

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68913; File No. SR-NASDAQ-2013-024)

February 12, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify the Measure Used to Determine Whether the Price of a Stock is Equal To or Greater Than One Dollar Under Rule 4120(a)(11)

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 January 31, 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 clarify the measure used to determine whether the price of a stock is equal to or greater than \$1 dollar under Rule 4120(a)(11).

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

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**4120. Trading Halts**

**(a) Authority to Initiate Trading Halts or Pauses**

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq, pursuant to the procedures set forth in paragraph (c):

(1) – (10) No change.

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

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

(11) shall, between 9:45 a.m. and 3:35 p.m., or in the case of an early scheduled close, 25 minutes before the close of trading, immediately pause trading for 5 minutes in any Nasdaq-listed security, other than rights and warrants, when the price of such security moves a percentage specified below within a 5-minute period.

(A) The price move shall be 10% or more with respect to securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products;

(B) The price move shall be 30% or more with respect to all NMS stocks not subject to section (a)(11)(A) of this Rule with a price equal to or greater than \$1; and

(C) The price move shall be 50% or more with respect to all NMS stocks not subject to section (a)(11)(A) of this Rule with a price less than \$1.

The determination that the price of a stock is equal to or greater than \$1 under paragraph (a)(11)(B) above or less than \$1 under paragraph (a)(11)(C) above shall be based on the last reported closing price on Nasdaq[the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day].

At the end of the trading pause, Nasdaq will re-open the security using the Halt Cross process set forth in Nasdaq Rule 4753. In the event of a significant imbalance at the end of a trading pause, Nasdaq may delay the re-opening of a security.

Nasdaq will issue a notification if it cannot resume trading for a reason other than a significant imbalance.

Price moves under this paragraph will be calculated by changes in each consolidated last-sale price disseminated by a network processor over a five minute rolling period measured continuously. Only regular way in-sequence transactions qualify for use in calculations of price

moves. Nasdaq can exclude a transaction price from use if it concludes that the transaction price resulted from an erroneous trade.

If a trading pause is triggered under this paragraph, Nasdaq shall immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. If a primary listing market issues an individual stock trading pause, Nasdaq will pause trading in that security until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen within 10 minutes of notification of a trading pause, Nasdaq may resume trading the security.

The provisions of this paragraph shall be in effect during a pilot set to end on February 4, 2013.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to clarify the source of the price used in determining whether the price of a stock is equal to or greater than \$1, or less than \$1, for purposes of applying Rule 4120(a)(11)(B) or (C). Rule 4120(a)(11) states that the determination that the price of a stock is equal to or greater than \$1 under paragraph Rule 4120(a)(11)(B) or less than

\$1 under paragraph Rule 4120(a)(11)(C) shall be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day. As a practical matter, it is only in a rare circumstance that the last sale reported to the Consolidated Tape is used as the measure for determining the \$1 threshold. This occurs when a security is thinly-traded and no trades have occurred on the Exchange on the previous trading day. The Exchange believes that using the last reported NASDAQ closing price as the measure for determining the \$1 threshold is a more reliable and accurate means of measuring the price of a low-priced security.<sup>3</sup> In low-priced thinly-traded securities, the Exchange believes that an off-exchange transaction in an Exchange-listed security reported to the Consolidated Tape is less reflective of the security's price than a transaction occurring on the Exchange resulting in a closing price, even if that closing price precedes an off-exchange transaction.

This rule change makes the pricing measure consistent with that used to determine price decline for the short sale-related circuit breaker. In discussing the reason it elected to use a covered security's listing market at the end of regular trading hours on the prior day as an appropriate measure of price decline for the short sale-related circuit breaker, the Commission stated:

The last price reported in the consolidated system is more likely to reflect an anomalous trade, e.g., a trade that is not consistent with the current market due to, for example, the 90 second reporting window, or an uncorrected error. Listing markets generally have in place specific procedures designed to ensure the accuracy and reliability of their closing prices. Thus, we believe it is appropriate to use the more accurate closing

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<sup>3</sup> The Exchange notes that the changes proposed herein are reflective of its current practice, in that it has used the last reported closing price on NASDAQ as the measure for determining the \$1 threshold price since adopting Rules 4120(a)(11)(B) and (C).

price as determined by the covered security's listing market rather than the last price reported in the consolidated system.<sup>4</sup>

NASDAQ agrees and believes that the Commission's analysis is particularly true in the case of thinly-traded securities.

In addition to being consistent with the short sale-related circuit breaker, the proposed change will make the \$1 threshold determination methodology under Rule 4120(a)(11) consistent with the Limit up-Limit down plan process to determine the percentage parameter applicable during a trading day, under which the reference price is based on the prior day's closing price on the primary listing market or the last sale on the primary listing market if no such closing price exists.<sup>5</sup>

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),<sup>6</sup> which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

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<sup>4</sup> Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 at 11255 (March 10, 2010) (adopting a short sale-related circuit breaker that, if triggered, will impose a restriction on the prices at which securities may be sold short). Rule 201 of Regulation SHO requires that a trading center establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. See 17 CFR 242.201.

<sup>5</sup> In the Order Approving, on a Pilot Basis, the National Market System Plan to Address Extraordinary Market Volatility, the reference price used for determining which percentage parameter shall be applicable during a trading day shall be based on the closing price of the NMS stock on the primary listing exchange on the previous trading day, or if no closing price exists, the last sale on the primary listing exchange reported by the Processor. See Securities Exchange Act Release No. 34-67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is designed to promote more accurate determinations of the price of securities under the trading pause provided by Rule 4120(a)(11), thus promoting just and equitable principles of trade, removing impediments to, and perfecting the mechanism of, a free and open market and a national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>7</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes more accurate trading pause triggers, as well as transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Moreover, the Exchange believes that other listing markets with functionally identical rules are concurrently adopting the changes proposed herein.

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 proposed rule change merely modifies how the value of a low-priced security is measured, replacing the current method with what the Exchange believes to be a more reliable and accurate measure. The proposed change will enhance the operation of the trading pause process by making the determination of the \$1 threshold more accurate and reflective of the current value of a low-priced security, which in turn contributes to the protection of investors and the public interest. Accordingly, the proposed changes will not impose any burden on competition while providing more accurate trading pause determinations under Rule

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<sup>7</sup> 15 U.S.C. 78k-1(a)(1).

4120(a)(11).

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>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>10</sup> to determine whether the proposed rule change should be approved or disapproved.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</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>10</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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-2013-024 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-2013-024. 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-2013-024 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).