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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77445; File No. SR-NASDAQ-2016-008)

March 25, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend Rule 4120

I. Introduction

On January 29, 2016, The NASDAQ Stock Market LLC (“Exchange” or “Nasdaq”) 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 amend the process for commencing trading in a security that is the subject of an initial public offering (“IPO”) or a trading halt. The proposed rule change was published for comment in the Federal Register on February 11, 2016.³ On March 23, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Nasdaq Rules 4120(c)(4)(B), 4120(c)(7)(A), and 4120(c)(8)(A) to modify the ways in which orders are handled prior to the commencement of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77066 (February 5, 2016), 81 FR 7398 (“Notice”).

⁴ In Amendment No. 1, the Exchange clarified that it will not accept orders for a security prior to having its registration statement declared effective. Because Amendment No. 1 adds clarification and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment (Amendment No. 1 to the proposed rule change is available at: <http://www.sec.gov/rules/sro/nasdaq.shtml>).

trading in a security that is the subject of an IPO or a trading halt.

Currently, during any trading halt or pause for which a halt cross under Nasdaq Rule 4753 will not occur (i.e., a trading halt or pause for non-Nasdaq-listed securities), market participants may enter orders in the security subject to such trading halt or pause, and designate such orders to be held in a suspended state until the termination of the trading halt or pause, at which time the orders will be entered into the system.⁵ Under the proposal, rather than holding such orders in a suspended state until the termination of the trading halt or pause, the Exchange would not accept such orders, unless an order is subject to instructions that it will be directed to another exchange as described in Nasdaq Rule 4758.⁶

Currently, for Nasdaq-listed securities, prior to terminating a trading halt or pause initiated under Nasdaq Rule 4120(a)(1), (4), (5), (6), (9), (10), (11), or (12)(F), there is a 5-minute Display Only Period during which market participants may enter quotes and orders for the security subject to the halt or pause into Nasdaq's system.⁷ When a trading halt is in effect prior to the commencement of the Display Only Period, market participants may enter orders for the security and designate such orders to be held in a suspended state until the beginning of the Display Only Period, at which time the orders will be entered into the system.⁸ Under the proposal, when a trading halt is in effect prior to the commencement of the Display Only Period, market participants may enter orders for the security that is subject to the trading halt and, rather

⁵ See Nasdaq Rule 4120(c)(4)(B).

⁶ See proposed Rule 4120(c)(4)(B).

⁷ See Nasdaq Rule 4120(c)(7)(A).

⁸ See id.

than requiring market participants to designate these orders to be held until the beginning of the Display Only Period, these orders would be accepted and entered into the system.⁹

Currently, prior to terminating a trading halt initiated under Nasdaq Rule 4120(a)(7), there is a 15-minute Display Only Period during which market participants may enter quotes and orders for the security.¹⁰ In addition, beginning at 4:00 a.m., market participants may enter orders for a security that is the subject of an IPO on the Exchange and designate such orders to be held until the beginning of the 15-minute Display Only Period, at which time they will be entered into the system.¹¹ Under the proposal, beginning at 4:00 a.m., market participants may enter orders for a security that is the subject of an IPO on the Exchange and, rather than requiring market participants to designate such orders to be held until the beginning of the Display Only Period, such orders would be accepted and entered into the system.¹²

The Exchange notes that it will issue an Equity Trader Alert to notify Exchange member firms of the changes.¹³

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations

⁹ See proposed Rule 4120(c)(7)(A). The Exchange notes that it would disseminate the quotes collected during the halt in a non-tradable state where they are clearly identified as being closed, and that these quotes would be non-actionable. See Notice, supra note 3, at 7399.

¹⁰ See Nasdaq Rule 4120(c)(8)(A).

¹¹ See id.

¹² See proposed Rule 4120(c)(8)(A). See also supra note 9.

¹³ See Notice, supra note 3, at 7399. For a more detailed description of the proposed rule change, see Notice, supra note 3.

thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ 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 foster cooperation and coordination with persons engaged in facilitating transactions 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. As noted above, the Commission received no comment letters regarding the proposed rule change.

The Commission notes that, according to the Exchange, the proposed changes will improve and simplify its process for commencing trading of securities that are the subject of IPOs and trading halts.¹⁶ With respect to non-Nasdaq-listed securities, the Exchange notes that the proposal would reduce confusion about where to send orders during a trading halt.¹⁷ With respect to Nasdaq-listed securities, the Exchange notes that the process of holding orders in a suspended state prior to the commencement of the Display Only Period has not been widely used.¹⁸ The Exchange also notes that the existing process requires special settings on participant ports, whereas under the proposed process, orders for Nasdaq-listed securities will be immediately accepted and entered into the system without any special port settings.¹⁹ Moreover,

¹⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See Notice, supra note 3, at 7400.

¹⁷ See id. at 7399. According to Nasdaq, market participants may use Nasdaq routing strategies that submit orders to the primary listing exchange for auctions or submit their orders directly to the primary listing exchange. See id.

¹⁸ See id.

¹⁹ See id.

according to the Exchange, accepting orders immediately rather than holding them in a suspended state will clarify the state of the orders, which will reduce confusion for market participants in times of increased activity, such as during a halt or IPO.²⁰ For these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NASDAQ-2016-008), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Brent J. Fields
Secretary

²⁰ See *id.* at 7400.

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

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