

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69217; File No. SR-NASDAQ-2013-045)

March 22, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 4120

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 11, 2013, 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

NASDAQ proposes to amend Exchange Rule 4120 to establish rules to comply with the requirements of the Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS.

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, at the Commission’s Public Reference Room, and on the Commission’s website at <http://www.sec.gov>.

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

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

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

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 Exchange proposes to amend Exchange Rule 4120 to establish rules to comply with the requirements of the Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS under the Act (the “Plan”). The Exchange proposes to adopt the changes for a pilot period that coincides with the pilot period for the Plan, which is currently scheduled as a one-year pilot to begin on April 8, 2013.<sup>3</sup>

Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, *i.e.*, the “flash crash,” the equities exchanges and FINRA have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include pilot plans for stock-by-stock trading pauses<sup>4</sup> and related changes to the equities market clearly erroneous execution rules<sup>5</sup> and more stringent equities market maker quoting requirements.<sup>6</sup> On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.<sup>7</sup> In addition, the Commission

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<sup>3</sup> See Securities Exchange Act Release No. 68953 (Feb. 20, 2013) (Notice of Filing and Immediate Effectiveness of the Second Amendment to the National Market System Plan to Address Extraordinary Market Volatility, File No. 4-631).

<sup>4</sup> See, *e.g.*, NASDAQ Rule 4120.

<sup>5</sup> See, *e.g.*, NASDAQ Rule 11890.

<sup>6</sup> See, *e.g.*, NASDAQ Rule 4613(a).

<sup>7</sup> 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).

approved changes to the equities market-wide circuit breaker rules on a pilot basis to coincide with the pilot period for the Plan.<sup>8</sup>

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.<sup>9</sup> As described more fully below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.<sup>10</sup> As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.<sup>11</sup> When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as non-executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.<sup>12</sup> All trading centers in NMS Stocks must maintain written policies and procedures that are reasonably designed to prevent the

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<sup>8</sup> See Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-BATS-2011-038; SR-BYX-2011-025; SR-BX-2011-068; SR-CBOE-2011-087; SR-C2-2011-024; SR-CHX-2011-30; SR-EDGA-2011-31; SR-EDGX-2011-30; SR-FINRA-2011-054; SR-ISE-2011-61; SR-NASDAQ-2011-131; SR-NSX-2011-11; SR-NYSE-2011-48; SR-NYSEAmex-2011-73; SR-NYSEArca-2011-68; SR-Phlx-2011-129).

<sup>9</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>10</sup> The Exchange is a Participant in the Plan.

<sup>11</sup> See Section (V)(A) of the Plan.

<sup>12</sup> See Section VI(A) of the Plan.

display of offers below the Lower Price Band and bids above the Upper Price Band for NMS Stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations.<sup>13</sup>

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.<sup>14</sup> Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause pursuant to Section VII of the LULD Plan, which would be applicable to all markets trading the security.<sup>15</sup> In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is \$9.50 and the Upper Price Band is \$10.50, such NMS stock would be in a Straddle State if the National Best Bid were below \$9.50, and therefore non-executable, and the National Best Offer were above \$9.50 (including a National Best Offer that could be above \$10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a Trading Pause for that NMS Stock.

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<sup>13</sup> See Section VI(A)(3) of the Plan.

<sup>14</sup> See Section VI(B)(1) of the Plan.

<sup>15</sup> The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. See Section VII(A) of the Plan.

### Proposed Amendment to Rule 4120

The Exchange is required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and trading pause requirements specified in the Plan. In response to the new Plan, the Exchange proposes to amend its Rules accordingly.

The Exchange proposes to add Rule 4120(a)(12)(A)(1) to define that “Plan” means the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). In addition, proposed Rule 4120(a)(12)(A)(2) provides that all capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan or Exchange rules, as applicable.

The Exchange proposes to add Rule 4120(a)(12)(C) to provide that Exchange members shall comply with the applicable provisions of the Plan. The Exchange believes that this requirement will help ensure the compliance by its members with the provisions of the Plan as required pursuant to Section II(B) of the Plan.<sup>16</sup>

The Exchange proposes to add Rule 4120(a)(12)(D) to provide that Exchange systems shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan. The Exchange believes that this requirement is reasonably designed to help ensure the compliance with the limit up-limit down

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<sup>16</sup> See Section II(B) of the Plan.

and trading pause requirements specified in the Plan, by preventing executions outside the Price Bands as required pursuant to Section VI(A)(1) of the Plan.<sup>17</sup>

The Exchange proposes Rules regarding the treatment of certain trading interest on the Exchange in order to prevent executions outside the Price Bands and to comply with the new LULD Plan. In particular, the Exchange proposes to add Rule 4120(a)(12)(E) to provide that Exchange systems shall re-price or cancel buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band. Any interest that is repriced pursuant to this Rule shall receive a new time stamp and new execution priority.<sup>18</sup> Specifically, the Exchange proposes the following provisions regarding the repricing or canceling of certain trading interest:

- Market Orders. If a market order with a time in force other than Immediate or Cancel cannot be fully executed at or within the Price Bands, Exchange systems shall post the unexecuted portion of the buy (sell) market order at the Upper (Lower) Price Band.
- Limit-priced Interest. Both displayable and non-displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be repriced to the Upper (Lower) Price Band. The treatment of limit-priced interest will depend upon its order entry protocol. For limit-priced orders entered via the OUCH protocol, the order shall be re-priced upon entry only if the Price Bands are such that the price of the limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Once slid, the treatment of that interest will further

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<sup>17</sup> See Section VI(A)(1) of the Plan.

<sup>18</sup> NASDAQ believes it is appropriate for re-priced orders to receive a new time stamp and new execution priority rather than jump ahead of previously-entered orders. In effect, an adjustment in price is equivalent to the entry of a new order; that function is simply being automated.

depend upon whether it becomes passive or aggressive interest. Specifically, if the order becomes passively priced such that the Price Bands move and the price of the order to buy (sell) would be below (below) the lower (upper) Price Band, the order will not be re-priced again. Rather, the order will either remain on the book at the same price or be cancelled back to the entering party, depending on how the entering party has configured its order entry port. If the interest becomes aggressively priced such that the Price Bands move and the price of the order to buy (sell) would be above (below) the upper (lower) Price Band, the order will not be re-priced again. Rather, the order will be cancelled.

- For limit-priced orders entered via RASH or FIX protocols, the order shall be priced upon order entry and then shall be eligible to be repriced by the system multiple times if the Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Once slid, if the Price Bands move such that the price of resting limit interest to buy (sell) would be below (above) the upper (lower) Price Band the order will continue to be repriced either to its original limit price or to the new price bands, whichever is less aggressive.<sup>19</sup>
- IOC Orders. If an IOC order cannot be fully executed at or within the Price Bands, Exchange systems shall cancel any unexecuted portion of the IOC Order.

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<sup>19</sup> The NASDAQ system will treat limit-priced orders differently depending upon whether the entering firm uses the OUCH protocol on one hand or the RASH or FIX protocols on the other. This different treatment stems from the ultimate destination for orders entered via those protocols. Orders entered via OUCH are destined for direct entry to the NASDAQ matching engine. As such, they are not eligible for special treatments or calculations, including re-pricing. Orders entered via RASH (short for “routing and special handling”) and FIX are destined for the indirect entry into the matching engine. They are eligible for special treatments and calculations, including re-pricing. This difference in the protocols is longstanding and well-known to NASDAQ members.

- Routable Orders. With the exception of Directed Orders, and orders submitted using either the DOTI or DOTZ routing strategy, the Exchange systems shall not route buy (sell) interest to an away market displaying a sell (buy) quote that is above (below) the Upper (Lower) Price Band. Orders that are eligible to be routed to away destinations will be price slid before routing if the buy (sell) is priced above (below) the Upper (Lower) Price Band.
- Auction Orders. On close or halt auction orders are not price slid or cancelled due to LULD price bands.
- Sell Short Orders. During a Short Sale Price Test, as defined in Rule 4763(b), Short Sale Orders priced below the Lower Price Band shall be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 4763(b).

The Exchange believes these provisions are reasonably designed to prevent executions outside the Price Bands as required by the limit up-limit down and trading pause requirements specified in the Plan.

The Exchanges also proposes to amend the Rules regarding Trading Pauses to correspond with the LULD Plan. The Exchange proposes to provide that during Phase 1 of the Plan, a Trading Pause in Tier 1 NMS Stocks shall be subject to the requirements of the Plan and Exchange Rule 4753 and a Trading Pause in Tier 2 NMS Stocks shall be subject to the requirements set forth in Exchange 4120(a)(11). Once the Plan has been fully implemented and all NMS Stocks are subject to the Plan, a Trading Pause under the Plan shall be subject to Exchange Rule 4120(a)(12). Consistent with these changes, the Exchange proposes to delete the threshold requirement of 10% or more with respect to securities included in the S&P 500® Index and the Russell 1000® Index, because these Tier 1 NMS Stocks will be subject to the

requirements under Exchange Rule 4120(a)(11). These proposed changes are designed to comply with Section VIII of the Plan to ensure implementation of the Plan's requirements.<sup>20</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>22</sup> 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 will ensure that the Exchange systems will not display or execute trading interest outside the Price Bands in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

The proposal will also ensure that the trading interest on the Exchange is either repriced or canceled in a manner that is consistent with just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Specifically, when trading interest is re-priced to comply with the requirements of the Plan, that trading interest will receive a new timestamp and new execution priority. Re-pricing is the automated equivalent of the entry of a new order which would, if done manually, result in a new timestamp and placement in the execution queue. The proposal will help market participants to continue to trade NMS Stocks within Price Bands in compliance with the Plan with certainty on how orders and trading interest will be treated. Reducing uncertainty regarding

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<sup>20</sup> See Section VIII of the Plan.

<sup>21</sup> 15 U.S.C. 78f (b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

the treatment and priority of trading interest with the Price Bands should help encourage market participants to continue to provide liquidity during extraordinary market volatility.

The proposal will also ensure that orders in NMS Stocks are not routed to other exchanges in situations where an execution may occur outside Price Bands, and thus promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system.

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 ensure cooperation between and among all national securities exchanges and FINRA to promote uniform and effective regulation of the national market system. The proposal is specifically aimed at reducing competition among exchanges that is based on differences in regulations, otherwise known as regulatory arbitrage. In actuality, the proposal is pro-competitive because it promotes fair and orderly markets and investor protection, which in turn will restore 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

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>23</sup> and Rule 19b-4(f)(6) thereunder.<sup>24</sup> Because the proposed rule change does not: (i)

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

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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>25</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>26</sup> the 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 designate an operative date of April 8, 2013. The Commission believes that waiving the operative delay and designating April 8, 2013 as the operative date of the proposed rule change is consistent with the protection of investors and the public interest because such waiver would allow the proposed rule change to be operative on the initial date of Plan operations. Accordingly, the Commission hereby grants the Exchange's request and designates an operative date of April 8, 2013.<sup>27</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

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<sup>24</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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).

<sup>27</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 Number SR-NASDAQ-2013-045 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 Number SR-NASDAQ-2013-045. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2013-045 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).