

Required fields are shown with yellow backgrounds and asterisks.

| | | | |
|----------------|--|-----------------------------|---------------------------------------|
| Page 1 of * 21 | SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4 | File No.* SR - 2013 - * 090 | Amendment No. (req. for Amendments *) |
|----------------|--|-----------------------------|---------------------------------------|

Filing by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

| | | | | | |
|--|--|--|--|--|---|
| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| | | | Rule | | |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input checked="" type="checkbox"/> 19b-4(f)(6) | | |

| | |
|---|--|
| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input checked="" type="checkbox"/> Section 806(e)(2) <input type="checkbox"/> | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input checked="" type="checkbox"/> |
|---|--|

| | |
|--|---|
| Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
|--|---|

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A Proposed Rule Change to Amend Exchange Rule 4754 Governing the NASDAQ Closing Cross ("Cross").

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Jeffrey Last Name * Davis

Title * VP and Deputy General Counsel

E-mail * jeffrey.davis@nasdaqomx.com

Telephone * (301) 978-8484 Fax (301) 978-8472

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 06/20/2013 Executive Vice President and General Counsel

By Edward S. Knight

(Name *)

Edward S Knight,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”), proposes to amend Exchange Rule 4754 governing the NASDAQ Closing Cross (“Cross”) to specify contingency plans for determining the NASDAQ Official Closing Price (“NOCP”) in the event NASDAQ experiences a system disruption that precludes normal execution of the Cross pursuant to Rule 4754.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is set forth in Exhibit 5 attached hereto.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of NASDAQ on July 10, 2012. No other action by the Exchange is necessary for the filing of the rule change. Questions regarding this rule filing may be directed to Jeffrey S. Davis, Vice President, Office of General Counsel, NASDAQ OMX, at (301) 978-8484.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background. Since June of 2002, NASDAQ has published contingency plans in the event the NASDAQ closing process was to be disrupted during the annual reconstitution of the Russell indexes. The Russell-targeted contingency plans began as a series of scenarios, and the set has accreted new scenarios from year to year as

NASDAQ's system and the market-wide trading ecosystem have evolved. NASDAQ has established a pattern of communication and testing of contingency plans to ensure that NASDAQ, its members, and the public are prepared to implement the contingency plans if needed.

While NASDAQ has communicated the contingency plans broadly to its members and to the investing public, NASDAQ has never included those contingency plans in NASDAQ's rule manual. NASDAQ has determined to approach contingency planning differently than in the past, and it has also determined to add the contingency plans to NASDAQ's rule manual.

The Contingency Closing Cross process begins with communication. Under the proposal, when NASDAQ experiences a disruption that will preclude execution of the standard Closing Cross, the President of NASDAQ or any Executive Vice President designated by the President will be authorized to invoke the Contingency Procedures. When that occurs, NASDAQ will at the earliest possible time communicate to members and the public its determination to implement the Contingency Closing Cross process. NASDAQ will communicate with members and the public via system status alerts on NASDAQTrader.com, as well as via Equity Trader Alerts and emails to pre-established notification lists.

NASDAQ is proposing to use a single method for determining the NOCP in response to any situation in which NASDAQ's standard closing cross process fails to operate properly. NASDAQ will employ a single offline process to determine the price, size, and component executions for the closing cross trade in any and all affected securities on a security-by-security basis. NASDAQ believes that a single offline process

will address potential failures in the NASDAQ execution system due to its separation from that system and its ability to draw on stored order files regardless of any impairment to the execution system.¹

The first step in NASDAQ's proposed Contingency Closing Cross is to determine the proper closing price. If the standard closing cross process fails in any security, NASDAQ will identify the last consolidated regular way trade reported by the network processor before 4:00:00:00 p.m. for an NMS Security and it will use that price as the NOCP. In the event an impacted security has no consolidated last sale price (*i.e.* the security has not traded during the day), NASDAQ will have no NOCP and no Contingency Cross for that security. NASDAQ will report each NOCP to the network processor as soon as practical using existing closing modifiers.

Once NASDAQ has identified the NOCP for a given security, NASDAQ will operate a modified closing cross to determine the number of shares and the specific orders that can be executed at the NOCP. Only "on close" orders will participate in the Contingency Closing Cross. All Market-on-Close ("MOC"), Limit-on-Close ("LOC") and Imbalance Only orders received and not cancelled prior to 3:50 p.m., as well as all Imbalance Only orders received between 3:50 and 4:00 p.m. will be eligible to participate. Resting DAY orders will *not* be eligible to participate because the

¹ NASDAQ maintains a database of all orders entered into the execution system, as well as other data regarding order processing. The database is independent of and isolated from the execution system and network and, as a result, it can operate regardless of impairment to those systems. NASDAQ will operate the contingency process from a server that is also independent of and isolated from the execution system and network, and that is supported by multiple redundant backups.

contingency closing cross will be an offline process and it will be unable to interact with the continuous book.

Once NASDAQ has identified orders eligible to participate in the Contingency Closing Cross and able to execute at the NOCP, NASDAQ will execute on a price-time priority basis, the maximum number of shares able to execute at the NOCP. If an order imbalance exists in the MOC and LOC interest that is marketable at the NOCP, NASDAQ will select Imbalance Only orders on the side of the market that is short of trading interest (in price/time priority) in order to maximize the number of paired shares to execute at the NOCP.

Once NASDAQ has completed the Contingency Closing Cross, it will report the results to the appropriate network processor and deliver execution reports to members. NASDAQ will publish the NOCP and total shares executed in the Contingency Closing Cross using the proper trade report modifiers already utilized by the processors.² Additionally, NASDAQ will deliver component executions to participants via a flat data file formatted in DROP protocol.³

After hours trading will begin either as scheduled at 4:00 p.m. or upon resolution of the disruption that triggered NASDAQ to operate the Contingency Closing Cross.

² NASDAQ will report both an official closing price and a bulk trade report for each Closing Cross.

³ “DROP” is a proprietary protocol that NASDAQ uses to deliver real-time execution information to members using the NASDAQ system. It facilitates members’ efforts to monitor, track, enter, and cancel orders.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5),⁵ 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 investors and the public interest. The proposal is consistent with this provision in that it will ensure that the Exchange continues to operate a fair and orderly market and to provide for an effective pricing mechanism for the critical period of the market close. The proposed independent, off-line process improves NASDAQ's ability to maintain a fair and orderly market when the NASDAQ execution system or network is impaired for any reason.

The proposed Contingency Procedures for the Closing Cross are designed to preserve NASDAQ's ability to move quickly to establish a reliable closing price under unusual conditions. By simplifying and codifying the Contingency Procedures, NASDAQ also enables NASDAQ members to plan for the contingencies, including the ability to test their systems and how they will interact with NASDAQ's systems in the event NASDAQ triggers the Contingency Procedures.

4. 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. To the contrary, the proposal is specifically designed to protect the other

⁴ 15 U.S.C. 78f (b).

⁵ 15 U.S.C. 78f(b)(5).

markets and investors from harm that a NASDAQ disruption could impose. In actuality, the proposal is pro-competitive because it promotes fair and orderly markets and investor protection, which in turn will buttress investor confidence and attract more investors into U.S. equities markets. NASDAQ has never used contingency planning by other exchanges as a competitive weapon; nor has any competitor used NASDAQ's planning against it.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(6) thereunder⁷ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission.

The proposal meets the requirements of the Rule 19b-4(f)(6) because the proposal presents no new or novel issues that impact investor protection. NASDAQ has for many years engaged in contingency planning of the sort described in this proposed rule change. NASDAQ is simply increasing the transparency and certainty that will accompany such contingency planning in the future. NASDAQ commits to file additional proposed rule changes prior to changing those plans going forward. Nor does the proposed rule change impact competition. Every exchange engages in contingency planning, and none uses those contingency plans for competitive gain.

NASDAQ respectfully requests that the Commission find good cause to waive the 30-day pre-operative period set forth in Rule 19b-4(f)(6)(iii). As stated above, NASDAQ is increasing the transparency and certainty of the contingency planning process.

Additionally, NASDAQ is attempting to establish this process prior to the Russell Reconstitution on June 28, 2013. There is significant benefit to investors from providing certainty prior to that date, and significant risk from failing to provide certainty prior to that date. In other words, denying the requested waiver benefits no one.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 –Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 –Text of Proposed Changes

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2013-090)

June __, 2013

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 4754 Governing the NASDAQ Closing Cross (“Cross”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on June 20, 2013, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) 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 Nasdaq. 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 Substance of the Proposed Rule Change

Nasdaq proposes to amend Exchange Rule 4754 governing the NASDAQ Closing Cross (“Cross”) to specify contingency plans for determining the NASDAQ Official Closing Price (“NOCP”) in the event NASDAQ experiences a system disruption that precludes normal execution of the Cross pursuant to Rule 4754.

The text of the proposed rule change is attached as Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. The text of these statements may be examined at the places specified in 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

Background. Since June of 2002, NASDAQ has published contingency plans in the event the NASDAQ closing process was to be disrupted during the annual reconstitution of the Russell indexes. The Russell-targeted contingency plans began as a series of scenarios, and the set has accreted new scenarios from year to year as NASDAQ's system and the market-wide trading ecosystem have evolved. NASDAQ has established a pattern of communication and testing of contingency plans to ensure that NASDAQ, its members, and the public are prepared to implement the contingency plans if needed.

While NASDAQ has communicated the contingency plans broadly to its members and to the investing public, NASDAQ has never included those contingency plans in NASDAQ's rule manual. NASDAQ has determined to approach contingency planning differently than in the past, and it has also determined to add the contingency plans to NASDAQ's rule manual.

The Contingency Closing Cross process begins with communication. Under the proposal, when NASDAQ experiences a disruption that will preclude execution of the

standard Closing Cross, the President of NASDAQ or any Executive Vice President designated by the President will be authorized to invoke the Contingency Procedures. When that occurs, NASDAQ will at the earliest possible time communicate to members and the public its determination to implement the Contingency Closing Cross process. NASDAQ will communicate with members and the public via system status alerts on NASDAQTrader.com, as well as via Equity Trader Alerts and emails to pre-established notification lists.

NASDAQ is proposing to use a single method for determining the NOCP in response to any situation in which NASDAQ's standard closing cross process fails to operate properly. NASDAQ will employ a single offline process to determine the price, size, and component executions for the closing cross trade in any and all affected securities on a security-by-security basis. NASDAQ believes that a single offline process will address potential failures in the NASDAQ execution system due to its separation from that system and its ability to draw on stored order files regardless of any impairment to the execution system.³

The first step in NASDAQ's proposed Contingency Closing Cross is to determine the proper closing price. If the standard closing cross process fails in any security, NASDAQ will identify the last consolidated regular way trade reported by the network processor before 4:00:00:00 p.m. for an NMS Security and it will use that price as the

³ NASDAQ maintains a database of all orders entered into the execution system, as well as other data regarding order processing. The database is independent of and isolated from the execution system and network and, as a result, it can operate regardless of impairment to those systems. NASDAQ will operate the contingency process from a server that is also independent of and isolated from the execution system and network, and that is supported by multiple redundant backups.

NOCP. In the event an impacted security has no consolidated last sale price (*i.e.* the security has not traded during the day), NASDAQ will have no NOCP and no Contingency Cross for that security. NASDAQ will report each NOCP to the network processor as soon as practical using existing closing modifiers.

Once NASDAQ has identified the NOCP for a given security, NASDAQ will operate a modified closing cross to determine the number of shares and the specific orders that can be executed at the NOCP. Only “on close” orders will participate in the Contingency Closing Cross. All Market-on-Close (“MOC”), Limit-on-Close (“LOC”) and Imbalance Only orders received and not cancelled prior to 3:50 p.m., as well as all Imbalance Only orders received between 3:50 and 4:00 p.m. will be eligible to participate. Resting DAY orders will *not* be eligible to participate because the contingency closing cross will be an offline process and it will be unable to interact with the continuous book.

Once NASDAQ has identified orders eligible to participate in the Contingency Closing Cross and able to execute at the NOCP, NASDAQ will execute on a price-time priority basis, the maximum number of shares able to execute at the NOCP. If an order imbalance exists in the MOC and LOC interest that is marketable at the NOCP, NASDAQ will select Imbalance Only orders on the side of the market that is short of trading interest (in price/time priority) in order to maximize the number of paired shares to execute at the NOCP.

Once NASDAQ has completed the Contingency Closing Cross, it will report the results to the appropriate network processor and deliver execution reports to members. NASDAQ will publish the NOCP and total shares executed in the Contingency Closing

Cross using the proper trade report modifiers already utilized by the processors.⁴

Additionally, NASDAQ will deliver component executions to participants via a flat data file formatted in DROP protocol.⁵

After hours trading will begin either as scheduled at 4:00 p.m. or upon resolution of the disruption that triggered NASDAQ to operate the Contingency Closing Cross.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ 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 investors and the public interest. The proposal is consistent with this provision in that it will ensure that the Exchange continues to operate a fair and orderly market and to provide for an effective pricing mechanism for the critical period of the market close. The proposed independent, off-line process improves NASDAQ's ability to maintain a fair and orderly market when the NASDAQ execution system or network is impaired for any reason.

The proposed Contingency Procedures for the Closing Cross are designed to preserve NASDAQ's ability to move quickly to establish a reliable closing price under

⁴ NASDAQ will report both an official closing price and a bulk trade report for each Closing Cross.

⁵ "DROP" is a proprietary protocol that NASDAQ uses to deliver real-time execution information to members using the NASDAQ system. It facilitates members' efforts to monitor, track, enter, and cancel orders.

⁶ 15 U.S.C. 78f (b).

⁷ 15 U.S.C. 78f(b)(5).

unusual conditions. By simplifying and codifying the Contingency Procedures, NASDAQ also enables NASDAQ members to plan for the contingencies, including the ability to test their systems and how they will interact with NASDAQ's systems in the event NASDAQ triggers the Contingency Procedures.

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. To the contrary, the proposal is specifically designed to protect the other markets and investors from harm that a NASDAQ disruption could impose. In actuality, the proposal is pro-competitive because it promotes fair and orderly markets and investor protection, which in turn will buttress investor confidence and attract more investors into U.S. equities markets. NASDAQ has never used contingency planning by other exchanges as a competitive weapon; nor has any competitor used NASDAQ's planning against it.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were n either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁸ and paragraph (f)(6) of Rule 19b-4 thereunder,⁹ in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. On June 13, 2013, Nasdaq gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change.

As described above, the proposed rule change is designed to conform Nasdaq's rules with the previously approved listing rules and remove expired fee provisions from the rules. As such, Nasdaq believes that the proposed change does not significantly affect the protection of investors and that investors and issuers will benefit from the additional clarity in the rules, and that it is therefore appropriate to file this proposal for immediate effectiveness pursuant to Section 19(b)(3)(A)¹⁰ and Rule 19b-4(f)(6)¹¹.

Nasdaq requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6). This will allow Nasdaq's rules to immediately reflect the legacy rule, which Nasdaq did not intend to modify, and allow companies and investors to immediately benefit from the additional clarity provided by the proposed rule.

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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

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 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-2013-090 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-090. 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 Web site (<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; 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-2013-090 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined. Proposed deletions are in [brackets].

* * * * *

NASDAQ Equity Rules

* * *

Rule 4754. Nasdaq Closing Cross

(a) No change.

(b)

(1) – (5) No change.

(6) Contingency Procedures. When a disruption occurs at or near the close of Market hours that prevents the execution of the Closing Cross as set forth above, Nasdaq shall apply the following contingency procedures for the Closing Cross rather than procedures set forth above. The determination to implement contingency procedures for the Closing Cross shall be made by the President of Nasdaq or any Executive Vice President designated by the President.

(A) NASDAQ shall announce at the earliest possible time the initiation of contingency closing procedures via system status alerts, Equity Trader Alerts, and email notification directories.

(B) For each security, NASDAQ shall identify the last regular-way trade reported by the network processor prior to 4:00 p.m. and shall publish that price as the NASDAQ Official Closing Price for that security. For securities in which there has been no consolidated trading in that security for that day, there shall be no NASDAQ Official Closing Price and no Closing Cross.

(C) NASDAQ shall identify and segregate all MOC and LOC Orders entered prior to 3:50 p.m., and all Imbalance Only orders entered prior to 4:00 p.m. Only these MOC, LOC, and Imbalance Only Orders shall be eligible to participate in the Closing Cross.

(D) NASDAQ shall cross and execute eligible MOC and LOC Orders in price time priority in order to maximize the trading interest executed at the NASDAQ Official Closing Price. If an order imbalance exists, NASDAQ shall include in the cross Imbalance Only Orders on the side of the market

with less trading interest in price/time priority, and then execute all MOC, LOC and Imbalance Only Orders at the NASDAQ Official Closing Price.

(E) NASDAQ shall report the results of the Closing Cross to the network processor for each security, and deliver execution reports to members.

(F) After hours trading shall begin either as scheduled at 4:00 p.m. or or upon resolution of the disruption that triggered NASDAQ to operate the Contingency Closing Cross.

* * * * *