SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Rules 4120 and 4753


I. Introduction

On July 18, 2019, 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”) and Rule 19b–4 thereunder, a proposed rule change to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder, a proposed rule change to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter (“OTC”) market prior to its initial pricing on the Exchange, in the form of an IPO Cross (described in Rules 4120(c)(8) and 4753) to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter (“OTC”) market prior to its initial pricing on the Exchange.

II. Description of the Proposal

Currently, a security that traded in the OTC market immediately prior to listing on the Exchange is released for initial trading on the Exchange by utilizing the Opening Cross pursuant to Rule 4752(d). The Exchange proposes to amend Rule 4120 to permit the Exchange to declare a regulatory halt in a security that traded in the OTC market prior to its initial pricing on the Exchange.

For each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Cross will occur will be the price that is closest to the most recent transaction price in the OTC market; (2) specify that, for purposes of this proposed rule change, the use of the term “regulatory halt” refers to Nasdaq’s authority to halt trading in a security under Rule 4120(a)(7); (3) clarify that, currently, a security that traded in the OTC marketplace immediately prior to listing on Nasdaq is released for initial trading on Nasdaq by utilizing the Opening Cross under Rule 4752(d) and, pursuant to the proposal, if such an issuer does not retain a financial advisor, the initial pricing will continue to be effected through the Opening Cross; (4) include additional justification in support of the proposed rule change; and (5) make technical and conforming changes.


2 In Amendment No. 2, the Exchange further revised the proposal to: (1) clarify that the proposal will not allow a company transferring from the OTC market to concurrently raise capital in the IPO Cross; (2) clarify that the proposal can be beneficial because Rule 4120(c)(8) will provide for extended quoting activity prior to the launch of a security; and (3) make technical and conforming changes.


3 See Amendment 2, supra note 9, at 4 n.4.

4 For purposes of this proposed rule change, the term “regulatory halt” refers to Nasdaq’s authority to halt trading in a security under Rule 4120(a)(7).

5 The Exchange states that its proposal will facilitate a more orderly start to trading by permitting the Exchange to declare a regulatory halt in a security that traded in the OTC market prior to its initial pricing on the Exchange, before trading on the Exchange begins, which the Exchange believes will avoid potential price disparities or anomalies that may occur during any unlisted trading privileges (“UTP”) trading before the first transaction on the primary listing exchange.

6 For purposes of this proposed rule change, the Exchange notes that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange.

7 The Exchange states that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange.

8 See id. at 8.

9 The Exchange states that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange.

10 The Exchange states that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange.

11 For purposes of this proposed rule change, the Exchange notes that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange.

12 The Exchange states that its proposal will facilitate a more orderly start to trading by permitting the Exchange to declare a regulatory halt in a security that traded in the OTC market prior to its initial pricing on the Exchange, before trading on the Exchange begins, which the Exchange believes will avoid potential price disparities or anomalies that may occur during any unlisted trading privileges (“UTP”) trading before the first transaction on the primary listing exchange.

13 The Exchange states that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange.

14 The Exchange states that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange.

15 The Exchange states that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange.
III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.16 In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, 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 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.

The Commission believes that the proposal to allow the Exchange to declare a regulatory halt prior to the initial pricing on the Exchange of a security that was previously traded in the OTC market is reasonably designed to address potential price disparities or anomalies that may occur during UTP trading in such security before the first transaction on the Exchange and contribute to a fair and orderly market. The Commission also believes that the proposal to allow a security that previously traded in the OTC market to utilize the IPO Cross for its initial pricing on the Exchange, provided that a broker-dealer serving in the role of a company that attracts significant activity prior to the launch of a security; will provide for extended quoting and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to allow the Exchange to declare a regulatory halt prior to the initial pricing on the Exchange of a security that was previously traded in the OTC market is reasonably designed to address potential price disparities or anomalies that may occur during UTP trading in such security before the first transaction on the Exchange and contribute to a fair and orderly market. The Commission also believes that the proposal to allow a security that previously traded in the OTC market to utilize the IPO Cross for its initial pricing on the Exchange, provided that a broker-dealer serving in the role of a company that attracts significant activity prior to the launch of a security; will provide for extended quoting and a national market system, and, in general, to protect investors and the public interest.

Finally, the Commission believes that it is reasonable to utilize the most recent transaction price in the OTC market, which could be predictive of the price that will develop upon listing of the security on the Exchange, as the fourth tie-breaker for determining the Current Reference Price and the Cross price for a security transferring from the OTC market.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments 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);
- Send an email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2019–060 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–2019–060. This file number should be included on the subject line if email 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–060, and should be submitted on or before February 25, 2020.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the Federal Register. As discussed above, in Amendment No. 2, the Exchange further revised the proposal to: (1) Clarify that the proposal will not allow a company transferring from the OTC market to concurrently raise capital in the IPO Cross; (2) clarify that the proposal can be beneficial because Rule 4120(c)(8) will provide for extended quoting activity prior to the launch of a security; and (3) make technical and conforming changes. The Commission believes that Amendment No. 2 provides additional accuracy and clarity to the proposal and does not raise any novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2019–060), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

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

J. Matthew DeLesdermier,
Assistant Secretary.

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16 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).
19 Id.