

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70911; File No. SR-NASDAQ-2013-143)

November 21, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASDAQ Rule 4120(c)(7)(C) to Modify the Parameters for Releasing Securities for Trading Upon the Termination of a Trading Halt

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 November 14, 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

The Exchange proposes to amend NASDAQ Rule 4120(c)(7)(C) to modify the parameters for releasing securities for trading upon the termination of a trading halt. NASDAQ will implement the proposed change immediately.

The text of the proposed rule change is below.<sup>3</sup> Proposed new language is italicized; proposed deletions are in brackets.

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

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

<sup>3</sup> The text of the 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.

#### **4120. Limit Up-Limit Down Plan and Trading Halts**

(a) – (b) No change.

#### **(c) Procedure for Initiating and Terminating a Trading Halt**

(1) - (6) No change.

(7)

(A) - (B) No change.

(C) If at the end of a Display Only Period or during the subsequent process to release the security for trading, Nasdaq detects an order imbalance in the security, Nasdaq will extend the Display Only Period as permitted under subparagraph (A). In the case of subparagraph (B), any order imbalance during the Pre-Launch Period or during the subsequent process to release the security for trading will result in a delay of the release for trading of the IPO until the end of the order imbalance and satisfaction of the other requirements for release of the IPO contained in subparagraph (B). Order imbalances are established as follows:

(1) Order imbalances under subparagraph (A) shall be established when (i) the last available Current Reference Price[s], as defined in Rule 4753(a)(2)(A), disseminated [15 seconds and ]immediately prior to the end of the Display Only Period and any of the three preceding Current Reference Prices differ by more than the greater of 5 percent or 50 cents, or (ii) all buy or sell market orders will not be executed in the cross.

(2) Order imbalances under subparagraph (B) shall be established when (i) the Current Reference Price[s], as defined in Rule 4753(a)(2)(A), disseminated [15 seconds and ]immediately prior to commencing the release

of the IPO for trading during the Pre-Launch Period and any of the three preceding Current Reference Prices differ by more than the greater of 5 percent or 50 cents, or (ii) all buy or sell market orders will not be executed in the cross.

(3) Order imbalances under both subparagraphs (A) and (B) shall be established during the subsequent process to release a security for trading, which occurs at the termination of either a Display Only Period under subparagraph (A) or a Pre-Launch Period under subparagraph (B), if, upon completion of the cross calculation, (i) the calculated price at which the security would be released for trading and any of the three preceding Current Reference Prices disseminated immediately prior to the initiation of the cross calculation differ by more than the greater of 5 percent or 50 cents, or (ii) all buy or sell market orders would not be executed in the cross.

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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 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 Rule 4120(c)(7)(C) to strengthen the price volatility comparison of the order imbalance tests done at the conclusion of the Display Only Period and Pre-Launch Period by increasing the number of Current Reference Prices that are compared. The Exchange is also proposing to extend the order imbalance tests of the rule to also include the process by which a company's securities are released for trading after a halt. Securities subject to a halt under Rule 4120(a) cannot be released when there is an order imbalance in the security. Historically, order imbalances were defined uniformly under Rule 4120(c)(7)(C) for all halts under Rule 4120(a) as: (i) the Current Reference Prices, as defined in Rule 4753(a)(2)(A),<sup>4</sup> disseminated 15 seconds and immediately prior to the end of the Display Only Period differ by more than the greater of 5 percent or 50 cents (the "Price Volatility Test"), or (ii) all buy or sell market orders will not be executed in the cross (the "Imbalance Test"). During the Display Only Period, NASDAQ disseminates an Order Imbalance Indicator every five seconds,<sup>5</sup> which includes a Current Reference Price along with the then-current imbalance information.<sup>6</sup> The Order Imbalance Indicator allows market participants insight into the likely price at which a security will emerge from a halt.

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<sup>4</sup> The Current Reference Price is defined in Rule 4753(a)(2)(A) as the price at which the maximum number of shares can be paired. In situations where more than one price exists, the rule establishes the Current Reference Price in a number of scenarios.

<sup>5</sup> Rule 4753(b)(1).

<sup>6</sup> The Order Imbalance Indicator provides market participants with the Current Reference Price, the number of shares matched for execution at the Current Reference Price, the total number of shares that cannot be matched for execution and side of executable shares, and the indicative prices at which the Halt Cross would occur if it were to occur at that time. See Rule 4753(a)(2).

NASDAQ recently adopted a new process for releasing securities approved for listing on NASDAQ in an initial public offering (“IPO”).<sup>7</sup> The changes were adopted to improve the IPO release process by increasing NASDAQ’s flexibility to commence trading when appropriate while retaining a transparent process that has been the hallmark of the rule. To this end, NASDAQ eliminated the former rule requirement that limited the number of extensions of the Display Only Period to six five-minute periods, and instead adopted a “Pre-Launch Period” at the conclusion of the initial 15-minute Display Only Period that is not of a fixed duration. Unlike other halts under Rule 4120(a), NASDAQ does not apply the order imbalance tests at the conclusion of an IPO launch Display Only Period, but rather thereafter transitions to the Pre-Launch Period. Under the new rule, the Pre-Launch Period will continue until:

(1) the IPO is released when the following two conditions are simultaneously met:

- NASDAQ receives notice from the underwriter of the IPO that the security is ready to trade, and
- there is no order imbalance in the security (as discussed below); or

(2) the underwriter, with concurrence of NASDAQ, determines at any point during the IPO Halt Cross process up through the Pre-Launch Period to postpone and reschedule the IPO.

The Exchange adopted the condition that there be no order imbalance, as defined in Rule 4120(c)(7)(C), in a halted security prior to its release for trading to ensure that the security price is reasonably stable and trading interest is balanced at the time trading commences. With the changes to the IPO release process discussed above, NASDAQ

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<sup>7</sup> Securities Exchange Act Release No. 69897 (July 1, 2013), 78 FR 40782 (July 8, 2013) (SR-NASDAQ-2013-092).

adopted a new definition of order imbalance applicable only to IPO halt securities, while retaining the same definition of an order imbalance for all other halts under Rule 4120(a). NASDAQ defines an order imbalance in an IPO security as occurring when (1) the Current Reference Price, as defined in Rule 4753(a)(2)(A), disseminated 15 seconds and immediately prior to commencing the release of the IPO for trading during the Pre-Launch Period differs by more than the greater of 5 percent or 50 cents, or (2) all buy or sell market orders will not be executed in the cross. This protection is designed to prevent circumstances where a misunderstanding by the underwriter as to the state of the order book risks launching trading at a time of material volatility in the book for the security. As a consequence, if an underwriter gives notice to launch the IPO security, it must also be free of an order imbalance prior to release for price calculation and trading.

All order imbalances are calculated by the Halt Cross system, which automatically prevents launch of a halted security when an order imbalance exists. For halts under Rule 4120(a) other than IPO halts, at the conclusion of the Display Only Period and any extensions thereof permitted by the rule, the Halt Cross system determines if an order imbalance exists by performing the two order imbalance tests. If there is not an order imbalance, the system calculates the release price of the security based on the trading interest at the conclusion of the Display Only Period and releases the halted security for trading. The conclusion of all halts under Rule 4120(a) other than IPO halts is initiated by the Halt Cross system automatically, resulting in the release of a security immediately after the issuance of a Current Reference Price. IPO halts, however, do not necessarily conclude in synch with the dissemination of a Current Reference Price

because the underwriter initiates the conclusion of the Pre-Launch Period without consideration to the dissemination of the Current Reference Price.

#### Enhanced Volatility Test

The Exchange proposes to strengthen the Price Volatility Test applied to all halts under Rule 4120(a) by increasing the number of prices to which the last disseminated Current Reference Price is compared. The current rule text provides that NASDAQ compares the Current Reference Price available immediately prior to the conclusion of either the Display Only Period<sup>8</sup> or Pre-Launch Period,<sup>9</sup> as applicable, to the Current Reference Price issued 15 seconds prior to the conclusion of these periods. This calculation results in a single comparison of prices, notwithstanding that there are two additional Current Reference Prices disseminated between the Current Reference Prices compared by the test. For example, in the case of a Display Only Period that concludes pursuant to Rule 4120(c)(7)(A) at 10:00:00 with the last disseminated Current Reference Price occurring at 10:00:00, the Halt Cross system will compare the last disseminated Current Reference Price to the Current Reference Price issued at 09:59:45. Because Current Reference Prices are disseminated every five seconds, two additional Current Reference Prices were disseminated at 09:59:50 and 09:59:55, between the two Current Reference Prices used by the Price Volatility Test. Either of the two intermediate Current Reference Prices may reflect volatile pricing that would not be considered by the current Price Volatility Test.

NASDAQ is proposing to amend Rule 4120(c)(7)(C) to reflect that the Price Volatility Test will compare the last available Current Reference Price to each of the

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<sup>8</sup> For halts concluded pursuant to Rule 4120(c)(7)(A).

<sup>9</sup> For halts concluded pursuant to Rule 4120(c)(7)(B).

three preceding Current Reference Prices. As a consequence, the Price Volatility Test will more robustly detect price volatility at the conclusion of a Display Only Period or Pre-Launch Period by conducting three price comparisons of the most recent Current Reference Prices as compared to the single comparison done now. The order imbalance tests are designed to ensure that the security price is reasonably stable at the time trading commences. NASDAQ believes that testing against the three prior Current Reference Prices increases the likelihood that instability will be detected and, as a consequence, trading in the security will be afforded additional time to stabilize, resulting in a launch that is more reflective of all the trading interest in the security.

#### Extension of the Order Imbalance Tests

NASDAQ is also proposing to extend the order imbalance tests to the release process, which occurs after the conclusion of a Display Only Period or Pre-Launch Period, as applicable, and before the release of the security. During this release process period, the Halt Cross system closes the order book, and then calculates the price at which the security will be opened. As noted above, the release price of an IPO is calculated at the conclusion of the Pre-Launch Period, which is not systematically determined by the expiration of a set time period, but rather is initiated by the underwriter to the IPO. The time between the dissemination of the last Current Reference Price and the close of the Pre-Launch Period may be as long as nearly five seconds, during which market participants may continue to enter and cancel orders. NASDAQ notes that, for a halt concluded pursuant to Rule 4120(c)(7)(A), there is a very brief time after the dissemination of the Current Reference Price and the closing of the order book during which market participants may continue to enter and cancel orders. As a result, the



orders in the order book may not be reflected in the last disseminated Order Imbalance Indicator.

Under both launch processes, at the conclusion of the applicable period the Halt Cross system performs the order imbalance tests using an Order Imbalance Indicator that, as noted, may not be reflective of the most recent orders entered during the period after its dissemination. It is possible that a market participant may enter an order that is materially different in price from the last available Current Reference Price disseminated and of an adequate size to significantly distort the security's price during the cross price calculation. Under such a scenario, the halted security could be released at a price significantly different from market expectations based on the indicative price of the Order Imbalance Indicator disseminated just prior to the launch. Moreover, an order entered or canceled during the period between the last dissemination of the Order Imbalance Indicator and the closing of the order book may cause an order imbalance in the number of buy and sell interest resulting in a certain number of shares remaining unmatched at the conclusion of the cross.

NASDAQ is proposing to extend the order imbalance tests to the process for releasing a security for trading applicable to halts concluded pursuant to both Rules 4120(c)(7)(A) and (B). Specifically, the requirement would apply to both the process following the conclusion of the Display Only Period for halts under Rule 4120(a) other than IPOs, and to the process following the conclusion of the Pre-Launch Period for IPO halt securities. NASDAQ has amended the definition of an order imbalance under Rule 4120(c)(7)(C) to reflect the addition of the order imbalance tests to this period. Under the new definition of order imbalance, the Halt Cross system will compare the calculated

price at which the security would be released to each of the three preceding Current Reference Prices disseminated immediately prior to initiation of the cross calculation. An order imbalance under this calculation would be present if the prices differ by more than the greater of 5 percent or 50 cents. The Halt Cross system will also apply the Imbalance Test to determine whether all orders were executed in the cross.

Under the amended rule, should a security be subject to an order imbalance during the subsequent process to release the security for trading by failing either the new Price Volatility Test or Imbalance Test, it would return to either a Display Only Period for a one minute extension period, in the case of Rule 4120(a) halts other than IPOs, or in the case of an IPO halt, return to the Pre-Launch Period. Once in the returned state, the security would repeat the process for release until such time that the security may be priced.<sup>10</sup> Accordingly, NASDAQ believes extension of the order imbalance tests to the release process will ensure that the price at which a security is released for trading is reflective of the general interest in the security, unaltered by aberrant order activity. NASDAQ notes that the proposed modification to the rule is not designed to substantively modify how order imbalances are handled in the release of securities halted under Rule 4120(a). It is instead designed to apply the same principles to the brief price calculation process just prior to the release of a security for regular trading.

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<sup>10</sup> In the case of a Pre-Launch Period, all conditions to conclude the period must be met, including a new indication that the underwriter is ready to launch. Consistent with Rule 4120(c)(7)(B), during this time the underwriter, with the concurrence of NASDAQ, may also determine to postpone and reschedule the IPO.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general, and with Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed 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 transaction 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change promotes this goal by strengthening tests that must be passed for a security to be released from a halt, and extending the protections of all such tests to include the brief period after a security is released for pricing and the pricing process concludes. Although unlikely, it is possible, particularly with regard to the IPO release process, for a disruptive order to skew the release price far from what was anticipated by market participants based on the indicative prices published by the Exchange prior to the calculation. The proposed change is designed to protect market participants from receiving what would appear from their perspective to be erroneous pricing of securities for resumption of trading. Accordingly, NASDAQ believes that enhancing and strengthening the process is in the interest of protecting investors as it will serve to avoid confusion among market participants. NASDAQ notes that the criteria it applies in releasing halted securities pursuant to the rule are applied consistently to every release, and therefore do not permit NASDAQ to discriminate in any manner.

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposal is irrelevant to competition because it is not driven by, and will have no impact on, competition.

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)(ii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</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>15</sup> 17 CFR 240.19b-4(f)(6)(ii).

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(ii),<sup>17</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 waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that this proposal establishes rules that enhance an existing test, which is designed to ensure that securities in a halted state are released in an orderly manner and that there are no order imbalances in a security emerging from a halt. In addition, the Exchange stated that the proposal is designed to protect market participants from seemingly erroneous pricing of securities for resumption of trading. Thus, the Exchange believes that it is in the interest of protecting investors to provide the amended process, which will eliminate the possibility of such a disruption, at the earliest time possible. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>18</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: (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

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<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>18</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).

the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>19</sup> of the Act 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-143 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-2013-143. 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

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<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

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 the 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 Number SR-NASDAQ-2013-143 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>20</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).