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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-88360; File No. SR-NASDAQ-2020-003]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change to Amend Rule 4121(b)
March 11, 2020.

On January 14, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 4121(b) concerning the resumption of trading following a Level 3 trading halt due to extraordinary market volatility. The proposed rule change was published for comment in the Federal Register on January 23, 2020.³ On March 6, 2020, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

Rule 4121 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility (“market-wide circuit breakers” or “MWCB”). The Exchange proposes to amend Rule 4121(b) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88004 (January 17, 2020), 85 FR 3992 (“Notice”).

⁴ See Securities Exchange Act Release No. 88342 (Federal Register publication pending).

Pursuant to Rule 4121, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading until the primary listing market opens the next trading day.

Currently, in the event that a Level 3 market decline occurs, the Exchange would halt trading for the remainder of the trading day, and would not resume until the primary listing market opens the next trading day. Thus, if the primary listing market is Nasdaq, the Exchange would resume trading in its listed securities at 4:00 a.m. ET on the next trading day, which is the beginning of the Exchange's Pre-Market Session.⁵ Effectively, Nasdaq would open its listed securities for trading following a Level 3 halt the same as a regular trading day under its current MWCB Level 3 re-opening procedures.⁶ For non-Nasdaq listed securities, however, Nasdaq would resume trading once the primary listing market has re-opened the security for trading, which time may currently vary depending on the primary listing market.⁷

⁵ Pre-Market Session means the trading session that begins at 4:00 a.m. and continues until 9:30 a.m. See Rule 4120(b)(4).

⁶ The Nasdaq system begins accepting and processing eligible orders in time priority at 4:00 a.m. ET. See Nasdaq Rule 4752(b) for further description of trading in the Pre-Market Session.

⁷ There may be cross-market differences in how each exchange currently opens the next day after a Level 3 MWCB halt. While Nasdaq currently resumes trading in its listed securities no differently from a regular trading day, other exchanges may, for instance, conduct a halt auction process instead of opening in the normal course under their respective rules.

The Exchange now proposes that a Level 3 halt would end at the end of the trading day on which it is declared. This proposed change would allow for next-day trading to resume in all NMS Stocks no differently from any other trading day.⁸ To effect this change, the Exchange proposes to delete the language in Rule 4121(b)(ii) requiring the Exchange to wait until the primary listing exchange opens the next trading day following a Level 3 market decline, and specify that the Exchange will halt trading for the remainder of the trading day.⁹ The proposed rule change would allow the Exchange to resume trading in all securities the next trading day following a Level 3 halt no differently than any other trading day, which for Nasdaq would be at the beginning of the Pre-Market Session at 4:00 a.m. ET under its current rules.¹⁰ The Exchange also expects that the primary listing exchanges will facilitate this change by sending resume messages to the applicable securities information processor (“SIP”) to lift the Level 3 trading halt message in all securities. The resumption messages will be disseminated after the SIP has started on the next trading day and before the start of the earliest pre-market trading session of all exchanges. If a security is separately subject to a regulatory halt that has not ended, the primary listing exchange would replace the Level 3 halt message with the applicable regulatory halt message.

The Exchange believes, based on industry feedback, that opening in the normal course in

⁸ The Exchange anticipates that the other national securities exchanges and FINRA will also file similar proposals to amend their MWCB rules on the resumption of trading following Level 3 halts, and amend their rules, where required, to have their Level 3 next-day openings happen normally.

⁹ Presently, the Exchange’s equities trading day ends at 8:00 p.m. ET.

¹⁰ The Commission notes that the Exchange has coordinated this proposal with the other national securities exchanges and FINRA and expects that they will file proposals with the Commission to harmonize the MWCB rules and facilitate appropriately a cross-market resumption of trading following a Level 3 halt that is no different from any normal trading day.

all equity securities as opposed to, for instance, having a normal opening for Nasdaq-listed securities only or conducting a halt auction prior to resuming trading, would be more beneficial to the marketplace. The Exchange states that by allowing trading to resume after a Level 3 halt in all securities no differently from any normal trading day under the respective rules of each exchange, the proposed rule change would provide greater certainty to the marketplace by ensuring a familiar experience for all market participants that trade NMS Stocks and balances out potential concerns around volatility. The Exchange states that while it recognizes that the impact of this proposal is to permit all securities to be traded in the Pre-Market Session, which does not have certain price protections for volatility such as LULD Bands or MWCB protections, it nonetheless believes that this outcome is outweighed by the benefits provided by opening in the Pre-Market Session in a manner that is more familiar to the marketplace. The Exchange further states that allowing the resumption of trading to occur on the Exchange at the beginning of the Pre-Market Session in all NMS Stocks would allow for price formation to occur earlier in the trading day, which in turn would allow market participants to react to news that has developed, and that, as such, trading at the beginning of regular hours may be more orderly.

II. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78f(b)(5).

coordination with persons engaged in 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.

The Commission believes that the Exchange's proposal protects investors and the public interest because it is designed to promote fair and orderly markets following a MWCB Level 3 halt in all securities. The Exchange's proposal is designed to promote fair and orderly markets in two ways. First, by permitting the resumption of trading no differently from any normal trading day, market participants are not forced to trade in manner differently from normal trading days following a Level 3 market event.¹³ This is particularly important as the market seeks to resume trading after being required to halt trading for the remainder of the prior trading day. Secondly, the Exchange's proposal is designed to enable price formation to occur for all securities earlier in the trading day, which in turn could allow market participants to react to news that has developed and may result in more orderly trading at the beginning of regular hours.¹⁴ For these reasons, the Commission finds that the Exchange's proposal is consistent with the Act.

III. Conclusion

¹³ The Exchange states that it has been working with other national securities exchanges and FINRA to establish a standardized approach for resuming trading in all NMS Stocks following a Level 3 halt, and that the proposed approach would allow for the opening of all securities the next trading day after a Level 3 halt as a regular trading day, and is designed to ensure that Level 3 MWCB events are handled in a more consistent manner that is transparent for market participants. See Notice, supra note 3, at 3993. As noted above, the Commission recognizes that the Exchange has filed this proposal in consultation and coordination with the other national securities exchanges and FINRA and expects that these SROs will file proposals with the Commission to harmonize the MWCB rules and facilitate appropriately a cross-market resumption of trading following a Level 3 halt that is no different from any normal trading day.

¹⁴ The Commission recognizes that while the proposal will permit all securities to be traded in the Exchange's Pre-Market Session, during which certain price protections for volatility such as LULD Price Bands or MWCB protections are not in effect, it believes that this is justified by the benefits noted above.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NASDAQ-2020-003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
Assistant Secretary.

¹⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

