

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66275; File No. SR-NASDAQ-2012-019)

January 30, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Pilot Period of Rule 4753(c)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 27, 2012, The NASDAQ Stock Market LLC (“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

NASDAQ proposes to extend the pilot period of Rule 4753(c), NASDAQ’s “Volatility Guard,” so that the pilot will now expire on the earlier of July 31, 2012 or the date on which a limit up/limit down system is adopted.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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**4753. Nasdaq Halt and Imbalance Crosses**

(a) - (b) No change.

(c) For a pilot period ending the earlier of July 31, 2012[January 31, 2012] or the date on which, if approved, a limit up / limit down mechanism to address extraordinary market volatility, is

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

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

approved, between 9:30 a.m. and 3:35 p.m. EST, the System will automatically monitor System executions to determine whether the market is trading in an orderly fashion and whether to conduct an Imbalance Cross in order to restore an orderly market in a single Nasdaq Security.

(1) An Imbalance Cross shall occur if the System executes a transaction in a Nasdaq Security at a price that is beyond the Threshold Range away from the Triggering Price for that security. The Triggering Price for each Nasdaq Security shall be the price of any execution by the System in that security within the prior 30 seconds. The Threshold Range shall be determined as follows:

<b>Execution Price</b>	<b>Threshold Range Away From Triggering Price</b>
\$1.75 and under	15%
Over \$1.75 and up to \$25	10%
Over \$25 and up to \$50	5%
Over \$50	3%

(2) If the System determines pursuant to subsection (1) above to conduct an Imbalance Cross in a Nasdaq Security, the System shall automatically cease executing trades in that security for a 60-second Display Only Period. During that 60-second Display Only Period, the System shall:

(A) maintain all current quotes and orders and continue to accept quotes and orders in that System Security; and

(B) Disseminate by electronic means an Order Imbalance Indicator every 5 seconds.

(3) At the conclusion of the 60-second Display Only Period, the System shall re-open the market by executing the Nasdaq Halt Cross as set forth in subsection (b)(2) - (4) above.

(4) If the opening price established by the Nasdaq Halt Cross pursuant to subsection (b)(2)(A) - (D) above is outside the benchmarks established by Nasdaq by a threshold amount, the Nasdaq Halt Cross will occur at the price within the threshold amounts that best satisfies the conditions of subparagraphs (b)(2)(A) through (D) above. Nasdaq management shall set and modify such benchmarks and thresholds from time to time upon prior notice to market participants.

(d) No change.

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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 parts of such statements.

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

1. Purpose

NASDAQ is proposing to extend the operative period of the pilot under Rule 4753(c), NASDAQ's "Volatility Guard," so that it will expire the earlier of July 31, 2012 or the date on which a limit up/limit down system is adopted, yet hold the implementation of Rule 4753(c) in abeyance until a limit up/limit down system is either adopted or disapproved.

Background

On March 11, 2011, the Commission approved Rule 4753(c) (the "Volatility Guard"), a volatility-based pause in trading in individual NASDAQ-listed securities traded on NASDAQ

(“NASDAQ Securities”), as a six month pilot applied to the NASDAQ 100 Index securities.<sup>3</sup> The Volatility Guard automatically suspends trading in individual NASDAQ Securities that are the subject of abrupt and significant intraday price movements between 9:30 a.m. and 4 p.m. Eastern Standard Time (“EST”), which was subsequently amended to 9:45 a.m. and 3:35 p.m. EST to avoid potential interference with the opening and closing crosses.<sup>4</sup> Volatility Guard is triggered automatically when the execution price of a pilot security moves more than a fixed amount away from a pre-established “triggering price” for that security. The triggering price for each pilot security is the price of any execution by the system in that security within the previous 30 seconds. For each pilot security, the system continually compares the price of each execution in the system against the prices of all system executions in that security over the 30 seconds. Once triggered, NASDAQ institutes a formal trading halt during which time NASDAQ systems are prohibited from executing orders. Members, however, may continue to enter quotes and orders, which are queued during a 60-second Display Only Period. At the conclusion of the Display Only Period, the queued orders are executed at a single price, pursuant to NASDAQ’s Halt Cross mechanism.<sup>5</sup>

NASDAQ determined to adopt Volatility Guard as a six month pilot in response to the unprecedented aberrant volatility witnessed on May 6, 2010, and the limited effect that NASDAQ’s market collars had in dampening such volatility. NASDAQ believed that the Rule

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<sup>3</sup> Securities Exchange Act Release No. 64071 (March 11, 2011), 76 FR 14699 (March 17, 2011) (SR-NASDAQ-2010-074). Amendment 1 to SR-NASDAQ-2010-074 designated the NASDAQ 100 Index as the 100 pilot securities.

<sup>4</sup> Securities Exchange Act Release No. 64268 (April 8, 2011), 76 FR 20742 (April 15, 2011) (SR-NASDAQ-2011-051).

<sup>5</sup> The Nasdaq Halt Cross is “the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest.” See Nasdaq Rule 4753(a)(3).

4753(c) halt process was needed to protect its listed securities and market participants from such volatility in the future. In proposing the six month pilot, NASDAQ noted that another market had adopted a process whereby the market's listed securities each may be temporarily removed from automatic trading when the trading exceeds certain average daily volume-, price-, and volatility-based criteria. Accordingly, NASDAQ believed that adopting its own process would serve to protect its market from aberrant volatility, like that experienced on May 6, 2011.

#### Limit Up / Limit Down Proposal

During the time that the Volatility Guard pilot was progressing through the notice and comment process with the Commission, NASDAQ together with the other national securities exchanges and FINRA ("SROs") and in consultation with the Commission, worked diligently to implement changes to the markets to prevent another event like May 6, 2010 from occurring. In this regard, the SROs have expanded their existing circuit breaker pilots<sup>6</sup> to cover all NMS stocks other than rights and warrants,<sup>7</sup> clarified rules concerning clearly erroneous processes,<sup>8</sup>

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<sup>6</sup> On June 10, 2010, the Commission approved the Circuit Breaker Pilot, which instituted new circuit breaker rules that pause trading for five minutes in a security included in the S&P 500 Index if its price moves ten percent or more over a five-minute period. See Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025); 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR-NASDAQ-2010-061, et al.). On September 10, 2010, the Circuit Breaker Pilot was expanded to include securities in the Russell 1000 Index and certain exchange-traded products. See Securities Exchange Act Release Nos. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033); 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR-NASDAQ-2010-079, et al.). The Circuit Breaker Pilot is scheduled to expire on August 11, 2011. See e.g., Securities Exchange Act Release No. 64174 (April 4, 2011), 76 FR 19819 (April 8, 2011) (SR-NASDAQ-2011-042).

<sup>7</sup> On June 23, 2011, the Commission granted accelerated approval to SRO proposals to expand the Circuit Breaker Pilot to all NMS securities. See Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR-NASDAQ-2011-067, et al.). In November 2011, the SROs filed immediately effective rule changes to exclude rights and warrants from the Circuit Breaker Pilot. See e.g., Securities Exchange Act Release No. 65814 (November 23, 2011), 76 FR 74084 (November 30, 2011) (SR-

and have made great strides in developing a limit up / limit down system to replace the circuit breakers currently in place. With respect to this last effort, on May 25, 2011, the SROs filed with the Commission a national market system plan to address extraordinary market volatility, which proposed a market-wide limit up / limit down system applicable to all NMS stocks (the “Plan”).<sup>9</sup> The period to submit comments on the Plan ended on June 22, 2011, and the Commission had previously stated that it would determine whether to approve the Plan shortly after the expiration of the comment period.<sup>10</sup> The SROs have proposed implementing the Plan 120 calendar days following the publication of the Commission’s order approving the proposed Plan in the Federal Register.

Important to the implementation of Volatility Guard, NASDAQ notes that the Commission stated that it may find exchange-specific volatility moderators inconsistent with the Act once a uniform, cross-market mechanism to address aberrant volatility is adopted. In approving Volatility Guard, the Commission emphasized:

[T]hat it is continuing to work diligently with the exchanges and FINRA to develop an appropriate consistent cross-market mechanism to moderate excessive volatility that could be applied widely to individual exchange-listed

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NASDAQ-2011-154). The term “NMS stocks” is defined in Rule 600(b)(47) of Regulation NMS under the Act. See 17 CFR 242.600(b)(47).

<sup>8</sup> Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-NASDAQ-2010-076, et al.); see also Securities Exchange Act Release No. 64238 (April 7, 2011), 76 FR 20780 (April 13, 2011) (SR-NASDAQ-2011-043).

<sup>9</sup> Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4-631).

<sup>10</sup> See <http://www.sec.gov/news/press/2011/2011-84.htm>. At the close of the comment period, NASDAQ understood that, given the number of comments received, the Commission would need a reasonable time to consider the comments provided. Rule 608(b) of Regulation NMS governs the effectiveness of national market system plans. See 17 CFR 242.608.

securities and to address commenters' concerns regarding the complexity and potential confusion of exchange-specific volatility moderators. To the extent the Commission approves such a mechanism, whether it be an expanded circuit breaker with a limit up/limit down feature or otherwise, the Commission may no longer be able to find that exchange-specific volatility moderators—including both Nasdaq's Volatility Guard and the NYSE's LRPs – are consistent with the Act.<sup>11</sup>

NASDAQ calculated that the Plan, if approved, may be implemented by the end of 2011 or early 2012.<sup>12</sup> It was based on that calculation that NASDAQ determined to extend the pilot period of Volatility Guard until January 31, 2012.<sup>13</sup>

On September 27, 2011, the Commission provided notice that it was extending the period for Commission action on the limit up / limit down proposal.<sup>14</sup> Pursuant to Section 11A<sup>15</sup> of the Act and Rule 608 thereunder,<sup>16</sup> the Commission may designate up to 180 days from the date of publication of notice of filing of a national market system plan if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the sponsors consent. In extending the date by which the Commission shall approve the Plan to November 28, 2011, the Commission noted that the extension of time was appropriate because, among other things, the

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<sup>11</sup> Securities Exchange Act Release No. 64071 (March 11, 2011), 76 FR 14699, at 14701 (March 17, 2011) (SR-NASDAQ-2010-074, as amended) (emphasis added).

<sup>12</sup> Supra note 9.

<sup>13</sup> Securities Exchange Act Release No. 65176 (August 19, 2011), 76 FR 53518 (August 26, 2011) (SR-NASDAQ-2011-117).

<sup>14</sup> Securities Exchange Act Release No. 65410 (September 27, 2011), 76 FR 61121 (October 3, 2011) (File No. 4-631).

<sup>15</sup> 15 U.S.C. 78k-1.

<sup>16</sup> 17 CFR 242.608.

additional time would ensure that the Commission has sufficient time to consider and take action on the SROs' proposal in light of the comments received on the proposal.<sup>17</sup> On November 18, 2011, the SROs notified the Commission that they consented to a three-month extension for Commission action on the Plan.<sup>18</sup> Pursuant to such consent, the Commission must take action on the Plan by February 29, 2012.

### Proposal

NASDAQ continues to believe that a limit up / limit down system, as proposed in the Plan, would be preferable to disparate individual market solutions to aberrant volatility. Given the progress made toward adopting a uniform limit up / limit down system and the Commission's apparent desire that exchange-specific volatility moderators be abandoned once a consistent cross-market mechanism is adopted, NASDAQ believes that implementing Volatility Guard at this time may be confusing and onerous to market participants.

NASDAQ is proposing to again extend the pilot rather than eliminate it so that NASDAQ may continue to have the option to implement Volatility Guard should the Plan not be approved by the Commission. As a primary market, NASDAQ takes seriously its responsibility to both its listed companies and the investing public. NASDAQ continues to believe that an individual solution like Volatility Guard, may be necessary in the event the Plan is rejected, much like NYSE-listed stocks may be protected by the LRP mechanism if it remains in place. NASDAQ believes that extending the Volatility Guard pilot, but holding its implementation in abeyance until such time that the Plan is approved or disapproved will best serve these groups by allowing NASDAQ to retain the ability to implement Volatility

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<sup>17</sup> At the time of the notice, the Commission had received 18 comment letters on the proposed Plan.

<sup>18</sup> Letter from Janet M. McGinness, Senior Vice President and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2011.



Guard if necessary, while also allowing market participants to make preparations to implement a limit up / limit down system, as proposed in the Plan. As such, market participants will not needlessly expend energy changing, and testing, their systems to account for the Volatility Guard pilot in addition to the changes required to implement the Plan.

Accordingly, NASDAQ is proposing to extend the Volatility Guard pilot to the earlier of July 31, 2012 or the date on which the Plan is approved and implemented. Should the Plan not be implemented by the expiration of the pilot, NASDAQ may consider further extension of Volatility Guard, consistent with the extension proposed herein.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>19</sup> in general and with Sections 6(b)(5) of the Act,<sup>20</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. NASDAQ believes that the proposed rule continues to meet these requirements in that it promotes the adoption of the Plan's uniform, cross-market limit up / limit down process to address aberrant volatility, while also allowing NASDAQ to retain an important alternative tool to deal with such volatility should approval of the Plan be delayed or disapproved.

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<sup>19</sup> 15 U.S.C. 78f.

<sup>20</sup> 15 U.S.C. 78f(b)(5).

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup> 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 prior to 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 Act<sup>23</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>24</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>25</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>26</sup> the

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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.

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

Commission may 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 so that the proposal may become operative immediately upon filing.

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 pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>27</sup>

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2012-019 on the subject line.

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<sup>27</sup> 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).

Paper comments:

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

All submissions should refer to File No. SR-NASDAQ-2012-019. 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 such 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 No. SR-NASDAQ-2012-019 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.<sup>28</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).