

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69563; File No. SR-NASDAQ-2013-073)

May 13, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4120 to Adopt a Modification in the Process for Initiating Trading of a Security that is the Subject of a Trading Halt or Pause on NASDAQ

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 29, 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 Rule 4120 to adopt a modification in the process for initiating trading of a security that is the subject of a trading halt or pause on NASDAQ, and to make several additional modifications to Rule 4120 to clarify the conditions under which NASDAQ will conduct a halt cross. NASDAQ proposes to implement the proposed rule change on a date that is on, or shortly after, the 30th day following the date of the filing. 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, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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. 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

In 2012, NASDAQ modified its process for commencing trading of a security that is the subject of an initial public offering (an "IPO") on NASDAQ by allowing market participants to enter orders to be held in an undisplayed state until the commencement of the Display-Only Period that occurs prior to the IPO.³ NASDAQ is now proposing a similar change with regard to entering orders prior to the end of other trading halts or pauses on NASDAQ. Rule 4120(a) describes the circumstances under which NASDAQ has the authority to initiate a trading halt. As detailed in Rule 4120(a), the specific bases for a halt include the following:

- a halt to permit the dissemination of material news with respect to a NASDAQ-listed security (Rule 4120(a)(1));
- a halt when a security listed on another national securities exchange is halted to permit dissemination of news (Rule 4120(a)(2)) or due to an order imbalance or influx (Rule 4120(a)(3));
- a halt in an American Depositary Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with

³ Securities Exchange Act Release No. 66652 (March 23, 2012), 77 FR 13129 (March 29, 2012) (SR-NASDAQ-2012-038).

another national or foreign securities exchange or market, and the regulatory authority overseeing such exchange or market halts trading in such security for regulatory reasons (Rule 4120(a)(4));

- a halt when Nasdaq requests from the issuer information relating to material news or the issuer's ability to meet Nasdaq listing qualification requirements, or any other information necessary to protect investors and the public interest (Rule 4120(a)(5));
- a halt trading in a security listed on NASDAQ when extraordinary market activity in the security is occurring, NASDAQ determines that the activity is likely to have a material effect on the market for the security, and NASDAQ believes that the activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system (Rule 4120(a)(6));
- a halt with respect to an index warrant when deemed appropriate in the interests of a fair and orderly market and to protect investors (Rule 4120(a)(8));
- a halt in a series of Portfolio Depository Receipts, Index Fund Shares or Managed Fund Shares listed on Nasdaq if the Intraday Indicative Value or the index value applicable to that series is not being disseminated as required (Rule 4120(a)(9));
- a halt in a Derivative Securities Product (as defined in Rule 4120(b)(4)(A)) for which a net asset value (“NAV”) or a Disclosed Portfolio is disseminated if Nasdaq becomes aware that the NAV or Disclosed Portfolio is not being disseminated to all market participants at the same time (Rule 4120(a)(10));

- a trading pause with respect to NASDAQ-listed stocks that are not subject to the Limit Up-Limit Down Plan⁴ and that are experiencing certain large price movements, as defined by Rule 4120(a)(11), or with respect to a NASDAQ-listed stock that is subject to the Limit Up-Limit Down Plan and that is in a “straddle state,” as defined by Rule 4120(a)(12)(F); and
- a trading halt in a Derivative Security Product traded pursuant to unlisted trading privileges for which a “Required Value,” such as an intraday indicative value or disclosed portfolio, is not being disseminated, under the conditions described in Rule 4120(b).⁵

Rule 4120(c)(7) provides that in the case of a halt under Rule 4120(a)(1), (4), (5), (6), (9), (10), or (11), or Rule 4120(b), prior to terminating the halt, there is a 5-minute Display-Only Period during which market participants may enter quotes and orders into the NASDAQ Market Center. At the conclusion of the Display-Only Period, trading commences through the halt cross process provided for in Rule 4753.⁶ However, if at the end of a Display-Only Period, NASDAQ detects an order imbalance in the security, the halt may be extended for an additional Display-Only Period of one minute. NASDAQ notes that the purpose of the halt cross is to establish a consensus price for the resumption of trading of securities for which NASDAQ is the primary listing market. Accordingly, NASDAQ does not believe that it is warranted to conduct a halt

⁴ Plan to Address Extraordinary Market Volatility Submitted to the Commission Pursuant to Rule 608 of Regulation NMS under the Act, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

⁵ Rule 4120 provides for a halt when a security is the subject of an IPO on NASDAQ (Rule 4120(a)(7)). Entry of orders during an IPO halt was addressed in a prior proposed rule change. See supra n.3.

⁶ Rule 4120 also provides for a Display-Only Period and a halt cross in the case of a halt under Rule 4120(b). Since that rule applies only to securities traded on an unlisted trading privileges (“UTP”) basis, NASDAQ believes that it is not necessary to conduct a halt cross prior to resumption of trading, consistent with other halts applicable to securities that are traded on a UTP basis. Accordingly, the rule is being amended to remove the reference to Rule 4120(b) from the provision of the rule that requires a cross for the resumption of trading.

cross for securities listed on other exchanges. Accordingly, NASDAQ is removing the reference to Rule 4120(b) from Rule 4120(c)(7), since Rule 4120(b) pertains solely to halts of securities traded on an unlisted traded privileges (“UTP”) basis. In addition, since halts under Rule 4120(a)(10) may pertain either to securities listed on NASDAQ or securities traded on a UTP basis, NASDAQ is further amending the rule to clarify that a halt cross is conducted only for securities listed on NASDAQ. Finally, since Rule 4120(a)(12)(F) contemplates a halt cross for a NASDAQ-listed security subject to the Limit Up-Limit Down Plan that is in a straddle state, NASDAQ is adding a reference to this provision to Rule 4120(c)(7).

Halts for securities not listed on NASDAQ are terminated at the time specified by NASDAQ, and a halt cross is not performed prior to resumption of trading.

Under the current process, quotes and orders in a halted security (with the exception of a security halted for an IPO) may not be entered until the commencement of the Display-Only Period, in the instance of a security for which a halt cross will occur, or until the resumption of trading in other instances. However, NASDAQ believes that the quality of its process for commencing trading in the halted security would be enhanced by allowing market participants to enter orders to be held but not displayed until the beginning of the Display-Only Period, in the instances of a security for which a halt cross will occur, or until the resumption of trading in other instances.⁷ Specifically, NASDAQ believes that this change will provide for a greater number of orders being entered prior to commencement of trading, resulting in a higher level of order interaction in the cross or at the resumption of trading.⁸

⁷ Because the orders would be held in an undisplayed state, the change would not implicate NASDAQ Rule 3340 or FINRA Rule 5260, which prohibit transactions, publication of quotations, or publication of indications of interest during a trading halt.

⁸ NASDAQ notes that in the case of a trading pause under Rule 4120(a)(11) or (12), the Display-Only Period commences at the same time as the trading pause. Accordingly, the

Orders entered in this manner will be held in a suspended state until the beginning of the Display-Only Period or the resumption of trading, as applicable, at which time they will be entered into the system. Market participants may cancel orders entered in this manner in the same way they would cancel any other order. Orders entered prior to the Display-Only Period or the resumption of trading, as applicable, will be rejected unless they are designated for holding. With respect to halts for which a halt cross will not occur, the orders will be entered into the continuous market once trading resumes.⁹ With respect to halts for which a cross will occur, the orders will be processed in the manner provided for in Rule 4753.

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 Section 6(b)(5) of the Act,¹¹ in particular, in that the proposal 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

proposed rule change does not alter the status quo with respect to such trading pauses. Rather, the proposed rule change provides that “in instances where a trading halt is in effect prior to the commencement of the Display Only Period, market participants may enter orders in a security that is the subject of the trading halt on Nasdaq and designate such orders to be held until the beginning of the Display Only Period.”

⁹ Orders entered and held during the halt period will be entered into the continuous market in the order in which they were received. However, such orders will be entered contemporaneously with any orders received through order entry ports after the halt is terminated. Thus, the relative priority of orders received during the halt and orders received through order entry ports after the halt is terminated will be a function of the duration of system processing associated with each particular order. As a result, orders received during the halt will not automatically have priority over orders received at the conclusion of the halt.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

a national market system, and, in general, to protect investors and the public interest. Specifically, NASDAQ believes that the change to allow entry of quotes and orders for holding during a trading halt will provide for a greater number of orders being entered prior to commencement of trading, resulting in a higher level of order interaction in the re-opening process. Thus, NASDAQ believes that the change will remove impediments to and perfect the mechanism of a free and open market. NASDAQ further believes that the proposed change to clarify that halt crosses will not be conducted for the resumption of trading in securities traded on a UTP basis is consistent with the halt cross's purpose of establishing a consensus price for the resumption of trading of securities for which NASDAQ is the primary listing market. Because this price is established by the listing market for securities that NASDAQ trades on a UTP basis, NASDAQ believes that conducting a halt cross for such securities is not necessary to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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. Specifically, NASDAQ believes that this change will provide for a greater number of orders being entered prior to commencement of trading, resulting in a higher level of order interaction. NASDAQ believes that this change will promote competition by enhancing the attractiveness of NASDAQ as a trading venue through higher order fill rates and more complete price discovery. Moreover, because the change will not affect the availability or price of goods or services offered by NASDAQ or others, it will not impose any burden 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ 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 and Rule 19b-4(f)(6)(iii) thereunder.

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 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:

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 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.

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-2013-073 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-2013-073. 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-2013-073 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

Lynn M. Powalski
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).