

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77454; File No. SR-NASDAQ-2016-039)

March 28, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Maximum Number of Times an Order on Nasdaq may be Updated before the System Cancels the Order

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 March 16, 2016, 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, II, and III, 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 Substance of the Proposed Rule Change

Nasdaq proposes to proposal [sic] to modify the maximum number of times an Order on Nasdaq may be updated before the System cancels the Order.

The text of the proposed rule change is available on Nasdaq’s website at <http://nasdaq.cchwallstreet.com>, at the principal office of Nasdaq, 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 Item IV

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Background

Nasdaq will cancel an Order if it is updated a certain number of times during any given day. Pursuant to Rule 4702(a), an Order will be cancelled if it is repriced and/or reentered 10,000 times for any reason.³

Pursuant to Rule 4702(b)(7)(A), a Market Maker Peg Order will be canceled if it is repriced 1,000 times. Pursuant to Rule 4703(d), an Order with Primary Pegging will be cancelled if it is updated 1,000 times, and an Order with Market Pegging will be cancelled if it is updated 10,000 times.

Nasdaq applies these limits to conserve System resources by limiting the persistence of Orders that update repeatedly without execution. These limits are applied daily to each order entered into the System. Orders that have a Time-in-Force⁴ that allows them to persist longer than a single trading day will have their count reset each day. For example, if an Order with a Time-in-Force of Good-till-Canceled⁵ is repriced 9,999 times during any given day, the Order

³ Orders entered through OUCH and FLITE ports generally are not repriced or reentered. As explained in rule 4702(b)(1)(B), orders entered through OUCH and FLITE may be updated for display once. Further, OUCH and FLITE Orders may only be decremented in size, which is not considered repricing or reentry of the Order. See <http://www.nasdaqtrader.com/Trader.aspx?id=TradingSpecs> for a description of the various order entry port specifications.

⁴ 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. See Rule 4703(a).

⁵ An Order that is designated to deactivate one year after entry may be referred to as a “Good-till-Canceled.” See Rule 4703(a)(3).

will not be canceled due to the number of updates. Starting the next day, the Order would be again allowed to reprice up to 9,999 times before it would be canceled by the System.

Proposed Changes

First, Nasdaq is proposing to eliminate rule text under Rules 4702(a), 4702(b)(7)(A), and 4703(d) concerning cancellation based on Order updates and consolidate the concept under a new Rule 4756(a)(4).

Second, Nasdaq is proposing to no longer state the specific number of times a particular Order Type may be updated before it is canceled in the new rule and is, instead, noting that the number of permissible changes may vary by Order Type or Order Attribute and may change from time to time. Further, the proposed rule will note that Nasdaq will post on its website what is considered a change for a particular Order Type and Order Attribute, and the current limits on the number of such changes.

Nasdaq is changing the process by which it counts updates, which will allow it to identify a wider range of updates to an Order. Using the new process, Nasdaq will be able to track the following Order updates: (1) System-generated child orders; (2) display size refreshes from reserve; (3) replaces of System-generated child Orders (which include Orders with a Pegging Attribute); and (4) cancellation requests of System-generated child Orders. Nasdaq notes that all updates identified by the current process will be counted under the new process. Nasdaq believes these changes will provide it with greater flexibility in addressing changes in volume, market participant behavior, and Nasdaq's capacity to handle the message volume caused by Orders that update a significant number of times throughout the trading day.

Nasdaq will provide at least one day's advanced notice to the public of any changes to the number of updates permitted before an Order is canceled. Initially, Nasdaq will keep the number

of updates consistent with what is currently noted in the rules; however, Nasdaq may shortly thereafter change the number of updates as needed to address market conditions.

Nasdaq is also making two minor technical corrections to Rule 4703(d) to remove an erroneous quote from the rule text.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(5) of the Act,⁷ in particular, because 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Excessive updating of Orders places a burden on Nasdaq's System, which, if left unchecked, could potentially affect overall market quality. Nasdaq will continue canceling Orders that reach a certain number of updates but, instead of the static number of updates stated in the rules, Nasdaq is proposing to provide the number of updates by Order type or Order Attribute on its public website. Website posting will allow Nasdaq to react more quickly to changes in the marketplace by changing the applicable number of updates that will trigger cancellation of an Order. Nasdaq will provide advanced notice to market participants of any changes to the number of updates applied. Thus, the proposed rule change will further promote the protection investors [sic] and the public interest.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

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.⁸ Nasdaq is proposing to make the change because it will allow it to better manage market quality for all market participants, who would be negatively impacted by issues caused by Orders that tax System resources due to the excessive number of updates.

These adjustments will not impact competition among market participants because the cancellation parameters will apply equally to all market participants. As is the case now, market participants that have an Order canceled due to the number of updates may enter a new replacement Order. Thus, Nasdaq does not think that the proposed change will place a burden on competition not necessary or appropriate in furtherance of the Act.

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

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)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

⁸ 15 U.S.C. 78f(b)(8).

⁹ 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

¹⁰ 17 CFR 240.19b-4(f)(6). 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,

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2016-039 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-2016-039. 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

or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2016-039 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.¹¹

Robert W. Errett
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).