

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75863; File No. SR-NASDAQ-2015-082)

September 9, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change to Introduce an Additional Data Element to the IPO Indicator Service

I. Introduction

On July 15, 2015, 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 introduce an additional data element, the “IPO Book Viewer,” to its existing IPO Indicator Service. The proposed rule change was published for comment in the Federal Register on July 24, 2015.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt Exchange Rule 7015(j) to include the IPO Book Viewer as new data element as part of the IPO Indicator Service.⁴ According to the Exchange, the IPO Indicator Service currently assists Nasdaq participants in monitoring the orders they have entered for execution in the Nasdaq Halt Cross for an IPO (“IPO Cross”).⁵ The Exchange states that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75517 (July 24, 2015), 80 FR 45568 (“Notice”).

⁴ See Exchange Rule 7015. Nasdaq notes that 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 Notice, supra note 3, at 45568 n.4.

⁵ See id. at 45568. The Exchange states that the Nasdaq Halt 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. See id.

IPO Indicator Service provides a market participant with information about the number of shares of its orders that would execute in the IPO Cross at the Current Reference Price.⁶ Under the proposal, the IPO Book Viewer would be available only to the Exchange member that is acting as the stabilizing agent for the IPO security.⁷ Access to the IPO Book Viewer will be limited through a secure entitlement process to designated individuals employed by the stabilizing agent.⁸

According to the Exchange, following the completion of the IPO Cross, the stabilizing agent⁹ 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.¹⁰ The Exchange further states that 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).¹¹

The Exchange states that on the day of an IPO, beginning with the start of the “Display-

⁶ See id. The Exchange states that prior to an IPO Cross, market participants enter eligible orders for participation in the IPO Cross, and the Exchange disseminates certain information regarding buying and selling interest entered and indicative execution price information, such information is known collectively as the Net Order Imbalance Indicator or “NOII”, and includes, among other things, the Current Reference Price. See id. and Exchange Rules 4753(a)(3)(A) (defining “Current Reference Price”) and 4753(a)(5) (defining “Eligible Interest”).

⁷ See proposed Exchange Rule 7015(j).

⁸ See Notice, supra note 3, at 45569.

⁹ The Exchange notes that the stabilizing agent is typically the lead underwriter and serves the function of being the designated representative of the underwriting syndicate that informs the Exchange that the IPO security is ready to commence trading, pursuant to the Exchanges rules governing the IPO Cross. See Notice, supra note 3 at, 45568.

¹⁰ See Notice, supra note 3, at 45569. The Exchange notes that the stabilizing agent is subject to the requirements and limitations under Regulation M regarding “stabilizing” the IPO security. See id. at 45568 (citing 17 CFR 242.100).

¹¹ See Notice, supra note 3, at 45569.

Only Period,”¹² and ending upon the completion of the IPO Cross for an IPO security, the IPO Book Viewer would display aggregated buying and selling interest information for the IPO security, reflecting all orders on the Nasdaq Book,¹³ 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.¹⁴ Under the proposal, the pricing increments could be adjusted by the stabilizing agent during the period that the IPO Book Viewer is available.¹⁵ Under the proposal, the placement of the price bands will be standardized, beginning at \$0.¹⁶ The Exchange states that the aggregated information that would be provided through this data element would include all orders and size, including orders with a time-in-force of immediate or cancel; orders with reserve size; and non-displayed orders.¹⁷ Under the proposal, the information provided through the IPO Book Viewer would be updated

¹² See Exchange Rule 4120(c)(7)(A) (describing “Display Only Period”).

¹³ See Exchange Rule 4701(a)(1) (defining “Nasdaq Book”).

¹⁴ See Notice, *supra* note 3, at 45569.

¹⁵ See Notice, *supra* note 3, at 45569. For example, the Exchange states that 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. See *id.* However, the Exchange notes that the stabilizing agent could not view multiple increments at the same time (e.g., 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). See *id.* at, 45569 n.8.

¹⁶ See Notice, *supra* note 3, at 45569. For example, the Exchange states that a stabilizing agent 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. See Notice, *supra* note 3, at 45569.

¹⁷ The Exchange notes that the IPO Book Viewer would 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 market participants posting orders. See *id.*

every five seconds, along with updates to the NOII.¹⁸

In addition, under the proposal, the stabilizing agent receiving the IPO Book Viewer would be required to maintain and enforce written policies and procedures reasonably designed to achieve the following purposes: (i) restrict electronic access 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; (ii) except as may be required for purposes of maintaining books and records for regulatory purposes, prevent the retention of aggregated information following the completion of the IPO Cross for the IPO security; and (iii) 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.¹⁹ Under the proposal, however, nothing contained in the proposed rule would 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.²⁰ The proposal would also require that the aggregated information provided through the IPO Book Viewer would be available solely for display on the screen of a computer for which an entitlement has been provided by the Exchange and under no circumstances may a member redirect aggregated information to another

¹⁸ See id.

¹⁹ See proposed Exchange Rule 7015(j)(1)(A)(i)-(iii). See also Notice, supra note 3, at 45570.

²⁰ See proposed Exchange Rule 7015(j)(1)(D). See also Notice, supra note 3, at 45570.

computer or reconfigure it for use in a non-displayed format, including, without limitation, in any trading algorithm.²¹ Finally, the Exchange proposes that if a member became aware of any violation of the restrictions contained in the proposed rule, it must report the violation promptly to the Exchange.²²

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.²³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁴ 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,²⁵ 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 proposed rule change would provide the Exchange member acting as stabilizing agent for an IPO security with access to the IPO Book Viewer, which would

²¹ See proposed Exchange Rule 7015(j)(1)(B). See also Notice, *supra* note 3, at 45570.

²² See proposed Exchange Rule 7015(j)(1)(C). See also Notice, *supra* note 3, at 45570. The Exchange also proposes to define the terms “IPO security,” “stabilizing,” “stabilizing agent,” “IPO Indicator Service,” and “IPO Book Viewer.” See proposed Exchange Rule 7015(j)(2).

²³ 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).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b)(8).

display aggregated buying and selling interest information for the IPO security, grouped in \$0.05, \$0.10, or \$0.25 price increments. The Exchange believes that the IPO Book Viewer would, among other things, allow the stabilizing agent to respond in a more informed way to questions from its customers and other market participants regarding expectations that an order to buy or sell with a stated price and size may be executable in the IPO Cross and would assist the stabilizing agent in making decisions about the appropriate level of capital to commit to support the IPO security once trading commences.²⁶ The Exchange proposes to provide access to the IPO Book Viewer only to the Exchange member acting as stabilizing agent for the IPO security because of the unique role played by the stabilizing agent on the day of an IPO.²⁷

The Commission notes that the Exchange has proposed a number of safeguards to help ensure that the aggregated information is not misused, including that the stabilizing agent maintain and enforce written policies and procedures restricting electronic access to the information only to certain persons, preventing the retention of the information, and preventing those with access to the information from trading in the IPO security, except in limited circumstances.²⁸ In addition, the Commission notes that the information provided through the IPO Book Viewer would be available solely for display on the screen of a computer for which an entitlement has been provided by the Exchange, access to the IPO Book Viewer will terminate immediately upon the completion of IPO Cross, and an Exchange member must report promptly

²⁶ See Notice, supra note 3, at 45569.

²⁷ See id. (noting that the stabilizing agent stands ready during the course of the day to commit its capital in support of the IPO security and thereby serves to dampen volatility in the IPO security and promote the maintenance of a fair and orderly market. Nasdaq believes that providing additional information about the 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, which will assist it in promoting a fair and orderly market for the IPO security).

²⁸ See supra note 19 and accompanying text.

to the Exchange any violation of the restrictions contained in proposed Exchange Rule 7015(j). The Commission also notes that the proposed rule change is similar to an existing rule on another exchange,²⁹ but is generally more restrictive with respect to the use of information about orders.³⁰ Accordingly, the Commission believes that the proposed rule change to add the IPO Book Viewer to the IPO Indicator Service is designed to protect investors and the public interest by providing the Exchange member acting as stabilizing agent with additional information that could, among things, assist the stabilizing agent in responding to questions from customers and market participants regarding expectations that a particular order may execute in the IPO Cross.

²⁹ See NYSE Rule 104. See also Securities Exchange Act Release No. 71175 (December 23, 2013), 78 FR 79534 (December 30, 2013) (SR-NYSE-2013-21 and SR-NYSEMKT-2013-25).

³⁰ For example, NYSE Rule 104 permits Designated Market Makers to access disaggregated information about the price and size of any individual order and to disclose disaggregated information about the price and size of any individual order to floor brokers in response to an inquiry in the normal course of business. See *id.* at 79538. In contrast, the Exchange's proposal would only permit the stabilizing agent to access aggregated order information and share such aggregated information with others in response to inquiries. See proposed Exchange Rule 7015(j).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-NASDAQ-2015-082) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Robert W. Errett
Deputy Secretary

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).