

8011-01P

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81390; File No. SR-NASDAQ-2017-082)

August 14, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify When Nasdaq Will Utilize the Secondary Source of Data

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 August 2, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 further clarify when Nasdaq will utilize the Secondary Source of data pursuant to Rule 4759.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of the proposed rule change is to clarify when Nasdaq will utilize the Secondary Source of data pursuant to Rule 4759. Rule 4759 lists the proprietary and network processor feeds that are utilized for the handling, routing, and execution of orders, as well as for the regulatory compliance processes related to those functions. Rule 4759 also lists Secondary Sources of data that are utilized in emergency market conditions, and only until those emergency conditions are resolved. The Exchange proposes to amend this rule to describe how the Nasdaq trading system decides when to use the Primary or Secondary Source of data. Specifically, the Exchange proposes to amend Rule 4759 to clarify that the Primary Source of data is used unless it is delayed by a configurable amount compared to the Secondary Source of data.³ The Exchange will revert to the Primary Source of data once the delay has been resolved. The configurable amount described in this rule will be made available to members via Equity Trader Alert.

³ As a conforming change, the Exchange proposes to remove the current rule text that indicates that the Secondary Source of data is, where applicable, utilized only in emergency market conditions and only until those emergency conditions are resolved. The Exchange does not believe that this language is needed as the amended rule would now indicate with more specificity when the Exchange fails over to the Secondary Source of data.

The Exchange believes that this clarification is necessary in light of the re-launch of NYSE MKT as NYSE American, which is scheduled for July 24, 2017.⁴ NYSE American rules provide for an intentional 350 microsecond access delay to certain inbound and outbound order messages on that exchange, including all outbound communications to proprietary market data feeds. NYSE American will not apply a similar delay to outbound communications to the securities information processor (“SIP”). Due to the intentional delay of proprietary market data to be disseminated by NYSE American, the Exchange believes that fail over to the Secondary Source of Data may sometimes be necessary even during otherwise normal operation to ensure that the fastest and most reliable data is used for the handling, routing, and execution of orders, and for regulatory compliance purposes.

Currently, the Nasdaq trading system utilizes proprietary market data as the Primary Source for the following markets that provide a reliable proprietary data feed: NYSE MKT, NASDAQ OMX BX, DirectEdge A, DirectEdge X, CHX, NYSE, NYSE Arca, NASDAQ, NASDAQ OMX PSX, BATS Y-Exchange, and BATS Exchange. For each of these markets, the Exchange uses SIP data as the Secondary Source.⁵ The trading system then uses certain real-time logic to determine whether emergency market conditions exist that should result in the failover to the Secondary Source of data from the Primary Source. Specifically, the trading system fails over to the Secondary Source of data for these markets if the Primary Source of data is delayed by a configurable amount compared to the Secondary Source.⁶ A significant delay of

⁴ See Securities Exchange Act Release No 80700 (May 16, 2017), 82 FR 23381 (May 22, 2017) (SR-NYSEMKT-2017-05) (Approval Order).

⁵ SIP data is used as the Primary Source for NSX, FINRA ADF, and IEX. There is no Secondary Source for these markets.

⁶ A delay is indicated by data being received by the Exchange from the Secondary Source that has a more recent timestamp than the Primary Source. Fail over then occurs once such a delay has reached a configurable value. The configurable amount described in this

the Primary Source of data compared to the Secondary Source of data indicates that there is an emergency market condition pursuant to Rule 4759. In such an instance, the Exchange believes that it is appropriate to fail over to the Secondary Source of data as the Secondary Source of data is more current. If the Exchange fails over to the Secondary Source of data it will re-elect the Primary Source of data if the Primary Source of data is no longer delayed compared to the Secondary Source. This process ensures that the Exchange's trading and other systems have the most accurate view of the trading interest available across other markets.

With the upcoming launch of NYSE American, the Exchange believes that its current rule should be amended to better reflect intentional delays to the Primary Source of data. Specifically, the Exchange desires to make clear that even otherwise normal operation of the Primary Source of data may result in the Exchange electing the Secondary Source of data if that operation includes an intentional delay. This would be the case even if such operation would not normally be deemed an emergency market condition. Although the Exchange's process for determining which data to use will not change at this time,⁷ the Exchange believes that it is important to clarify that process so that members and other market participants are adequately apprised of when the Exchange will use the Primary or Secondary Source of data.

As explained earlier in this proposed rule change, the Exchange employs an automated, real-time, process to determine if there is an emergency market condition pursuant to Rule 4759. In particular, the Exchange determines whether there is an emergency market condition by comparing the timestamp of the Primary Source of data with the timestamp of the Secondary

rule will be made available to members via Equity Trader Alert. Currently, this configurable value is set to 1.5 seconds. The Exchange will issue an Equity Trader Alert to members to notify them of the current value and in the event that it changes this value.

⁷ The Exchange may decrease the amount of delay required to switch to the Secondary Source of data at a later date. The Exchange will alert members of any such change with an Equity Trader Alert. See id.

Source of data. The Exchange believes that a significant delay in the Primary Source of data compared to the Secondary Source is an emergency market condition because such a delay is not consistent with normal operation of such data feeds. The Exchange does not believe that the current emergency market conditions language is clear, however, when dealing with markets such as NYSE American that have employed an intentional delay in the data disseminated over the direct data feeds utilized by the Exchange as the Primary Source of data. Currently, the Primary Source of data is used unless it is delayed by a configurable amount compared to the Secondary Source of data. The Exchange then reverts to the Primary Source of data once the delay has been resolved. The Primary Source of data may be delayed due to technical issues that would normally be considered an emergency market condition, or during otherwise normal operation of the Primary Source of data if an intentional delay has been implemented. In this respect, the Exchange notes that even NYSE Arca – an affiliate of NYSE American – has decided to use SIP data as the primary source of data for NYSE American due to the intentional delay of messages on their proprietary market data.⁸ Although Nasdaq is not proposing to change its Primary Source of data for NYSE American, the Exchange believes that modifying its rules to clarify the conditions where the Secondary Source of data may be elected will increase transparency of the operation of the Exchange to the benefit of members and other market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is

⁸ See Securities Exchange Act Release No. 34-81061 (June 30, 2017), 82 FR 31642 (July 7, 2017) (SR-Arca-2017-70).

⁹ 15 U.S.C. 78f(b).

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 rule change removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional transparency around when Nasdaq will elect to use the Secondary Source of data for the handling, routing, and execution of orders, and for regulatory compliance purposes. The proposed rule change does not change the operation of the Exchange or its use of data feeds; rather it clarifies when the Exchange will elect the Secondary Source of data pursuant to Rule 4759. Currently, Rule 4759 indicates that the Exchange will fail over to the Secondary Source of data if there is an emergency market condition but does not specify what counts as an emergency market condition pursuant to the rule. In fact, the Exchange has an automated, real-time, process for determining whether an emergency market condition exists by measuring the amount of delay between the Primary and Secondary Sources of data. The proposed rule change therefore clarifies that the Exchange will elect the Secondary Source of data if the Primary Source of data is delayed by a configurable amount (made available to members via Equity Trader Alert), and will then revert to the Primary Source of data once the delay has been resolved. The Secondary Source of data may be elected even during otherwise normal operation because of intentional delays in the dissemination of market data over an exchange's proprietary market data feeds. The Exchange believes that this change is appropriate in light of the launch of the NYSE American exchange, which will come with an intentional delay of market data provided through proprietary data products used by Nasdaq as the Primary Source of data. The

¹⁰ 15 U.S.C. 78f(b)(5).

Exchange believes the additional transparency of the operation of the Exchange as described in the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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. The proposed rule change is not designed to address any competitive issue but rather would provide members and other market participants with information about when Nasdaq will utilize its Secondary Source of data. The Exchange believes that this change will increase transparency around the operation of the Exchange without any significant impact on competition.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to clarify the conditions under which the Secondary Source of data may be elected and increase transparency of the operation of the Exchange. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁵

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.

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:

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2017-082 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-2017-082. 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 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; 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-2017-082 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

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Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).