

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67678; File No. SR-NASDAQ-2012-094)

August 16, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Remove the Expired Pilot Under Rule 4753(c) from the NASDAQ Rule Book

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 3, 2012, 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, II, and III below, which Items have been prepared by NASDAQ. 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 remove the expired pilot under Rule 4753(c) (the “Volatility Guard”) from the NASDAQ rule book. NASDAQ will remove the rule text 30 days after the filing date of this proposal.

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

¹ 15 U.S.C. 78s(b)(1).

² 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:

Execution Price	Threshold Range Away From Triggering Price
\$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, NASDAQ 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. NASDAQ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to remove the expired pilot under Rule 4753(c) from the rule book. On June 18, 2010, NASDAQ filed a rule change for Commission approval, proposing to adopt Volatility Guard as a six month pilot in 100 NASDAQ-listed securities.³ NASDAQ proposed implementing the Volatility Guard pilot as a means to address aberrant trading

³ Securities Exchange Act Release No. 64071 (March 11, 2011), 76 FR 14699 (March 17, 2011) (SR-NASDAQ-2010-074). The proposal was amended to identify the 100 pilot securities as the securities comprising NASDAQ 100 Index. See Amendment 1 to SR-NASDAQ-2010-074.

volatility on the Exchange, in part, as a 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.

On March 11, 2011, the Commission approved the Volatility Guard. Important to its subsequent determination to hold the implementation of Volatility Guard in abeyance, NASDAQ notes that the Commission stated in approving Volatility Guard that it may find exchange-specific volatility moderators inconsistent with the Act once a uniform, cross-market mechanism to address aberrant volatility is adopted. Specifically, the Commission stated:

[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 securities and to address commenter's 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.⁴

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. One such joint effort was a proposed limit up / limit down mechanism to replace the single stock circuit breaker pilots currently in place. On April 5, 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 mechanism applicable to all NMS stocks (the "Plan").⁵ Because

⁴ Id. at 14701 (emphasis added).

⁵ Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011)

NASDAQ believed that a limit up / limit down mechanism, as proposed in the Plan, would be preferable to disparate individual market solutions to aberrant volatility, and because the Commission indicated that it may not find exchange-specific volatility moderators consistent with the Act, the Exchange determined to extend the pilot to January 31, 2011 yet hold implementation of the Volatility Guard pilot in abeyance.⁶ On January 27, 2012, NASDAQ filed an immediately effective filing to extend the operative period of the Volatility Guard pilot, while continuing to hold it in abeyance, so that it would expire the earlier of July 31, 2012 or the date on which, if approved, a limit up / limit down mechanism to address extraordinary market volatility, is approved.⁷

On May 31, 2012, the Commission approved the Plan on a pilot basis, with an implementation date of February 4, 2013.⁸ In approving the Plan, the Commission stated:

The Commission notes that some of the comments focused on the relation between the Plan, and other, exchange-specific volatility mechanisms, including the NYSE Liquidity Replenishment Points, and the Nasdaq Volatility Guard. While a stated purpose of the Plan is to replace the current single-stock circuit breaker, the Commission is also aware of the potential for unnecessary complexity that could result if the Plan were adopted, and exchange-specific volatility mechanisms were retained. To this end, the Commission expects that, upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges. In that regard, the Commission notes that one such mechanism, the Nasdaq Volatility Guard, is currently set to expire on the earlier of July 31, 2012, or the date on which the Plan is approved by the Commission.⁹

(File No. 4-631).

⁶ Securities Exchange Act Release No. 65176 (August 19, 2011), 76 FR 53518 (August 26, 2011) (SR-NASDAQ-2011-117).

⁷ Securities Exchange Act Release No. 66275 (January 30, 2012), 77 FR 5606 (February 3, 2012) (SR-NASDAQ-2012-019).

⁸ Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

⁹ Id. at 33510, n. 182 (emphasis added).

In light of the Commission's multiple statements concerning its expectation that exchanged-based volatility moderators, such as the Volatility Guard and the NYSE Liquidity Replenishment Point process, would be discontinued by their respective exchanges, NASDAQ is hereby proposing to eliminate the Volatility Guard rule text from its rulebook.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general and with Sections 6(b)(5) of the Act,¹¹ 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 change meets these requirements in that it promotes the adoption of the Plan's uniform, cross-market limit up / limit down process to address aberrant volatility by eliminating an exchange-specific process that may add complexity and be potentially confusing to market participants. In this regard, NASDAQ notes that Volatility Guard, like other market-specific volatility mechanisms such as the NYSE Liquidity Replenishment Point program, may not be consistent with the Act upon implementation of the limit up / limit down mechanism to address extraordinary market volatility.

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

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

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

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)(ii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

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. NASDAQ has provided the Commission written notice of its 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.

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:

¹² 15 U.S.C. 78s(b)(3)(a)(ii).

¹³ 17 CFR 240.19b-4(f)(6).

- 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 No. SR-NASDAQ-2012-094 on the subject line.

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-2012-094. 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-2012-094 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.¹⁴

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).