



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72736; File No. SR-NASDAQ-2014-075)

August 1, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness to Correct Language in the Text of Rule 4753

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 July 22, 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 amend NASDAQ Rule 4753 to correct imprecise language in the rule text. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NASDAQ is amending the language of Rule 4753 to correct imprecise language with respect to imbalance information disseminated prior to the execution of the NASDAQ Halt Cross (the “Halt Cross” or “Cross”). 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 initial public offering (“IPO”). Prior to the Cross execution, market participants enter quotes and orders eligible for participation in the Cross, and NASDAQ disseminates certain information regarding buying and selling interest entered and the indicative execution price. The information disseminated by NASDAQ is referred to in Rule 4753 as the “Order Imbalance Indicator”, but is sometime also referred to by NASDAQ and by market participants as the “Net Order Imbalance Indicator” or “NOII”.

At the time when the security is released for trading, the Halt Cross will occur at the price that maximizes the number of shares of trading interest eligible for participation in the Cross³ to be executed. If there is more than one such price, the Cross will occur at the price that minimizes any Imbalance, which is defined in the rule as “the number of shares of Eligible Interest that may not be matched with other order shares at a particular price at any given time.”⁴

³ “Eligible Interest” is defined as any quotation or any order that may be entered into the system and designated with a time-in-force of SIOC, SDAY, SGTC, MIOC, MDAY, MGTC, SHEX, or GTMC. These respective times-in-force are defined in Rule 4751.

⁴ Additional provisions of Rule 4753, not pertinent to this proposed rule change, are used to determine the price in the event that there is more than one price that minimizes any Imbalance.

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. The information includes the Current Reference Price, which is the price at which the Cross would occur if it executed at the time of the NOII's dissemination, and the number of shares of Eligible Interest that would be paired at that price. Rule 4753 also provides that the NOII includes "the size of any Imbalance" and "the buy/sell direction of any Imbalance", as well as "an indicator for 'market buy' or 'market sell'" "[i]f marketable buy (sell) shares would remain unexecuted above (below) [the Current Reference Price]".

While the NOII does provide certain information regarding shares that might not be executed in the Cross, the information provided is not precisely described by the defined term "Imbalance". It appears, however, that the original drafter of the rule concluded that because the NOII does include certain information that might be generally understood to concern imbalances, the defined term used for determining the Cross price would also serve to describe the NOII. This conclusion may have also been influenced by the text of Rules 4752 and 4754, which describe the NASDAQ Opening Cross and the NASDAQ Closing Cross and which accurately use a similar defined term to describe information provided by the NOII for those crosses. However, the NOII for the Halt Cross provides information about shares that might not be executed in the Cross only when the 'market buy' or 'market sell' indicator described in current Rule 4753(a)(2)(E)(iii) is being disseminated, in which case the number of shares of Eligible Interest entered through market orders that would not be executed in the Cross would be disseminated.⁵ NASDAQ believes that the dissemination of imbalance information focused on unmatched market orders because the Cross cannot occur if not all market orders would be

⁵ The information disseminated does not include marketable limit orders.

executed. Therefore, the information is designed to solicit offsetting liquidity that would allow the Cross to execute. NASDAQ further believes that the information currently provided through the NOII is well understood by market participants, and that as a result, a modification to the rule text to clarify it will not result in any confusion or alteration in expectations on the part of market participants

To address this issue in a comprehensive manner, NASDAQ is proposing to adopt a new defined term – Market Order Imbalance – that will be defined 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 an Order Imbalance Indicator.” NASDAQ is then proposing to amend current Rule 4753(a)(2)(C) and (D) to provide that the NOII includes the size and buy/sell direction of a Market Order Imbalance, rather than an Imbalance. Finally, NASDAQ proposes to delete Rule 4753(a)(2)(E)(iii), since it describes the buy/sell direction of a Market Order Imbalance and is therefore redundant.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect

⁶ NASDAQ is also proposing to eliminate current reserved subsection (c) of the rule, and to delete several obsolete references to the NASDAQ Imbalance Cross, which was otherwise deleted from the rulebook by Securities Exchange Act Release No. 67678 (August 16, 2012), 77 FR 50738 (August 22, 2012) (SR-NASDAQ-2012-094).

⁷ 15 U.S.C. 78f (b).

⁸ 15 U.S.C. 78f(b)(5).

investors and the public interest. The proposal is consistent with these purposes because it will ensure that Rule 4753 clearly describes the information provided in the NOII for the Halt Cross.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because the proposal is designed merely to ensure that Rule 4753 clearly describes the information provided in the NOII for the Halt Cross, it does not affect competition in any respect.

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 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)⁹ of the Act and Rule 19b-4(f)(6)¹⁰ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) of the Act¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

4(f)(6)(iii) of the Act,¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that because the proposed rule change is designed solely to correct and clarify rule text, the public interest and protection of investors will be better served by immediately implementing the proposed rule change.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because waiver will clarify the rule immediately, which could prevent investor confusion with respect to the rule. The Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.¹³

At any time within 60 days of the filing of such 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 change 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

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 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).

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-2014-075 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-2014-075. 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 such filing also will be available for inspection and copying at the principal offices 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-2014-075, 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

Kevin M. O'Neill
Deputy Secretary

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¹⁴ 17 CFR 200.30-3(a)(12).