SECURITIES AND EXCHANGE COMMISSION


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

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September 9, 2015.

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”) and Rule 19b–4 thereunder,1 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, 2015.2 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(f) to include the IPO Book Viewer as new data element as part of the IPO Indicator Service.3 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”).4 The Exchange states that the 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.5 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.6 Access to the IPO Book Viewer will be limited through a secure entitlement process to designated individuals employed by the stabilizing agent.7

According to the Exchange, following the completion of the IPO Cross, the stabilizing agent8 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.9 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).10 The Exchange states that on the day of an IPO, beginning with the start of the “Display-Only Period,”11 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,12 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.13 Under the proposal, the pricing increments could be adjusted by the stabilizing agent during the period that the IPO Book Viewer is available.14

Under the proposal, the placement of the price bands will be standardized, beginning at $0.15. 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. Under the proposal, the information provided through the IPO Book Viewer would be updated every five seconds, along with updates to the NOII.16 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.17 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 orders.

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.
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 aggregated information regarding buying and selling interest entered and indicative execution price information, such information is known collectively as the Order Imbalance Indicator or “OII,” 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(f)(i).
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. The Exchange notes that the IPO security is ready to commence trading, pursuant to the Exchange 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.
12 See Exchange Rule 4120(c)(7)(A) (describing “Display Only Period”).
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 $0.05 increments 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.
18 See id.
19 See proposed Exchange Rule 7015(f)(i)(A)(i)–(iii). See also Notice, supra note 3, at 45570.
of an IPO security at stated prices in the IPO Cross. The proposal would also require that the aggregated information provided through the IPO Book Viewer 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 computer or reconfigure it for use in a non-displayed format, including, without limitation, in any trading algorithm. 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.

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. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, 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)(6) of the Act, 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 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. 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.

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. 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 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, but is generally more restrictive with respect to the use of information about orders.

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.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, 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.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2015–23096 Filed 9–14–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish an Administration and Delivery Fee for the Municipal Advisor Representative Examination (“Series 50 Examination”)

September 9, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder, notice is hereby given that on September 1, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

See supra note 3, at 45569. See id. at 45569.