

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68015; File No. SR-NASDAQ-2012-111)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide for Automatic Cancellation of Midpoint Peg Post-Only Orders at Market Close

October 9, 2012

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 September 28, 2012, 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 NASDAQ. 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 proposes a rule change to provide for automatic cancellation of Midpoint Peg Post-Only Orders at market close. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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

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

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

Item IV below. NASDAQ 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

A Midpoint Peg Post-Only Order is a non-displayed order that is priced at the midpoint between the national best bid and best offer ("NBBO") (as determined using the consolidated tape). However, like a Post-Only Order, the Midpoint Peg Post-Only Order does not remove liquidity from the System upon entry if it would lock a non-displayed order on the NASDAQ Market Center system (the "System"). Rather, the Midpoint Peg Post-Only Order will post and lock the pre-existing order, but will remain undisplayed.<sup>3</sup>

Midpoint Peg Post-Only Orders that post to the book and lock a pre-existing non-displayed order will execute against an incoming order only if the price of the incoming buy (sell) order is higher (lower) than the price of the pre-existing order. If a Midpoint Peg Order and a Midpoint Peg Post-Only Order are locked, and a Midpoint Peg Order is entered on the same side of the market as the Midpoint Peg Post-Only Order, the new order will execute against the original Midpoint Peg Order. This is the case because the market participant entering the Midpoint Peg Post-Only Order has expressed its intention not to execute against posted liquidity, and therefore cedes execution priority to the new order.

Nasdaq believes that demand for the use of Midpoint Peg Post-Only Orders is limited to regular market hours, since the wider spreads generally prevailing during pre-market and post-market trading sessions would result in execution prices more at variance from the NBBO than

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<sup>3</sup> SEC Rule 610(d) under Regulation NMS, 17 CFR 242.610(d), restricts displayed quotations that lock protected quotations in NMS Stocks, but does not apply to non-displayed trading interest.

would be the case during regular market hours. To this end, Midpoint Peg Post-Only Orders are accepted only during regular market hours. The proposed rule change clarifies this restriction by adding it to the rule text. At present, however, a Midpoint Peg Post-Only Order that is accepted during regular market hours but not executed and/or cancelled during regular market hours will continue to rest on the book until it is removed by another order, cancelled by the user or its Time-in-Force expires. To assist market participants in managing the use of these orders, NASDAQ is proposing to cancel all Midpoint Peg Post-Only Orders on the NASDAQ book at 4:00 p.m. In addition, the change provides that Midpoint Peg Post-Only Orders may execute during regular market hours only. This change will help ensure that market participants entering these orders are not subject to executions at prices that deviate from the NBBO by a greater extent that [sic] would be the case during regular market hours. Moreover, because such orders may execute during regular market hours only, they are not eligible for participation in the NASDAQ Opening Cross or the NASDAQ Closing Cross.

## 2. Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(5) of the Act,<sup>5</sup> 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 a national market system, and, in general, to protect investors and the public interest.

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<sup>4</sup> 15 U.S.C. 78f.

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

Specifically, NASDAQ believes that the proposed change will help promote efficient market operations by providing for automatic cancellation of resting Midpoint Peg Post-Only Orders at 4:00 pm. This change will assist market participants in managing the use of these orders and help ensure that they are not subject to executions at prices that deviate from the NBBO by a greater extent that [sic] would be the case during regular market hours.

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 does not believe that the proposed change will affect competition in any respect.

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

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup>

The Exchange has requested that the Commission waive the 30-day operative delay provided for in Rule 19b-4(f)(6)(iii).<sup>8</sup> NASDAQ believes that the proposed rule change will

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

advance the protection of investors by ensuring that market participants entering Midpoint Peg Post-Only Orders will not be subject to executions at prices that deviate from the NBBO by a greater extent than would be the case during regular market hours. NASDAQ also believes that the proposed rule change will thereby minimize the likelihood of executions during post-market hours that do not reflect the intentions of market participants. The Commission believes that minimizing the likelihood of unintended executions after hours should benefit investors. The Commission believes that waiver of the operative delay is consistent with investor protection and the public interest. As a result, the Commission is hereby waiving the 30-day operative delay.

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 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:

##### 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-2012-111 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-2012-111. 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 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 offices 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-2012-111, 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).