

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71961; File No. SR-NASDAQ-2014-036)

April 17, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Clarify the Rule Governing the Operation of the Closing Cross in Circumstances Where a Pause Triggered Under the LULD Plan Would be Triggered After 3:50 p.m. EST

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 April 9, 2014, 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 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 the Substance of the Proposed Rule Change

(a) The Exchange proposes to amend Exchange Rule 4754 governing the NASDAQ Closing Cross (“Cross”) to accommodate changes in market structure triggered by Phase 2 of the Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS (“LULD Plan”). Specifically, NASDAQ proposes to clarify the rule governing the operation of the Cross in circumstances where a pause triggered under the LULD Plan would be triggered after 3:50 p.m. EST.

Changes to the rule text are shown in the attached Exhibit 5.³ A copy of this filing is available on the Exchange’s website at <http://nasdaq.cchwallstreet.com>, at NASDAQ’s principal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes the Exhibit 5 is attached to the filing submitted by the Exchange but is not attached to the published notice of the filing.

office, and at the Commission's Public Reference Room.

(b) Not applicable.

(c) Not applicable.

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

Background. As set forth in detail in prior filings, on May 31, 2012, the Commission approved the LULD Plan, as amended, as a one-year pilot, which began on April 8, 2013.⁴ The LULD Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands calculated and disseminated by the Network Processors.⁵

⁴ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility). Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁵ See Section (V)(A) of the LULD Plan.

Under Phase 2 (Amendment No. 6) of the Plan,⁶ the Plan's operative time is to be extended from 3:45 p.m. until 4:00 p.m.; full implementation of Phase 2 was scheduled to take effect on February 24, 2014. In anticipation of the February 24th implementation date, NASDAQ proposed to establish the LULD Closing Cross, an alternate mechanism to close a security that is subject to a Trading Pause within the last ten minutes of regular trading. The Commission approved that proposal on February 21, 2014.⁷ However, NASDAQ delayed final implementation of Phase 2 for NASDAQ-listed securities⁸ when the final industry-wide test of the new LULD Closing Cross failed to meet NASDAQ's testing standards. NASDAQ conducted successful, additional testing on March 15 and 22, 2014 and plans further testing on April 12, 2014. Assuming all testing is successful, NASDAQ would complete final implementation of Phase 2 of the LULD Plan shortly thereafter, on a date to be announced to all market participants through a widely disseminated notice.

During the testing conducted to date, NASDAQ has identified several minor, technical clarifications to the approved rule governing the LULD Closing Cross, NASDAQ Rule 4754(b)(6), as well as the description of that rule in SR-NASDAQ-2014-004. First, NASDAQ is clarifying the timing of the commencement of the After Hours Trading session and the treatment of Good-til-Cancelled ("GTC") orders in the event the LULD Closing Cross is delayed until 5:00 p.m. due to continuing volatility. In the approved proposal, NASDAQ stated:

If this condition persists until 5:00 p.m., NASDAQ will not conduct an LULD Closing Cross in that security and shall instead use the last-sale on NASDAQ as the NASDAQ Official Closing

⁶ See Securities Exchange Act Release No. 71247 (January 7, 2014), 79 FR 2204 (January 13, 2014) (File No. 4-631).

⁷ See Securities Exchange Act Release No. 71597 (Feb. 21, 2014), 79 FR 11169 (Feb. 27, 2014) (SR-NASDAQ-2014-004).

⁸ Phase 2 of the LULD Plan was implemented for securities listed on other exchanges as planned on February 24, 2014.

Price in that security for that trading day. In that event, all orders will be cancelled back to the entering firms, and after hours trading will begin at 5:00 p.m.⁹

In addition, Rule 4754 states that “After Hours Trading shall commence after the LULD Closing Cross executes unless the volatility condition persists until 5:00 p.m. in which case there will [sic] After Hours Trading will begin at 5:00 p.m.”¹⁰ and “NASDAQ shall continue disseminating the NOII every five seconds until the execution of the LULD Closing Cross or until 5:00 p.m. whichever is later.”¹¹

In fact, the process of cancelling orders would not be instantaneous, and After Hours Trading would begin only when the process is complete. Moreover, all orders are not automatically cancelled back to the entering firm. GTC orders require special treatment due to the fact that firms presume that they will remain on the book overnight, potentially over many nights. The actual process is better described as follows:

If this condition persists until 5:00 p.m., NASDAQ will not conduct an LULD Closing Cross in that security and shall instead use the last-sale on NASDAQ as the NASDAQ Official Closing Price in that security for that trading day. In that event, NASDAQ will commence a process of cancelling all orders (other than orders with a time-in-force of good-till-cancelled) back to the entering firms, and after hours trading will commence upon the completion of that process. In the case of both Market Hours GTC orders and Good-til-Market Close orders, the orders will be removed from the continuous book and placed in a suspended state. Entering firms will have the option to cancel those orders or allow them to be re-entered into the system on the following trading day.¹²

The second clarification relates to the entry of orders during an LULD Trading Pause prior to and after 4:00 p.m. Rule 4754, as approved, states that:

⁹ 79 FR at 2494.

¹⁰ Rule 4754(b)(6)(A)(iii).

¹¹ Rule 4754(a)(6)(B).

¹² Similarly, NASDAQ is amending Rule 4754(b)(6)(A)(iii) and (B) to describe the timing of the commencement of After Hours Trading and the treatment of GTC orders in circumstances where an LULD Closing Cross has not occurred by 5:00 p.m.

After 4:00pm, entry of market orders is prohibited. New Imbalance Only Orders may also be entered and modified to increase shares represented, but can't be cancelled during the pause.¹³

In fact, NASDAQ should have said that entry of market pegged orders, rather than market orders, is prohibited after 4:00 p.m. As provided in Rule 4751, a market pegged order is an order whose price is pegged to the opposite side of the market. In addition, NASDAQ rules do not currently define a market order. By omitting the word “pegged”, the proposal improperly implied that NASDAQ’s system otherwise accepts market orders at this or any other time of day. Accordingly, NASDAQ is proposing to modify the text of the rule to make this clarification.

The third clarification also relates to the entry of orders during the LULD Trading Pause.

Rule 4754, as approved, states that:

During the pause and prior to 4:00pm, new market and limit orders of any order type and any time in force may be entered, modified, and cancelled and may participate in the LULD Closing Cross.¹⁴

The words “market and limit” in this context was inadvertently confusing in two ways. First, as stated above, NASDAQ rules do not define “market” orders as such. Therefore, the inclusion of that term is erroneous. Second, the reference to orders of any type or time in force is vague. It is clearer in this context to describe what is prohibited rather than what is permitted. Finally, the use of “market and limit” could be read to refer to Market on Close and Limit on Close orders. However, as otherwise provided in Rule 4754, MOC and LOC orders may not be submitted after 3:50:00, and NASDAQ was not proposing to modify this restriction. Accordingly, for the avoidance of doubt, NASDAQ proposes to clarify the treatment of MOC and LOC orders as follows:

¹³ Rule 4754(b)(6)(C)(iii) (emphasis added).

¹⁴ Id.

During the pause and prior to 4:00pm, new orders (other than MOC and LOC orders, which may not be submitted after 3:50) may be entered, modified, and cancelled and may participate in the LULD Closing Cross.

NASDAQ believes that this modification will make clearer to members that, as in all circumstances, MOC and LOC orders cannot be cancelled after 3:50 p.m. without special intervention by NASDAQ personnel, and that they cannot be cancelled after 3:55 p.m. under any circumstances.

Finally, NASDAQ is modifying the text of Rule 4754(b)(6) to replace a statement that a stock subject to a Trading Pause will “open” with a more accurate statement that the stock will “resume trading” and is amending Rule 4754(b)(6)(C)(iii) to correct a typographical error.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposal is consistent with this provision in that it will ensure that the Exchange will comply with the LULD Plan. The LULD Closing Cross, as originally proposed, is designed to balance the need for transparency and liquidity with the need to move quickly from a Trading Pause to a closing price. NASDAQ believes that it has accomplished these goals to the maximum extent possible. The Exchange also believes that the proposed clarifications, which are minor and technical in nature, are consistent with the Act in that they make clearer the existing Exchange rules and the obligations those rule impose on members.

¹⁵ 15 U.S.C. 78f (b).

¹⁶ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is specifically designed to comply with the LULD Plan and, thereby, to ensure cooperation between and among all national securities exchanges and FINRA to promote uniform and effective regulation of the national market system. In actuality, the proposal is pro-competitive because it promotes fair and orderly markets and investor protection, which in turn will buttress investor confidence and attract more investors into U.S. equities markets.

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 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6)(iii) thereunder.¹⁸

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with 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.

waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will ensure that the text of Rule 4754 fully conforms to the operation of the LULD Closing Cross upon launch. For this reason, the Commission waives the operative delay and designates the proposed rule change to be operative upon filing.¹⁹

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:

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-2014-036 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.

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NASDAQ-2014-036. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2014-036, 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).