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December 13, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendment No. 1 (SR-NASDAQ-2017-088)

Dear Mr. Fields:

The Nasdaq Stock Market LLC filed the above-referenced filing on December 13, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Sean Bennett', with a long, sweeping horizontal line extending to the right.

T. Sean Bennett
Principal Associate General Counsel

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rule 4703(a) to allow members to designate when an Order with a RTFY or SCAN routing Order Attribute will be activated. This Amendment No. 1 supersedes the original filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on August 23, 2017. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.
[REDACTED]

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange is proposing to amend Rule 4703(a) to allow members to designate when an Order with a RTFY or SCAN routing Order Attribute³ will be activated. RTFY is a routing option available for an order that qualifies as a Designated Retail Order⁴ under which orders check the System⁵ for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table.⁶ If shares remain unexecuted after routing, they are posted to the book.⁷ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.⁸ RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary

³ The term "Order" means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. See Rule 4701(e).

⁴ As defined by Rule 7018.

⁵ As defined by Rule 4701(a).

⁶ See Rule 4758(a)(1)(A)(v)b.

⁷ Id.

⁸ Id.

listing market for a security. SCAN is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table.⁹ If shares remain un-executed after routing, they are posted on the book.¹⁰ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.¹¹

Rule 4703 provides the various Order Attributes that may be assigned to Orders entered into the System. All Orders have a Time-in-Force,¹² during which the Order is active. During Pre-Market Hours,¹³ members usually select one of two options concerning when an Order with a RTFY or SCAN Order Attribute may become active – upon entry or at single designated time, which is currently 8:00 a.m. ET.¹⁴ That is,

⁹ See Rule 4758(a)(1)(A)(iv).

¹⁰ Id.

¹¹ Id.

¹² All Times-in-Force described in Rule 4703(a) are applicable to RTFY and SCAN.

¹³ The term “Pre-Market Hours” means the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term “Market Hours” means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). The term “Post-Market Hours” means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET. The term “System Hours” means the period of time beginning at 4:00 a.m. ET and ending at 8:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). See Rule 4701(g).

¹⁴ The designation to become active at 8:00 a.m. ET is a port level setting, and not Order by Order. The Exchange will likewise only offer the proposed functionality on a port level basis. As a consequence, if, for example, a member cancels an Order entered through a port set for 8:00 a.m. ET activation and wishes the Order to instead activate at 8:20 a.m. ET, it must either have another port set

Orders with a RTFY or SCAN Order Attribute entered prior to 8:00 a.m. ET that are not designated to activate immediately are held by the System until 8:00 a.m. ET, at which time they become active. During Market Hours¹⁵ and Post-Market Hours,¹⁶ Orders with a RTFY or SCAN Order Attribute are generally elected to become active upon entry. The Exchange is proposing to provide members with greater control over their Orders with RTFY and SCAN Order Attributes by allowing members to designate when such Orders become active at any point during the Pre-Market Hours. Accordingly, the Exchange is amending Rule 4703(a) and paragraph (7) thereunder to state that Orders with a RTFY or SCAN Order Attribute may be active upon entry or at a time designated by the member during Pre-Market Hours. The Exchange is also stating under Rule 4703(a)(7) that Orders with a RTFY or SCAN Order Attribute may be designated to activate at any time during Pre-Market Hours on the same day.¹⁷ Thus, an Order with a RTFY or SCAN Order Attribute not designated to become active immediately may be designated to activate during Pre-Market Hours of the day on which the Order was entered.

for activation at 8:20 a.m. ET or alternatively enter the Order at that time for immediate activation.

¹⁵ See Rule 4701(g).

¹⁶ Id.

¹⁷ Id.

The Exchange will implement the proposed changes upon approval by the Commission.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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, by providing members with greater control over their Orders with a RTFY or SCAN Order Attribute and more flexibility to carry out their investment strategies. Currently, market participants are limited by the time at which their RTFY and SCAN Orders may activate. The proposed rule change removes this limitation by allowing a member to designate the precise time at which it wishes the Order to become active during Pre-Market Hours. Having more control over their Orders will help members better manage their customers' needs based on market conditions. The Exchange notes that a member may currently replicate what is being proposed by entering an Order with a RTFY or SCAN Order Attribute precisely at the time during Pre-Market Hours that they wish it to become active during that trading session; however, some members have greater difficulty entering Orders at the precise time they wish it to activate than others due to the nature of their Order flow and technical limitations. Consequently, such members have used the 8:00 a.m. ET activation time as a means to achieve this. The proposed change merely frees

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

members from having to time their Order entry to achieve their investment goals. Currently, members may cancel an Order with a RTFY or SCAN Order Attribute at any time before it activates at 8 a.m. ET. Under the proposed change, members may cancel their inactive Orders with a RTFY or SCAN Order Attribute at any time prior to the time it activates in Pre-Market Hours, thus allowing them to react to market conditions that may cause them to violate their obligation of best execution, as discussed below, to their customers should the Order activate and execute. Similarly, members may cancel their active Orders with RTFY or SCAN and enter new RTFY or SCAN Orders to activate at a time during Pre-Market Hours that the members believe will better satisfy their obligation of best execution.

As is the case with the current functionality, members must monitor market conditions to ensure compliance with best execution obligations²⁰ for their Orders with a RTFY or SCAN Order Attribute. FINRA Rule 5310(a)(1)²¹ provides that a member must use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. FINRA Rule 5310(a)(1)(A) states that one of the factors that will be considered in determining whether a member has used “reasonable diligence” is “the character of the market for the security (e.g., price, volatility, relative liquidity,

²⁰ A member’s best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed intentionally as the member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

²¹ Rule 5310A requires Nasdaq members to comply with FINRA Rule 5310 as if the Rule were part of Nasdaq’s Rules.

and pressure on available communication).”²² Under the proposed change, the time between Order entry and activation may be longer than is currently the case, thus requiring a member to remain diligent for a greater period of time.

The Exchange believes that members will be accustomed to this additional analysis in determining when to participate during Pre-Market Hours. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution..., the speed of execution and the trading characteristics of the security, together with other non-price factors such as reliability and service.²³

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market structure,²⁴ including the use of the currently available Market Hours Time-in-Force instruction. However, similar to why a member may use the Market Hours Time-in-

²² These characteristics are reflected in the disclosure requirements mandated by Rule 4631 before a member may accept an order from a customer for execution in Pre-Market Hours or Post-Market Hours or post-market session.

²³ See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) (“Disclosure of Order Execution and Routing Practices release”).

²⁴ The Commission has also indicated a member’s best execution obligation may not be satisfied simply by obtaining the best bid or offer (“BBO”). See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (“Order Executions Obligations release”). While a member may seek the most favorable terms reasonably available under the circumstances of the transaction, such terms may not necessarily in every case be the best price available. Id. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

Force instruction, a member may wish to forgo a possible execution during Pre-Market Hours or Post-Market Hours if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of Market Hours.²⁵ Applicable best execution guidance contains no formulaic mandate as to whether or how brokers should direct orders. The optionality created by the proposed rule change simply represents one tool available to members in order to meet their best execution obligations.

The Exchange is proposing to amend Rule 4703(a) to allow members to designate when an Order with a RTFY or SCAN Order Attribute will be activated during Pre-Market Hours. As of the time that an Order with a RTFY or SCAN Order Attribute is activated, the Exchange would subject Orders that are eligible for display or execution to all of the Exchange's standard regulatory checks, as it currently does with all orders upon entry. These checks include compliance with Regulation NMS,²⁶ Regulation SHO,²⁷ as well as relevant Exchange rules.²⁸

Last, the Exchange reminds Members of their regulatory obligations when submitting an Order with a RTFY or SCAN Order Attribute. The Market Access Rule under Rule 15c3-5 of the Act requires broker-dealers to, among other things, implement

²⁵ Rule 4631 requires members make certain disclosures to their customers prior to accepting an order for execution outside of Market Hours. These disclosures include, among other things, the risk of lower liquidity, higher volatility, wider spreads, and changing prices in extended hours trading as compared to regular market hours. See Rule 4631(1) – (7).

²⁶ 17 CFR 242.610 - 611.

²⁷ 17 CFR 242.200 - 204.

²⁸ See, e.g., Rule 4763.

regulatory risk management controls and procedures that are reasonably designed to prevent the entry of Orders that fail to comply with regulatory requirements that apply on a pre-Order entry basis.²⁹ These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO³⁰ and Regulation NMS.³¹ In accordance with the Market Access Rule, a member's procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the Order is routed to the Exchange, but also at the time the Order is activated and becomes eligible for execution.

With this change, and as is currently the case, all Nasdaq members may use the SCAN Order Attribute, and all Nasdaq members may use the RTFY Order Attribute if they meet its requirements.³² Thus, the proposed change will benefit all members that

²⁹ See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7-03-10).

³⁰ See 17 CFR 242.200 – 204. See also Questions and Answers 2.5 – 2.6 of the Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Regulation SHO (“Reg SHO FAQs”) (requiring a seller, among other things, to accurately mark orders based on the seller's net position at the time of order entry and not requiring the seller to remark pending sell orders to reflect changes in the seller's net position in the security after order entry but prior to execution unless there is a change to increase the quantity, change the price, or cancel and replace the pending sell order), available at <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>. The Exchange notes that trading centers, such as Nasdaq, have obligations under Rule 201 of Regulation SHO, including written policies and procedures reasonably designed to prevent the execution or display of a short sale order at an impermissible price, even where the seller changes the price of a pending order after order entry but prior to execution. See, e.g., Question and Answer 2.6, Reg SHO FAQs.

³¹ 17 CFR 240.610 - 611.

³² As set forth in Rule 4758(a)(1)(A), RTFY is a routing option available for an order that qualifies as a Designated Retail Order. Rule 7018 defines a Designated Retail Order as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to

may use, or are eligible to use, SCAN or RTFY Order Attributes by removing a limitation, and by providing more choice over their market participation.

The Exchange believes that it is equitable to limit the proposed change to RTFY or SCAN Orders because of the nature of the members that use these Order types with the current order activation delay. Currently, members that enter Orders with a RTFY or SCAN Order Attribute with delayed activation tend to represent customers on an agency basis – for example, individual retail investors.³³ The Exchange has become aware that the proposed functionality would ease burdens associated with entering members' agency Orders with these Routing Order Attributes. Members that handle agency Orders typically have a significant number of such Orders that must be activated in the System at the same time, but may not have functionality that allows them to send large numbers of RTFY and SCAN Orders to the Exchange for execution at a designated time. These members currently may only take advantage of the 8 a.m. ET activation time, however, 8 a.m. ET may not be the time at which the members believe is best to satisfy their obligations to their customers. Consequently, the Exchange is proposing to apply the proposed change to Orders with a RTFY or SCAN Order Attribute. Should the Exchange become aware of other Routing Order Attributes that would also benefit from the

Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

³³ RTFY, by definition, is entered on behalf of retail customers, whereas the Orders with a SCAN Order Attribute are entered on behalf of a wide array of customer, including retail customers. Consequently, although the proposed change will relieve burdens placed on members using both RTFY and SCAN, it will beneficially impact SCAN Orders more so than RTFY Orders.

flexibility proposed herein, it will consider filing a rule change to expand the time during which such Orders may be designated to become active.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All Nasdaq members may use the SCAN Order Attribute, and Nasdaq members may use the RTFY Order Attribute if they meet its requirements. Any member that may use, or is eligible to use, Orders with RTFY or SCAN Order Attributes may avail itself of the proposed change. The Exchange believes that the proposed rule change promotes competition by removing a restriction on the use of two Order Attributes, thereby making the process of entering Orders with RTFY and SCAN Order Attributes more efficient and less burdensome on members. Members may not have functionality that allows them to send large numbers of RTFY and SCAN Orders to the Exchange for execution at a designated time. As discussed above, such members may enter RTFY and SCAN Orders for immediate execution or send them to the Exchange for execution at 8 a.m. ET, relying on the Exchange to queue and activate these Orders at this single time. The Exchange is proposing to allow such queuing and activation done by the Exchange to occur at any time during Pre-Market Hours, since the Exchange can better handle the large number of queued Orders received by certain members. Consequently, the proposed change eliminates the burden that affects these members, but will also allow any other member that currently queues RTFY and SCAN Orders for activation at a precise time to use the Exchange for this functionality instead. Should the Exchange find a similar burden placed on members using other Orders, it may extend the proposed activation functionality to other such Orders through rulemaking. The Exchange notes that

providing members greater efficiency and control over their trading may make Nasdaq a more attractive venue, which may, in turn, cause other markets to consider similar changes that would remove unnecessary restrictions to the benefit of their members. For these reasons, the Exchange believes that the proposed change will not impose any burden on competition, but rather will reduce burdens, as described above.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not Applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
4. Amended text of the proposed rule change.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. _____ ; File No. SR-NASDAQ-2017-088)

December __, 2017

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rule 4703(a) to Allow Members to Designate when an Order with a RTFY or SCAN Routing Order Attribute will be Activated during Pre-Market Hours

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on December 13, 2017, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, 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 Rule 4703(a) to allow members to designate when an Order with a RTFY or SCAN routing Order Attribute will be activated during Pre-Market Hours. This Amendment No. 1 supersedes the original filing in its entirety.

The text of the proposed 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to amend Rule 4703(a) to allow members to designate when an Order with a RTFY or SCAN routing Order Attribute³ will be activated. RTFY is a routing option available for an order that qualifies as a Designated Retail Order⁴ under which orders check the System⁵ for available shares only if so instructed by the

³ The term "Order" means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. See Rule 4701(e).

⁴ As defined by Rule 7018.

⁵ As defined by Rule 4701(a).

entering firm and are thereafter routed to destinations on the System routing table.⁶ If shares remain unexecuted after routing, they are posted to the book.⁷ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.⁸ RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. SCAN is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table.⁹ If shares remain un-executed after routing, they are posted on the book.¹⁰ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.¹¹

Rule 4703 provides the various Order Attributes that may be assigned to Orders entered into the System. All Orders have a Time-in-Force,¹² during which the Order is active. During Pre-Market Hours,¹³ members usually select one of two options

⁶ See Rule 4758(a)(1)(A)(v)b.

⁷ Id.

⁸ Id.

⁹ See Rule 4758(a)(1)(A)(iv).

¹⁰ Id.

¹¹ Id.

¹² All Times-in-Force described in Rule 4703(a) are applicable to RTFY and SCAN.

¹³ The term “Pre-Market Hours” means the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term “Market Hours” means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when

concerning when an Order with a RTFY or SCAN Order Attribute may become active – upon entry or at single designated time, which is currently 8:00 a.m. ET.¹⁴ That is, Orders with a RTFY or SCAN Order Attribute entered prior to 8:00 a.m. ET that are not designated to activate immediately are held by the System until 8:00 a.m. ET, at which time they become active. During Market Hours¹⁵ and Post-Market Hours,¹⁶ Orders with a RTFY or SCAN Order Attribute are generally elected to become active upon entry. The Exchange is proposing to provide members with greater control over their Orders with RTFY and SCAN Order Attributes by allowing members to designate when such Orders become active at any point during the Pre-Market Hours. Accordingly, the Exchange is amending Rule 4703(a) and paragraph (7) thereunder to state that Orders with a RTFY or SCAN Order Attribute may be active upon entry or at a time designated by the member during Pre-Market Hours. The Exchange is also stating under Rule 4703(a)(7) that Orders with a RTFY or SCAN Order Attribute may be designated to

Nasdaq closes early). The term “Post-Market Hours” means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET. The term “System Hours” means the period of time beginning at 4:00 a.m. ET and ending at 8:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). See Rule 4701(g).

¹⁴ The designation to become active at 8:00 a.m. ET is a port level setting, and not Order by Order. The Exchange will likewise only offer the proposed functionality on a port level basis. As a consequence, if, for example, a member cancels an Order entered through a port set for 8:00 a.m. ET activation and wishes the Order to instead activate at 8:20 a.m. ET, it must either have another port set for activation at 8:20 a.m. ET or alternatively enter the Order at that time for immediate activation.

¹⁵ See Rule 4701(g).

¹⁶ Id.

activate at any time during Pre-Market Hours on the same day.¹⁷ Thus, an Order with a RTFY or SCAN Order Attribute not designated to become active immediately may be designated to activate during Pre-Market Hours of the day on which the Order was entered.

The Exchange will implement the proposed changes upon approval by the Commission.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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, by providing members with greater control over their Orders with a RTFY or SCAN Order Attribute and more flexibility to carry out their investment strategies. Currently, market participants are limited by the time at which their RTFY and SCAN Orders may activate. The proposed rule change removes this limitation by allowing a member to designate the precise time at which it wishes the Order to become active during Pre-Market Hours. Having more control over their Orders will help members better manage their customers' needs based on market conditions. The Exchange notes that a member may currently replicate what is being proposed by entering an Order with a RTFY or SCAN Order

¹⁷ Id.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

Attribute precisely at the time during Pre-Market Hours that they wish it to become active during that trading session; however, some members have greater difficulty entering Orders at the precise time they wish it to activate than others due to the nature of their Order flow and technical limitations. Consequently, such members have used the 8:00 a.m. ET activation time as a means to achieve this. The proposed change merely frees members from having to time their Order entry to achieve their investment goals.

Currently, members may cancel an Order with a RTFY or SCAN Order Attribute at any time before it activates at 8 a.m. ET. Under the proposed change, members may cancel their inactive Orders with a RTFY or SCAN Order Attribute at any time prior to the time it activates in Pre-Market Hours, thus allowing them to react to market conditions that may cause them to violate their obligation of best execution, as discussed below, to their customers should the Order activate and execute. Similarly, members may cancel their active Orders with RTFY or SCAN and enter new RTFY or SCAN Orders to activate at a time during Pre-Market Hours that the members believe will better satisfy their obligation of best execution.

As is the case with the current functionality, members must monitor market conditions to ensure compliance with best execution obligations²⁰ for their Orders with a RTFY or SCAN Order Attribute. FINRA Rule 5310(a)(1)²¹ provides that a member must

²⁰ A member's best execution obligation may also include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers where the execution of their order may be delayed intentionally as the member utilizes reasonable diligence to ascertain the best market for the security. See FINRA Rule 5130. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

²¹ Rule 5310A requires Nasdaq members to comply with FINRA Rule 5310 as if the Rule were part of Nasdaq's Rules.

use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. FINRA Rule 5310(a)(1)(A) states that one of the factors that will be considered in determining whether a member has used “reasonable diligence” is “the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communication).”²² Under the proposed change, the time between Order entry and activation may be longer than is currently the case, thus requiring a member to remain diligent for a greater period of time.

The Exchange believes that members will be accustomed to this additional analysis in determining when to participate during Pre-Market Hours. The regulatory guidance with respect to best execution anticipates the continued evolution of execution venues:

[B]est execution is a facts and circumstances determination. A broker-dealer must consider several factors affecting the quality of execution, including, for example, the opportunity for price improvement, the likelihood of execution..., the speed of execution and the trading characteristics of the security, together with other non-price factors such as reliability and service.²³

To the extent there may be best execution obligations at issue, they are no different than the best execution obligations faced by brokers in the current market

²² These characteristics are reflected in the disclosure requirements mandated by Rule 4631 before a member may accept an order from a customer for execution in Pre-Market Hours or Post-Market Hours or post-market session.

²³ See Securities Exchange Act Release No. 43950 (November 17, 2000), 65 FR 75414 (December 1, 2000) (“Disclosure of Order Execution and Routing Practices release”).

structure,²⁴ including the use of the currently available Market Hours Time-in-Force instruction. However, similar to why a member may use the Market Hours Time-in-Force instruction, a member may wish to forgo a possible execution during Pre-Market Hours or Post-Market Hours if they believe doing so is consistent with their best execution obligations as they anticipate that the market for the security may improve upon the start of Market Hours.²⁵ Applicable best execution guidance contains no formulaic mandate as to whether or how brokers should direct orders. The optionality created by the proposed rule change simply represents one tool available to members in order to meet their best execution obligations.

The Exchange is proposing to amend Rule 4703(a) to allow members to designate when an Order with a RTFY or SCAN Order Attribute will be activated during Pre-Market Hours. As of the time that an Order with a RTFY or SCAN Order Attribute is activated, the Exchange would subject Orders that are eligible for display or execution to all of the Exchange's standard regulatory checks, as it currently does with all orders upon

²⁴ The Commission has also indicated a member's best execution obligation may not be satisfied simply by obtaining the best bid or offer ("BBO"). See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Executions Obligations release"). While a member may seek the most favorable terms reasonably available under the circumstances of the transaction, such terms may not necessarily in every case be the best price available. Id. See also FINRA Regulatory Notice 15-46, Best Execution. Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets, (November 2015).

²⁵ Rule 4631 requires members make certain disclosures to their customers prior to accepting an order for execution outside of Market Hours. These disclosures include, among other things, the risk of lower liquidity, higher volatility, wider spreads, and changing prices in extended hours trading as compared to regular market hours. See Rule 4631(1) – (7).

entry. These checks include compliance with Regulation NMS,²⁶ Regulation SHO,²⁷ as well as relevant Exchange rules.²⁸

Last, the Exchange reminds Members of their regulatory obligations when submitting an Order with a RTFY or SCAN Order Attribute. The Market Access Rule under Rule 15c3-5 of the Act requires broker-dealers to, among other things, implement regulatory risk management controls and procedures that are reasonably designed to prevent the entry of Orders that fail to comply with regulatory requirements that apply on a pre-Order entry basis.²⁹ These pre-trade controls must, for example, be reasonably designed to assure compliance with Exchange trading rules and Commission rules under Regulation SHO³⁰ and Regulation NMS.³¹ In accordance with the Market Access Rule, a

²⁶ 17 CFR 242.610 - 611.

²⁷ 17 CFR 242.200 - 204.

²⁸ See, e.g., Rule 4763.

²⁹ See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File no. S7-03-10).

³⁰ See 17 CFR 242.200 – 204. See also Questions and Answers 2.5 – 2.6 of the Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Regulation SHO (“Reg SHO FAQs”) (requiring a seller, among other things, to accurately mark orders based on the seller’s net position at the time of order entry and not requiring the seller to remark pending sell orders to reflect changes in the seller’s net position in the security after order entry but prior to execution unless there is a change to increase the quantity, change the price, or cancel and replace the pending sell order), available at <https://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm>. The Exchange notes that trading centers, such as Nasdaq, have obligations under Rule 201 of Regulation SHO, including written policies and procedures reasonably designed to prevent the execution or display of a short sale order at an impermissible price, even where the seller changes the price of a pending order after order entry but prior to execution. See, e.g., Question and Answer 2.6, Reg SHO FAQs.

³¹ 17 CFR 240.610 - 611.

member's procedures must be reasonably designed to ensure compliance with their applicable regulatory requirements, not just at the time the Order is routed to the Exchange, but also at the time the Order is activated and becomes eligible for execution.

With this change, and as is currently the case, all Nasdaq members may use the SCAN Order Attribute, and all Nasdaq members may use the RTFY Order Attribute if they meet its requirements.³² Thus, the proposed change will benefit all members that may use, or are eligible to use, SCAN or RTFY Order Attributes by removing a limitation, and by providing more choice over their market participation.

The Exchange believes that it is equitable to limit the proposed change to RTFY or SCAN Orders because of the nature of the members that use these Order types with the current order activation delay. Currently, members that enter Orders with a RTFY or SCAN Order Attribute with delayed activation tend to represent customers on an agency basis – for example, individual retail investors.³³ The Exchange has become aware that the proposed functionality would ease burdens associated with entering members' agency Orders with these Routing Order Attributes. Members that handle agency Orders typically have a significant number of such Orders that must be activated in the System at

³² As set forth in Rule 4758(a)(1)(A), RTFY is a routing option available for an order that qualifies as a Designated Retail Order. Rule 7018 defines a Designated Retail Order as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

³³ RTFY, by definition, is entered on behalf of retail customers, whereas the Orders with a SCAN Order Attribute are entered on behalf of a wide array of customer, including retail customers. Consequently, although the proposed change will relieve burdens placed on members using both RTFY and SCAN, it will beneficially impact SCAN Orders more so than RTFY Orders.

the same time, but may not have functionality that allows them to send large numbers of RTFY and SCAN Orders to the Exchange for execution at a designated time. These members currently may only take advantage of the 8 a.m. ET activation time, however, 8 a.m. ET may not be the time at which the members believe is best to satisfy their obligations to their customers. Consequently, the Exchange is proposing to apply the proposed change to Orders with a RTFY or SCAN Order Attribute. Should the Exchange become aware of other Routing Order Attributes that would also benefit from the flexibility proposed herein, it will consider filing a rule change to expand the time during which such Orders may be designated to become active.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All Nasdaq members may use the SCAN Order Attribute, and Nasdaq members may use the RTFY Order Attribute if they meet its requirements. Any member that may use, or is eligible to use, Orders with RTFY or SCAN Order Attributes may avail itself of the proposed change. The Exchange believes that the proposed rule change promotes competition by removing a restriction on the use of two Order Attributes, thereby making the process of entering Orders with RTFY and SCAN Order Attributes more efficient and less burdensome on members. Members may not have functionality that allows them to send large numbers of RTFY and SCAN Orders to the Exchange for execution at a designated time. As discussed above, such members may enter RTFY and SCAN Orders for immediate execution or send them to the Exchange for execution at 8 a.m. ET, relying on the Exchange to queue and activate these Orders at this single time. The Exchange is proposing to allow such queuing and activation done by the Exchange to occur at any

time during Pre-Market Hours, since the Exchange can better handle the large number of queued Orders received by certain members. Consequently, the proposed change eliminates the burden that affects these members, but will also allow any other member that currently queues RTFY and SCAN Orders for activation at a precise time to use the Exchange for this functionality instead. Should the Exchange find a similar burden placed on members using other Orders, it may extend the proposed activation functionality to other such Orders through rulemaking. The Exchange notes that providing members greater efficiency and control over their trading may make Nasdaq a more attractive venue, which may, in turn, cause other markets to consider similar changes that would remove unnecessary restrictions to the benefit of their members. For these reasons, the Exchange believes that the proposed change will not impose any burden on competition, but rather will reduce burdens, as described above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-NASDAQ-2017-088 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2017-088. 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 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-2017-088 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.³⁴

Eduardo A. Aleman
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Amendment No. 1 is underlined; proposed deletions in this Amendment No. 1 are in brackets.

The Nasdaq Stock Market Rules

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4703. Order Attributes

As described in Rule 4702, the following Order Attributes may be assigned to those Order Types for which they are available.

(a) Time-in-Force

The “Time-in-Force” assigned to an Order means the period of time that the Nasdaq Market Center will hold the Order for potential execution. Participants specify an Order’s Time-in-Force by designating a time at which the Order will become active and a time at which the Order will cease to be active. The available times for activating Orders are:

- The time of the Order’s receipt by the Nasdaq Market Center;
- the Nasdaq Opening Cross (or 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs);
- Market Hours, beginning after the completion of the Nasdaq Opening Cross (or at 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs);
- the Nasdaq Closing Cross (or the end of Market Hours in the case of a security for which no Nasdaq Closing Cross occurs);
- upon entry or at a specific time during Pre-Market Hours identified by the Participant, in the case of an Order using the SCAN or RTFY routing strategy;
- the beginning of the Display-Only Period, in the case of a security that is the subject of a trading halt and for which trading will resume pursuant to a halt cross; and
- the resumption of trading, in the case of a security that is the subject of a trading halt and for which trading resumes without a halt cross.

The available times for deactivating Orders are:

- “Immediate” (i.e., immediately after determining whether the Order is marketable);

- the end of Market Hours;
- the end of System Hours;
- one year after entry; or
- a specific time identified by the Participant; provided, however, that an Order specifying an expire time beyond the current trading day will be cancelled at the end of the current trading day.

Notwithstanding the Time-in-Force originally designated for an Order, a Participant may always cancel an Order after it is entered.

The following Times-in-Force are referenced elsewhere in Nasdaq's Rules by the designations noted below:

(1) – (6) No change.

(7) A Participant entering an Order using the SCAN or RTFY routing strategy may designate the Order to activate upon entry, or at any time during [System]Pre-Market Hours on the same day.

(b) – (m) No change.

* * * * *

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market Rules

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4703. Order Attributes

As described in Rule 4702, the following Order Attributes may be assigned to those Order Types for which they are available.

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- The time of the Order’s receipt by the Nasdaq Market Center;
- the Nasdaq Opening Cross (or 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs);
- Market Hours, beginning after the completion of the Nasdaq Opening Cross (or at 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs);
- the Nasdaq Closing Cross (or the end of Market Hours in the case of a security for which no Nasdaq Closing Cross occurs);
- [8:00 a.m. ET]upon entry or at a specific time during Pre-Market Hours identified by the Participant, in the case of an Order using the SCAN or RTFY routing strategy[that is entered prior to 8:00 a.m. ET];
- the beginning of the Display-Only Period, in the case of a security that is the subject of a trading halt and for which trading will resume pursuant to a halt cross; and
- the resumption of trading, in the case of a security that is the subject of a trading halt and for which trading resumes without a halt cross.

The available times for deactivating Orders are:

- “Immediate” (i.e., immediately after determining whether the Order is marketable);
- the end of Market Hours;

- the end of System Hours;
- one year after entry; or
- a specific time identified by the Participant; provided, however, that an Order specifying an expire time beyond the current trading day will be cancelled at the end of the current trading day.

Notwithstanding the Time-in-Force originally designated for an Order, a Participant may always cancel an Order after it is entered.

The following Times-in-Force are referenced elsewhere in Nasdaq's Rules by the designations noted below:

(1) – (6) No change.

(7) A Participant entering an Order using the SCAN or RTFY routing strategy [prior to 8:00 a.m. ET]may designate the Order to activate upon entry, or at any time during Pre-Market Hours on the same day[8:00 a.m. ET].

(b) – (m) No change.

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