to the NASDAQ Workstation. The Exchange believes the IPO Indicator would provide member firms with information consistent with what the Exchange currently disseminates during the IPO launch process, but as that information relates to a member firm's orders and in greater detail.²⁴ The Exchange further believes that IPO Indicator would provide member firms and underwriters with more information regarding their orders submitted for participation in an IPO Halt Cross, which the Exchange believes would allow them to make better informed investment decisions.²⁵

²¹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78f(b)(8).

²⁴ See Notice, supra note 3 at 68746.

²⁵ The Exchange notes, for example, that the IPO Indicator may help an underwriter to make a determination to launch an IPO at a time when the IPO security would likely pass

The Commission notes that the Exchange is not proposing to increase the fee for usage of the NASDAQ Workstation in connection with the addition of the IPO Indicator feature. In addition, under the proposal, the information provided by the IPO Indicator would be limited to the subscribing member firm's orders.²⁶ Accordingly, the Commission believes that the proposed rule change adopting the IPO Indicator feature is designed to protect investors and the public interest by providing them with more information regarding their orders submitted for participation in an IPO Halt Cross. Further, the new IPO Indicator feature may also facilitate the fair and orderly launch of an IPO security.²⁷

the validation checks, which the Exchange believes could increase the likelihood of a fair and orderly launch of the IPO security. See id.

²⁶ See Notice, supra note 3, at 68746.

²⁷ See supra note 25.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NASDAQ-2014-100) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Brent J. Fields
Secretary

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).