

inaccurate rule text or remove language pertaining to unavailable functionality in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes the proposed changes would add transparency to the operation of certain order types, without altering the current functionality.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2019-71 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-NYSEArca-2019-71. 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-NYSEArca-2019-71 and should be submitted on or before November 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Jill M. Peterson,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-87445; File No. SR-NASDAQ-2019-060]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 4120 and 4753**

November 1, 2019.

**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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rules 4120 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 the initial pricing on the Exchange and to allow for the initial pricing of such a security through the IPO Cross. The proposed rule change was published for comment in the **Federal Register** on August 6, 2019.<sup>3</sup> On September 19, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On September 19, 2019, the Exchange also filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.<sup>6</sup> The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

**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

<sup>3</sup> See Securities Exchange Act Release No. 86537 (July 31, 2019), 84 FR 38321.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 87012, 84 FR 50490 (September 25, 2019). The Commission designated November 4, 2019 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> In Amendment No. 1, the Exchange revised the proposal to: (1) Clarify that when a security previously traded in the OTC market is initially priced using the IPO Cross, the fourth tie-breaker 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 market immediately prior to listing on Nasdaq is released for initial trading on Nasdaq through 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. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2019-060/srnasdaq2019060-6163792-192369.pdf>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

4752(d).<sup>8</sup> The Exchange proposes to amend Rule 4120 to permit the Exchange to declare a regulatory halt<sup>9</sup> in a security that traded in the OTC market prior to its initial pricing on the Exchange.<sup>10</sup> The Exchange also proposes to amend Rules 4120 and 4753 to allow for the initial pricing on the Exchange of such a security through the IPO Cross (described in Rules 4120(c)(8) and 4753) if a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter in an initial public offering.<sup>11</sup> If the issuer does not retain a financial advisor, the initial pricing on the Exchange of such a security will continue to be effected through the Opening Cross.<sup>12</sup> Moreover, the Exchange proposes to adopt Rules 4753(a)(3)(A)(iv)(e) and 4753(b)(2)(D)(v) to provide that, in the case of the initial pricing of a security that traded in the OTC market pursuant to FINRA Form 211 immediately prior to its initial pricing, the fourth tie-breaker used in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator for purposes of the IPO Cross and the price at which the IPO Cross will occur will be the price that is closest to the most recent transaction price in the OTC market.<sup>13</sup>

<sup>8</sup> See Amendment 1, *supra* note 6, at 4 n.4.

<sup>9</sup> 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). See *id.* at 4 n.3.

<sup>10</sup> The Exchange states that its proposal would 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 would 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. See *id.* at 7.

<sup>11</sup> Rule 4120(c)(9) currently provides that the IPO Cross process is available for the initial pricing of a security that has not been listed on a national securities exchange or traded in the OTC market pursuant to FINRA Form 211 immediately prior to the initial pricing where a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. The Exchange states that the IPO Cross will be a better mechanism to open trading in securities that traded in the OTC market given that these companies may attract significant interest upon listing on the Exchange from investors who previously could not invest in such securities, and that it will be beneficial to allow significant financial advisor involvement in determining when to launch trading. See *id.* at 8–9.

<sup>12</sup> See *id.* at 4 n.4.

<sup>13</sup> 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. See *id.* at 8. This proposed change to the fourth tie-breaker will not

### III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2019–060, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>14</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>15</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) of the Act.<sup>16</sup> Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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.

As discussed above, the proposal would allow the Exchange to declare a regulatory halt in a security that traded in the OTC market prior to its initial pricing on the Exchange. The proposal would also allow the Exchange to use the IPO Cross to initially price such a security provided that a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering, and would establish the fourth tie-breaker used in calculating the Current Reference Price and the IPO Cross price. Currently, the functions performed by an underwriter with respect to an initial public offering under Rule 4120(c)(8) include, for example, providing notice to the Exchange that the security is

affect the pricing of a security if the issuer does not retain a financial advisor. See *id.* at 4 n.5.

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>15</sup> *Id.*

<sup>16</sup> 15 U.S.C. 78f(b)(5).

ready to trade, selecting price bands for the price validation test, and determining to postpone and reschedule the initial public offering. The underwriter functions under Rule 4120(c)(8) currently also apply to a broker-dealer serving in the role of financial advisor to the issuer of a security that has not been listed on a national securities exchange or traded in the OTC market pursuant to FINRA Form 211 immediately prior to its initial pricing on the Exchange, if the IPO Cross is used for the initial pricing of such a security on the Exchange. In the current proposal, the Exchange states that the IPO Cross will be a better mechanism to open trading in securities that traded in the OTC market given that these companies may attract significant interest upon listing on the Exchange from investors who previously could not invest in a security that was traded in the OTC market, and it would be beneficial to allow significant financial advisor involvement in determining when to launch trading.<sup>17</sup> The Commission seeks commenters’ views on the sufficiency and merit of the Exchange’s statements in support of the proposal, which are set forth in Amendment No. 1,<sup>18</sup> in addition to any other comments they may wish to submit about the proposed rule change.

### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,<sup>19</sup> any request for an opportunity to make an oral presentation.<sup>20</sup>

<sup>17</sup> See Amendment 1, *supra* note 6, at 8–9.

<sup>18</sup> See Amendment 1, *supra* note 6.

<sup>19</sup> 17 CFR 240.19b–4.

<sup>20</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by November 29, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 12, 2019.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. 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 No. SR-NASDAQ-2019-060. The 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 No. SR-NASDAQ-2019-060 and should be

particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submitted by November 29, 2019. Rebuttal comments should be submitted by December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87441; File No. SR-FINRA-2019-026]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR-FINRA-2015-036

November 1, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 25, 2019, the 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. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend, to March 25, 2021, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR-FINRA-2015-036, other than the amendments pursuant to SR-FINRA-2015-036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

<sup>21</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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 Item IV below. FINRA 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

On October 6, 2015, FINRA filed with the Commission proposed rule change SR-FINRA-2015-036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced ("TBA") transactions, inclusive of adjustable rate mortgage ("ARM") transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations ("CMOs"), issued in conformity with a program of an agency or Government-Sponsored Enterprise ("GSE"), with forward settlement dates, as defined more fully in the filing (collectively, "Covered Agency Transactions"). The Commission approved SR-FINRA-2015-036 on June 15, 2016 (the "Approval Date").<sup>4</sup>

Pursuant to Partial Amendment No. 3 to SR-FINRA-2015-036, FINRA announced in *Regulatory Notice* 16-31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR-FINRA-2015-036 (collectively, the "risk limit determination requirements"), would

<sup>4</sup> See Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR-FINRA-2015-036).