

**V. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-FINRA-2011-005), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64268; File No. SR-NASDAQ-2011-051]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Effective Hours of Rule 4753(c)**

April 8, 2011.

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 April 7, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or the “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 the Substance of the Proposed Rule Change**

NASDAQ is proposing to amend Rule 4753(c) to change the effective time of the rule from 9:30 a.m. to 4 p.m., to 9:45 a.m. to 3:35 p.m.

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

\* \* \* \* \*

**4753. Nasdaq Halt and Imbalance Crosses**

(a)-(b) No change.

(c) For a pilot period ending six months after the date of Commission approval of SR-NASDAQ-2010-074, between 9:45[30] a.m. and 3:35[4:00] 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 (percent)
\$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.

\* \* \* \* \*

**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**

NASDAQ is proposing to amend Rule 4753(c) to change the effective time of the rule from 9:30 a.m. to 4 p.m., to 9:45 a.m. to 3:35 p.m. On March 11, 2011, the Commission approved Rule 4753(c) (the “Volatility Guard”), a volatility-based pause in trading in individual NASDAQ-listed securities traded on NASDAQ (“NASDAQ Securities”), as a six month pilot applied to the NASDAQ 100 Index securities.<sup>3</sup> The Volatility Guard automatically suspends trading in individual NASDAQ Securities that are the subject of abrupt and significant intraday price movements between 9:30 a.m. and 4 p.m. Eastern Standard Time (“EST”). Volatility Guard is triggered automatically when the execution price of a pilot security moves more than a fixed amount away from a pre-established “triggering price” for that security. The triggering price for each pilot security is the price of any execution by the system in that security within the previous 30 seconds. For each pilot security, the system continually compares the price of each execution in the system against the prices of all system executions in that security over the 30 seconds. Once triggered, NASDAQ institutes a formal trading halt during which time NASDAQ systems are prohibited from executing orders. Members, however, may continue to enter quotes and orders, which are queued during a 60-second Display Only Period. At the conclusion of the Display Only Period, the queued orders are executed at a single price, pursuant to NASDAQ’s Halt Cross mechanism.<sup>4</sup>

NASDAQ is preparing to implement the Volatility Guard in the second quarter of 2011, and through these preparations NASDAQ identified a possible concern with the effective time

<sup>3</sup> See Securities Exchange Act Release No. 64071 (March 11, 2011), 76 FR 14699 (March 17, 2011) (SR-NASDAQ-2010-074). Amendment 1 to SR-NASDAQ-2010-074 designated the NASDAQ 100 Index as the 100 pilot securities.

<sup>4</sup> The Nasdaq Halt Cross is “the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest.” See Nasdaq Rule 4753(a)(3).

<sup>12</sup> 15 U.S.C. 78s(b)(2).  
<sup>13</sup> 17 CFR 200.30-3(a)(12).  
<sup>1</sup> 15 U.S.C. 78s(b)(1).  
<sup>2</sup> 17 CFR 240.19b-4.

of the Volatility Guard. As currently proposed, the Volatility Guard could interfere with the effective hours of NASDAQ's opening and closing crosses should a Volatility Guard halt occur during a cross process. The NASDAQ opening and closing crosses are price discovery facilities that cross orders at a single price. The crosses enable market participants to execute on-open and on-close interest.<sup>5</sup> NASDAQ is proposing to change the effective time of the pilot to 9:45 a.m. until 3:35 p.m. EST to avoid potential interference with the crosses, and the orderly opening and closing of the market.

NASDAQ notes that the proposed effective time is identical to the effective time of the single-stock trading pause pilot adopted by multiple U.S. markets, including NASDAQ, (the "Circuit Breaker Pilot").<sup>6</sup> In approving the Circuit Breaker Pilot, the Commission noted that limiting the effective time of the pilot to 9:45 a.m. until 3:35 p.m. EST would ensure that existing procedures designed to facilitate orderly openings and closings would not be interfered with. As a consequence, NASDAQ believes that adopting the identical effective time as the Circuit Breaker Pilot will reasonably ensure that the orderly opening and closing of the markets is not interfered with by the Volatility Guard.

NASDAQ also believes that, as a complement to the Circuit Breaker Pilot, it is important that Volatility Guard's effective time mirror that of the Circuit Breaker Pilot. The Circuit Breaker Pilot applies to the securities of the S&P 500 Index, Russell 1000 Index and certain exchange-traded products. As such, there is certain overlap between the securities covered by the Circuit Breaker

Pilot and Volatility Guard.<sup>7</sup> Such a consistent approach to the effective time will lessen the potential for investor confusion surrounding the timing and operation of the two processes. Accordingly, NASDAQ believes harmonizing the intra-day effective time of the Volatility Guard with that of the Circuit Breaker Pilot will better serve the goal of working seamlessly with the cross-market pause and will avoid potential interference with the orderly opening and closing of the markets.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general and with Sections 6(b)(5) of the Act,<sup>9</sup> 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 meets these requirements in that it promotes transparency and uniformity among the Circuit Breaker Pilot and the Volatility Guard. Further, the proposed changes will ensure that the opening and closing processes of the markets are not interfered with by the Volatility Guard.

### 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.

### C. Self-Regulatory Organization's Statement on Comments Regarding 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: (1) Does not significantly affect

the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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)<sup>10</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASDAQ has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. This proposed rule change will reduce the effective time of the Volatility Guard as the current effective time of the NASDAQ opening and closing processes. This proposed rule change will also make the effective time of the Volatility Guard consistent with the Circuit Breaker Pilot. Waiving the operative delay will ensure that the proposed change in the effective time of the Volatility Guard is both effective and operative by the date on which NASDAQ implements the Volatility Guard. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>14</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 action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission notes that the Exchange has met this requirement.

<sup>13</sup> *Id.*

<sup>14</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> The crosses generate opening and closing prices that are widely used by industry professionals including Russell Investments, Standard & Poor's and Dow Jones.

<sup>6</sup> On June 10, 2010, the Commission approved the Circuit Breaker Pilot, which instituted new circuit breaker rules that pause trading for five minutes in a security included in the S&P 500 Index if its price moves ten percent or more over a five-minute period. See Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025); 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR-NASDAQ-2010-061, *et al.*). On September 10, 2010, the Circuit Breaker Pilot was expanded to include securities in the Russell 1000 Index and certain exchange-traded products. See Securities Exchange Act Release Nos. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033); 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR-NASDAQ-2010-079, *et al.*). The Circuit Breaker Pilot is scheduled to expire on April 11, 2011, however, the Exchanges are filing proposals with the Commission to extend the pilot to August 11, 2011. See *e.g.*, Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR-NASDAQ-2010-162).

<sup>7</sup> See Securities Exchange Act Release No. 62468 (July 7, 2010), 75 FR 41258 (July 15, 2010) (SR-NASDAQ-2010-074) (discussing how Volatility Guard operates in relation to the Circuit Breaker Pilot).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

#### 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-2011-051 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-2011-051. 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 Web site (<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 Web site 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 a.m. and 3 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-2011-051 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Cathy Ahn,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64264; File No. SR-FINRA-2011-008]

##### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Require Public Disclosure of Any Access or Post-Transaction Fees for Executions Against a Public Quotation in an OTC Equity Security**

April 8, 2011.

On February 18, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to require each member to disclose on its website any fees imposed against its published quotation in any OTC Equity Security, consistent with FINRA Rule 6450 (Restrictions on Access Fees). The proposed rule change was published for comment in the **Federal Register** on March 3, 2011.<sup>3</sup> The Commission received two comments on the proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the

proposed rule change should be disapproved. The 45th day for this filing is April 17, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. The extension of time will ensure that the Commission has sufficient time to consider and take action on FINRA's proposal in light of, among other things, the comments received on the proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act<sup>6</sup> and for the reasons stated above, the Commission designates May 25, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR-FINRA-2011-008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64263; File No. SR-NASDAQ-2011-050]

##### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify an Initial Listing Standard for the Nasdaq Global Select Market**

April 8, 2011.

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 April 1, 2011, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 63960 (February 24, 2011), 76 FR 11829 ("Notice").

<sup>4</sup> See Letter from Daniel Zinn, General Counsel, OTC Markets Group, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated March 22, 2011 ("OTC Markets Letter") and letter from Kimberly Unger, Executive Director, The Security Traders Association of New York, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated April 6, 2011 ("STANY Letter").

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(A)(ii)(I).

<sup>7</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).