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P: [REDACTED]
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January 10, 2020

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 2 SR-Nasdaq-2019-060

Dear Ms. Countryman:

The Nasdaq Stock Market LLC filed the above-referenced filing on January 10, 2020.

Sincerely,

A handwritten signature in black ink that reads 'Nikolai Utochkin'.

Nikolai Utochkin
Counsel – Listing and Governance

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2019 - * 060	Amendment No. (req. for Amendments *) 2
Filing by The Nasdaq Stock Market LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input 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 type="checkbox"/> 19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input 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 *).				
<input type="text" value="A proposal 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 market prior to the initial pricing on the Exchange"/>				
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 *	<input type="text" value="Nikolai"/>	Last Name *	<input type="text" value="Utochkin"/>	
Title *	<input type="text" value="Counsel Listing and Governance"/>			
E-mail *	<input type="text" value="REDACTED"/>			
Telephone *	<input type="text" value="REDACTED"/>	Fax	<input type="text"/>	
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	<input type="text" value="01/10/2020"/>	<input type="text" value="EVP and Chief Legal Counsel"/>		
By	<input type="text" value="John Zecca"/>	<input type="text" value="REDACTED"/>		
(Name *)				
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 *

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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 *

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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 *

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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

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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

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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

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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

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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

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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 the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal 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 market prior to the initial pricing on the Exchange and to allow for the initial pricing of such securities through the IPO Cross. This Amendment No. 2 supersedes the original filing as modified by Amendment No. 1 in its entirety.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on July 16, 2019. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Nikolai Utochkin
Counsel – Listing and Governance
Nasdaq, Inc.
[REDACTED]

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

Nasdaq proposes to amend Rule 4120 to permit the Exchange to declare a regulatory halt³ in a security that traded in the over-the-counter market (the "OTC market") prior to the initial pricing on the Exchange. Nasdaq also proposes to amend Rule 4753 to allow for the initial pricing on the Exchange of such securities through the IPO Cross where a broker-dealer is willing to serve in the role of financial advisor to the issuer and perform the functions under Rule 4120(c)(8) that are ordinarily performed by an underwriter with respect to an initial public offering.⁴ Finally, the proposed change would state that where a security previously traded in the OTC market pursuant to FINRA Form 211 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 Nasdaq Halt Cross will occur shall be the price that is closest to the most recent transaction price in the over-the-counter market.⁵

Background

In 2014, Nasdaq first adopted rules to allow the use of the Nasdaq IPO Cross to initiate trading in securities that have not been listed on a national securities exchange or

³ As used in this filing, the term "regulatory halt" refers to Nasdaq's authority to halt trading in a security under Rule 4120(a)(7).

⁴ Currently, a security that traded on the OTC Market immediately prior to listing on Nasdaq is released for initial trading on Nasdaq through the Opening Cross under Rule 4752(d). If the issuer does not retain a financial advisor, the initial pricing on the Exchange of a security that previously traded in the OTC Market will continue to be effected through the Opening Cross.

⁵ The proposed change to the fourth tie-breaker will not affect pricing of a security if the issuer does not retain a financial advisor. See footnote 4 above.

traded in the over-the-counter market pursuant to FINRA Form 211 (the “OTC market”) immediately prior to the initial pricing and described the role of financial advisors in that process.⁶ At that time, the Exchange added new Rule 4120(c)(9)⁷ to set forth the process by which trading commences in such securities. Under that rule, securities of companies that have not previously been listed on a national securities exchange or traded in the OTC market pursuant to FINRA Form 211 immediately prior to listing on Nasdaq can be launched for trading using the same crossing mechanism available for IPOs outlined in Rule 4120(c)(8) and Rule 4753 (the “IPO Cross”). Prior to that rule change, securities of companies that were not conducting IPOs were released using the Halt Cross outlined in Rule 4120(c)(7), which differed from the IPO Cross.⁸

The 2014 Rule Change extended the safeguards contained in the IPO Cross to securities that have not been listed on a national securities exchange or traded in the OTC market immediately prior to the initial pricing and established that a broker-dealer serving in the role of financial advisor to the issuer could serve in the same capacity for such securities as the underwriter does for IPOs. Specifically, Rule 4120(c)(9) provides

⁶ Securities Exchange Act Release No. 71931 (April 11, 2014), 79 FR 21829 (April 17, 2014) (SR-NASDAQ-2014-032) (the “2014 Rule Change”).

⁷ In 2014, Nasdaq filed SR-NASDAQ-2014-081 modifying the functions that are performed by an underwriter with respect to an initial public offering and renumbered certain paragraphs of Rule 4120. Securities Exchange Act Release No. 73399 (October 21, 2014), 79 FR 63981 (October 27, 2014) (approving SR-NASDAQ-2014-81). All references in this filing are to the renumbered rules, as currently in effect.

⁸ The Halt Cross process has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market appears likely to have a material impact on the security, unless there is an order imbalance as defined in the rule. See the 2014 Rule Change for additional details on the differences between the Halt Cross and the IPO Cross.

that the IPO Cross process described in Rules 4120 and 4753 is available to securities that have not been listed on a national securities exchange or traded in the OTC market immediately prior to the initial pricing where “a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.”⁹ Rule 4753 provides the definition of Current Reference Price and a description of the calculation of the price at which the Nasdaq Halt Cross will occur.¹⁰

When Nasdaq added Rule 4120(c)(9) in 2014, it cross-referenced Rule 4753 but did not modify it. In 2019, Nasdaq amended Rule 4753 to elaborate the role of a financial advisor to the issuer of a security that has not been listed on a national securities exchange or traded in the OTC market immediately prior to the initial pricing.¹¹ Nasdaq has successfully employed the IPO Cross for securities that have 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 since 2014 and continues to believe that financial advisors to issuers seeking to utilize that process are well placed to perform the functions that are currently performed by underwriters with respect to an initial public offering.

⁹ Subsequent to the 2014 Rule Change Nasdaq expanded and elaborated the functions that are performed by an underwriter with respect to an initial public offering. See footnote 7, above. Rule 4120(c)(9) requires a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed to perform all such functions in order for the issuer to utilize the IPO Cross for the initial pricing of the security.

¹⁰ Rules 4753(a)(3)(A) and 4753(b)(2)(D).

¹¹ Securities Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019) (SR-NASDAQ-2019-001).

Proposed Rule Change

Nasdaq now proposes to amend Rules 4120 and 4753 to facilitate more orderly start to trading by permitting the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the Exchange.

The Exchange proposes to delete the clause “or traded in the over-the-counter market pursuant to FINRA Form 211” in Rule 4120 before “immediately prior to the initial pricing.” The proposed amendment would thus enable the Exchange to declare a regulatory halt for a security that is having its initial listing on the Exchange that was traded in the OTC market immediately prior to its initial pricing on the Exchange.

Nasdaq believes that it would be consistent with the protection of investors and the public interest for the Exchange, as a primary listing exchange, to have authority to declare a regulatory halt for a security that was previously traded in the OTC market prior to its initial pricing on Nasdaq. An OTC market security that will be listed on a primary listing exchange will be removed from the OTC trading list on the day prior to its initial pricing on the Exchange. However, on the day of its initial listing, such security can trade on an unlisted trading permit (“UTP”) basis before the first transaction on the primary listing exchange. The Exchange believes that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would avoid potential price disparities or anomalies that may occur during any UTP trading before the first transaction on the primary listing exchange.

More specifically, the Exchange believes that quoting and trading in the pre-market of an OTC transfer can be erratic and investors may be harmed if their securities trade during this period. The Exchange believes that the proposed limited authority to

declare a regulatory halt in the hours prior to the OTC transfer pricing on the Exchange would mitigate any potential price disparities and contribute to a fair and orderly market once the security opens on the Exchange. The Exchange believes that such authority would be consistent with the protection of investors and the public interest.

In addition, Nasdaq proposes to allow for the initial pricing of such securities through the IPO Cross where a broker-dealer is willing to serve in the role of financial advisor to the issuer and perform the functions under Rule 4120(c)(8) that are ordinarily performed by an underwriter with respect to an initial public offering.¹² To that end, Nasdaq proposed to add Rules 4753(a)(3)(A)(iv)(e) and 4753(b)(2)(D)(v) to state that in the case of the initial pricing of a security that traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, the fourth tie-breaker in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, respectively, shall be the price that is closest to the most recent transaction price in that market. Nasdaq believes that such price is predictive of the price in the market for the securities that will develop upon listing of the securities on Nasdaq and that it is therefore appropriate to use the price from such trading to determine the Current Reference Price and the price at which the Nasdaq Halt Cross will occur. Nasdaq also believes that the IPO Cross will be a better mechanism to open trading in these cases, 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. In that way, the initial interest in the security upon its listing on the Exchange makes it beneficial

¹² For the avoidance of doubt, this proposed rule change will not allow a company to concurrently raise capital in the IPO Cross.

to provide the issuer's financial advisor with additional time by extending quoting activity prior to launch, as provided for in Rule 4120(c)(8), and allowing significant financial advisor involvement in determining when to launch trading.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed 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.

The Exchange believes that the proposed amendment to Rules 4120 and 4753 to provide authority to declare a regulatory halt in a security that is an OTC transfer would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing the Exchange with authority to halt trading across all markets for a security that has traded in the OTC market and not previously listed on the Exchange, but for which a regulatory halt would promote fair and orderly markets. The Exchange believes that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would avoid potential price disparities or anomalies that may occur during any UTP trading before the first transaction on the primary listing exchange.¹⁵ More specifically, the Exchange believes that quoting and

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Approving similar changes to Rule 123D of the New York Stock Exchange (NYSE), the Commission stated that it "believes that extending the authority of the [NYSE] to declare a regulatory trading halt prior to the initial pricing on the [NYSE] of securities that were previously traded in the OTC market is consistent

trading in the pre-market of an OTC transfer can be erratic and investors may be harmed if their securities trade during this period. The Exchange therefore believes that having the authority to declare a regulatory halt for a security that is the subject of an OTC transfer is consistent with the protection of investors and the public interest and would promote fair and orderly markets by helping to protect against volatility in pricing before the initial transaction on the primary listing exchange.

Nasdaq believes that some 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. Nasdaq believes that allowing a security that traded in the OTC market prior to listing on the Exchange to initially price on the Exchange through the IPO Cross, rather than the Opening Cross, where a broker-dealer is willing to serve in the role of financial advisor to the issuer and perform the functions under Rule 4120(c)(8) that are ordinarily performed by an underwriter with respect to an initial public offering would promote fair and orderly markets because it would facilitate more orderly start to trading by providing the issuer's financial advisor with time by extending quoting activity, as provided for in Rule 4120(c)(8), prior to launch and allowing significant financial advisor involvement in determining when to launch trading.

The proposed rule change to clarify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest by describing such fourth tie-breaker for a security that is not the subject of an IPO, but

with the Act because it is reasonably designed to address any potential price disparities or anomalies that may occur during UTP trading before the first transaction on the [NYSE].” See Securities Exchange Act Release No. 86351 (July 11, 2019), 84 FR 34219 (July 17, 2019) (Approving SR-NYSE-2019-32).

that has traded in the OTC market pursuant to FINRA Form 211 immediately prior to the initiation of trading on Nasdaq. The proposed rule change establishes that in such a case the Current Reference Price and price at which the Nasdaq Halt Cross will occur will be the price that is closest to the most recent transaction price in the OTC market. Nasdaq believes the most recent price from such trading is predictive of the price that will develop upon listing of the securities on Nasdaq.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the benefit to investors to halt trading in a security that transfers from an OTC market to a primary listing exchange outweighs any burden on competition that may result from a regulatory halt in such security before the initial listing on the primary listing exchange. The proposed rule change is consistent with existing authority for the Exchange to declare a regulatory halt in trading of a security before the initial pricing on the Exchange and would extend that authority to a transfer from the OTC market.

In addition, the proposed change is designed to more fully describe the application of the IPO Halt Cross to a security that has traded in the OTC market pursuant to FINRA Form 211 immediately prior to the initiation of trading on Nasdaq in the determination of the fourth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur. The proposed rule change will have no impact on competition as it is merely designed to improve the opening process for investors in securities of certain companies that have already chosen

to list on the Exchange and to insure that the Current Reference Price and the price at which the Nasdaq Halt Cross will occur is appropriately calculated.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the 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)

Nasdaq requests accelerated effectiveness pursuant to Section 19(b)(2) of the Act¹⁶ given that the proposed changes to Rule 4120 are substantially similar to the changes the NYSE made to Rule 123D, which the Commission approved following the notice and comment process.¹⁷ Further, the proposed changes to Rule 4753 are substantially similar to the changes made to this Rule when Nasdaq clarified the applicability of the IPO Cross for the a security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing.¹⁸

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ See Securities Exchange Act Release No. 86351 (July 11, 2019), 84 FR 34219 (July 17, 2019) (Approving SR-NYSE-2019-32).

¹⁸ See Securities Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019).

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

The proposed rule change to amend Rule 4120 is based on Rule 123D of the New York Stock Exchange as described in detail in SR-NYSE-2019-32.¹⁹

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

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

¹⁹ See footnote 17 above.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2019-060)

January __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of 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 Market Prior to the Initial Pricing on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on January 10, 2020, 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 the Exchange. 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

The Exchange proposes 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 market prior to the initial pricing on the Exchange and to allow for the initial pricing of such securities through the IPO Cross. This Amendment No. 2 supersedes the original filing as modified by Amendment No. 1 in its entirety.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, 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, the Exchange 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. 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

Nasdaq proposes to amend Rule 4120 to permit the Exchange to declare a regulatory halt³ in a security that traded in the over-the-counter market (the "OTC market") prior to the initial pricing on the Exchange. Nasdaq also proposes to amend Rule 4753 to allow for the initial pricing on the Exchange of such securities through the IPO Cross where a broker-dealer is willing to serve in the role of financial advisor to the issuer and perform the functions under Rule 4120(c)(8) that are ordinarily performed by an underwriter with respect to an initial public offering.⁴ Finally, the proposed change

³ As used in this filing, the term "regulatory halt" refers to Nasdaq's authority to halt trading in a security under Rule 4120(a)(7).

⁴ Currently, a security that traded on the OTC Market immediately prior to listing on Nasdaq is released for initial trading on Nasdaq through the Opening Cross under Rule 4752(d). If the issuer does not retain a financial advisor, the initial pricing on the Exchange of a security that previously traded in the OTC Market will continue to be effected through the Opening Cross.

would state that where a security previously traded in the OTC market pursuant to FINRA Form 211 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 Nasdaq Halt Cross will occur shall be the price that is closest to the most recent transaction price in the over-the-counter market.⁵

Background

In 2014, Nasdaq first adopted rules to allow the use of the Nasdaq IPO Cross to initiate trading in securities that have not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 (the “OTC market”) immediately prior to the initial pricing and described the role of financial advisors in that process.⁶ At that time, the Exchange added new Rule 4120(c)(9)⁷ to set forth the process by which trading commences in such securities. Under that rule, securities of companies that have not previously been listed on a national securities exchange or traded in the OTC market pursuant to FINRA Form 211 immediately prior to listing on Nasdaq can be launched for trading using the same crossing mechanism available for IPOs outlined in Rule 4120(c)(8) and Rule 4753 (the “IPO Cross”). Prior to that rule change, securities of

⁵ The proposed change to the fourth tie-breaker will not affect pricing of a security if the issuer does not retain a financial advisor. See footnote 4 above.

⁶ Securities Exchange Act Release No. 71931 (April 11, 2014), 79 FR 21829 (April 17, 2014) (SR-NASDAQ-2014-032) (the “2014 Rule Change”).

⁷ In 2014, Nasdaq filed SR-NASDAQ-2014-081 modifying the functions that are performed by an underwriter with respect to an initial public offering and renumbered certain paragraphs of Rule 4120. Securities Exchange Act Release No. 73399 (October 21, 2014), 79 FR 63981 (October 27, 2014) (approving SR-NASDAQ-2014-81). All references in this filing are to the renumbered rules, as currently in effect.

companies that were not conducting IPOs were released using the Halt Cross outlined in Rule 4120(c)(7), which differed from the IPO Cross.⁸

The 2014 Rule Change extended the safeguards contained in the IPO Cross to securities that have not been listed on a national securities exchange or traded in the OTC market immediately prior to the initial pricing and established that a broker-dealer serving in the role of financial advisor to the issuer could serve in the same capacity for such securities as the underwriter does for IPOs. Specifically, Rule 4120(c)(9) provides that the IPO Cross process described in Rules 4120 and 4753 is available to securities that have not been listed on a national securities exchange or traded in the OTC market immediately prior to the initial pricing where “a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering.”⁹ Rule 4753 provides the definition of Current Reference Price and a description of the calculation of the price at which the Nasdaq Halt Cross will occur.¹⁰

⁸ The Halt Cross process has a shorter quoting period (five minutes) and provides no ability to extend the quoting period in the event trading interest or volatility in the market appears likely to have a material impact on the security, unless there is an order imbalance as defined in the rule. See the 2014 Rule Change for additional details on the differences between the Halt Cross and the IPO Cross.

⁹ Subsequent to the 2014 Rule Change Nasdaq expanded and elaborated the functions that are performed by an underwriter with respect to an initial public offering. See footnote 7, above. Rule 4120(c)(9) requires a broker-dealer serving in the role of a financial advisor to the issuer of the securities being listed to perform all such functions in order for the issuer to utilize the IPO Cross for the initial pricing of the security.

¹⁰ Rules 4753(a)(3)(A) and 4753(b)(2)(D).

When Nasdaq added Rule 4120(c)(9) in 2014, it cross-referenced Rule 4753 but did not modify it. In 2019, Nasdaq amended Rule 4753 to elaborate the role of a financial advisor to the issuer of a security that has not been listed on a national securities exchange or traded in the OTC market immediately prior to the initial pricing.¹¹ Nasdaq has successfully employed the IPO Cross for securities that have 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 since 2014 and continues to believe that financial advisors to issuers seeking to utilize that process are well placed to perform the functions that are currently performed by underwriters with respect to an initial public offering.

Proposed Rule Change

Nasdaq now proposes to amend Rules 4120 and 4753 to facilitate more orderly start to trading by permitting the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to the initial pricing on the Exchange.

The Exchange proposes to delete the clause “or traded in the over-the-counter market pursuant to FINRA Form 211” in Rule 4120 before “immediately prior to the initial pricing.” The proposed amendment would thus enable the Exchange to declare a regulatory halt for a security that is having its initial listing on the Exchange that was traded in the OTC market immediately prior to its initial pricing on the Exchange.

Nasdaq believes that it would be consistent with the protection of investors and the public interest for the Exchange, as a primary listing exchange, to have authority to declare a regulatory halt for a security that was previously traded in the OTC market prior to its initial pricing on Nasdaq. An OTC market security that will be listed on a primary

¹¹ Securities Exchange Act Release No. 85156 (February 15, 2019), 84 FR 5787 (February 22, 2019) (SR-NASDAQ-2019-001).

listing exchange will be removed from the OTC trading list on the day prior to its initial pricing on the Exchange. However, on the day of its initial listing, such security can trade on an unlisted trading permit (“UTP”) basis before the first transaction on the primary listing exchange. The Exchange believes that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would avoid potential price disparities or anomalies that may occur during any UTP trading before the first transaction on the primary listing exchange.

More specifically, the Exchange believes that quoting and trading in the pre-market of an OTC transfer can be erratic and investors may be harmed if their securities trade during this period. The Exchange believes that the proposed limited authority to declare a regulatory halt in the hours prior to the OTC transfer pricing on the Exchange would mitigate any potential price disparities and contribute to a fair and orderly market once the security opens on the Exchange. The Exchange believes that such authority would be consistent with the protection of investors and the public interest.

In addition, Nasdaq proposes to allow for the initial pricing of such securities through the IPO Cross where a broker-dealer is willing to serve in the role of financial advisor to the issuer and perform the functions under Rule 4120(c)(8) that are ordinarily performed by an underwriter with respect to an initial public offering.¹² To that end, Nasdaq proposed to add Rules 4753(a)(3)(A)(iv)(e) and 4753(b)(2)(D)(v) to state that in the case of the initial pricing of a security that traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, the fourth tie-breaker in calculating each of the Current Reference Price disseminated in the Nasdaq

¹² For the avoidance of doubt, this proposed rule change will not allow a company to concurrently raise capital in the IPO Cross.

Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, respectively, shall be the price that is closest to the most recent transaction price in that market. Nasdaq believes that such price is predictive of the price in the market for the securities that will develop upon listing of the securities on Nasdaq and that it is therefore appropriate to use the price from such trading to determine the Current Reference Price and the price at which the Nasdaq Halt Cross will occur. Nasdaq also believes that the IPO Cross will be a better mechanism to open trading in these cases, 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. In that way, the initial interest in the security upon its listing on the Exchange makes it beneficial to provide the issuer's financial advisor with additional time by extending quoting activity prior to launch, as provided for in Rule 4120(c)(8), and allowing significant financial advisor involvement in determining when to launch trading.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed 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.

The Exchange believes that the proposed amendment to Rules 4120 and 4753 to provide authority to declare a regulatory halt in a security that is an OTC transfer would

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and a national market system by providing the Exchange with authority to halt trading across all markets for a security that has traded in the OTC market and not previously listed on the Exchange, but for which a regulatory halt would promote fair and orderly markets. The Exchange believes that permitting the Exchange to declare a regulatory halt in such securities before trading on the Exchange begins would avoid potential price disparities or anomalies that may occur during any UTP trading before the first transaction on the primary listing exchange.¹⁵ More specifically, the Exchange believes that quoting and trading in the pre-market of an OTC transfer can be erratic and investors may be harmed if their securities trade during this period. The Exchange therefore believes that having the authority to declare a regulatory halt for a security that is the subject of an OTC transfer is consistent with the protection of investors and the public interest and would promote fair and orderly markets by helping to protect against volatility in pricing before the initial transaction on the primary listing exchange.

Nasdaq believes that some 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. Nasdaq believes that allowing a security that traded in the OTC market prior to listing on the Exchange to initially price on the Exchange through the IPO Cross, rather than the Opening Cross, where a broker-dealer is willing to serve in

¹⁵ Approving similar changes to Rule 123D of the New York Stock Exchange (NYSE), the Commission stated that it “believes that extending the authority of the [NYSE] to declare a regulatory trading halt prior to the initial pricing on the [NYSE] of securities that were previously traded in the OTC market is consistent with the Act because it is reasonably designed to address any potential price disparities or anomalies that may occur during UTP trading before the first transaction on the [NYSE].” See Securities Exchange Act Release No. 86351 (July 11, 2019), 84 FR 34219 (July 17, 2019) (Approving SR-NYSE-2019-32).

the role of financial advisor to the issuer and perform the functions under Rule 4120(c)(8) that are ordinarily performed by an underwriter with respect to an initial public offering would promote fair and orderly markets because it would facilitate more orderly start to trading by providing the issuer's financial advisor with time by extending quoting activity, as provided for in Rule 4120(c)(8), prior to launch and allowing significant financial advisor involvement in determining when to launch trading.

The proposed rule change to clarify the fourth tie-breaker used in calculating the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the Nasdaq Halt Cross will occur, protects investors and the public interest by describing such fourth tie-breaker for a security that is not the subject of an IPO, but that has traded in the OTC market pursuant to FINRA Form 211 immediately prior to the initiation of trading on Nasdaq. The proposed rule change establishes that in such a case the Current Reference Price and price at which the Nasdaq Halt Cross will occur will be the price that is closest to the most recent transaction price in the OTC market. Nasdaq believes the most recent price from such trading is predictive of the price that will develop upon listing of the securities on Nasdaq.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the benefit to investors to halt trading in a security that transfers from an OTC market to a primary listing exchange outweighs any burden on competition that may result from a regulatory halt in such security before the initial listing on the primary listing exchange. The proposed rule change is consistent with existing authority for the Exchange to declare a regulatory halt in trading of a security

before the initial pricing on the Exchange and would extend that authority to a transfer from the OTC market.

In addition, the proposed change is designed to more fully describe the application of the IPO Halt Cross to a security that has traded in the OTC market pursuant to FINRA Form 211 immediately prior to the initiation of trading on Nasdaq in the determination of the fourth tie-breaker in calculating the Current Reference Price for the security and the price at which the Nasdaq Halt Cross will occur. The proposed rule change will have no impact on competition as it is merely designed to improve the opening process for investors in securities of certain companies that have already chosen to list on the Exchange and to insure that the Current Reference Price and the price at which the Nasdaq Halt Cross will occur is appropriately calculated.

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

No written comments were either solicited or received.

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 within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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 e-mail 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 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-2019-060 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.¹⁶

Jill M. Peterson
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market Rules

* * * * *

4120. Limit Up-Limit Down Plan and Trading Halts

(a) – (b) No change.

(c) Procedure for Initiating and Terminating a Trading Halt

(1) – (8) No change.

(9) For purposes of this Rule and Rule 4753, the process for halting and initial pricing of a security that is the subject of an initial public offering shall also be available for the initial pricing of any other security that has not been listed on a national securities exchange[or traded in the over-the-counter market pursuant to FINRA Form 211] immediately prior to the initial pricing, provided that a broker-dealer serving in the role of financial advisor to the issuer of the securities being listed is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. If more than one broker dealer is serving in the role of financial advisor, the issuer must designate one to perform the functions under Rule 4120(c)(8).

(10) No change.

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4753. Nasdaq Halt Cross

(a) Definitions.

For the purposes of this rule the term:

(1) – (2) No change.

(3) "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about Eligible Interest and the price at which such interest would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:

(A) "Current Reference Price" shall mean:

(i) – (iii) No change.

(iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean:

a. – b. No change.

c. In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; [and]

d. In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price[.]; and

e. In the case of the initial pricing of a security that traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, the price that is closest to the most recent transaction price in that market.

Notwithstanding the foregoing, the Order Imbalance Indicator will not include the Current Reference Price if there is a Market Order Imbalance.

(B) – (F) No change.

(4) – (6) No change.

(b) Processing of Nasdaq Halt Cross. For Nasdaq-listed securities that are the subject of a trading halt or pause initiated pursuant to Rule 4120(a)(1), (4), (5), (6), (7) or (11), the Nasdaq Halt Cross shall occur at the time specified by Nasdaq pursuant to Rule 4120, and Market hours trading shall commence when the Nasdaq Halt Cross concludes.

(1) No change.

(2)

(A) – (C) No change.

(D) If more than one price exists under subparagraph (C), the Nasdaq Halt Cross shall occur at:

(i) – (ii) No change.

(iii) In the case of another halt type in which the security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the trading halt; [and]

(iv) In the case of another halt type in which the security has not already traded during normal market hours on that trading day, the price that is closest to the previous Nasdaq Official Closing Price[.]; and

(v) In the case of the initial pricing of a security that traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing, the price that is closest to the most recent transaction price in that market.

(3) – (4) No change.

(c) – (d) No change.

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