

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80216; File No. SR-NASDAQ-2017-028)

March 10, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4703 and Rule 4753

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 8, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4703 (Order Attributes) to specify the behavior of locked or crossed Orders during the Nasdaq Opening or Closing Cross. Nasdaq also proposes to make a corresponding change to Rule 4753, which governs the Halt Cross.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq proposes to amend Rule 4703 (Order Attributes) to specify the behavior of locked or crossed Orders during the Nasdaq Opening or Closing Cross in light of recent changes to its Post-Only Order functionality. Nasdaq also proposes to make a corresponding change to Rule 4753, which governs the Halt Cross.

Rule 4703(l) describes the application of the Nasdaq Opening and Closing Cross to Nasdaq Order Types. Rule 4703(l) states that all Order Types, except Supplemental Orders, Retail Orders, and RPI Orders participate in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross if the Order has a Time-in-Force that would cause the Order to be in effect at the time of the Nasdaq Opening Cross and/or Nasdaq Closing Cross. Market on Open (“MOO”) Orders, Limit On Open (“LOO”) Orders, and IOI Orders participate in the Nasdaq Opening Cross in the manner specified in Rule 4752 (Opening Process). Other Order Types eligible to participate in the Nasdaq Opening Cross operate as “Market Hours Orders” or “Open Eligible Interest” as specified in Rule 4752. MOC Orders, LOC Orders and IO Orders participate in the Nasdaq Closing Cross in the manner specified in Rule 4754 (Nasdaq Closing Cross). Other Order Types eligible to participate in the Nasdaq Closing Cross operate as “Close Eligible Interest” in the manner specified in Rule 4754.

Nasdaq proposes to add language to Rule 4703(l) to specify the treatment of Orders that are locked or crossed during the Opening or Closing Cross. Specifically, for purposes of selecting the Nasdaq Opening Cross or Closing Cross price, an Order to buy (sell) that is locked

or crossed at its non-displayed price by a Post-Only Order on the Nasdaq Book shall be deemed to have a price at one minimum price increment below (above) the price of the Post-Only Order. This functionality will impact Non-Displayed Orders, Post-Only Orders, Price to Comply Orders and Midpoint Peg Post-Only Orders when the non-displayed price of that Order is locked or crossed by a Post-Only Order.³ Thus, a Non-Displayed Order to buy that is locked by a Post-Only Order to sell at \$11.03 would be deemed to have a price of \$11.02 for purposes of selecting the Cross price. Nasdaq is proposing to re-price the non-displayed price of an Order that is locked or crossed, rather than the Post-Only Order, because re-pricing a non-displayed Order will produce less market impact than re-pricing an order that is already displayed.

The same functionality will apply to Orders that are locked or crossed during the Nasdaq Halt Cross.⁴ Accordingly, Nasdaq proposes to add Rule 4753(d), which states that, for purposes of selecting the Nasdaq Halt Cross price, an Order to buy (sell) that is locked or crossed at its non-displayed price by a Post-Only Order on the Nasdaq Book prior to the trading halt shall be deemed to have a price at one minimum price increment below (above) the price of the Post-Only Order.

The proposed change supplements the recently-approved changes to the Post-Only Order and the resulting modifications to Nasdaq systems.⁵ The change also reflects the intent of the

³ In this scenario, the Post-Only Order would have locked or crossed the Non-Displayed Order, Post-Only Order, Price to Comply Order, or Midpoint Peg Post-Only Order at its non-displayed price upon entry if the value of price improvement associated with executing against the Order is not met.

⁴ The Halt Cross is defined as the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. See Rule 4753(a)(4).

⁵ See Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR-NASDAQ-2016-111). Nasdaq initially proposed to implement the new Post-Only functionality on November 21, 2016. See Equity Trader Alert #2016-291. However, following testing, Nasdaq has decided to delay the

Nasdaq Opening and Closing Cross functionality, which currently prices buy (sell) Opening Imbalance Only (“OIO”) Orders and Imbalance Only (“IO”) Orders to the highest bid (lowest offer) on the Nasdaq Book (but not beyond the Order’s stated limit price), and prevents buy and sell OIO and IO Orders from being priced at the same price and executing against each other.

The change is also similar to the treatment of Post-Only Orders with Midpoint Pegging during the Opening Cross, Closing Cross and Halt Cross.⁶ Rule 4702(b)(5)(A) provides that, for purposes of any cross in which a Midpoint Peg Post-Only Order participates, a Midpoint Peg Post-Only Order to buy (sell) that is locking a preexisting Order shall be deemed to have a price

implementation of this new functionality to provide additional time for systems testing. The new functionality shall be implemented no later than March 31, 2017. See Securities Exchange Act Release No. 80045 (February 15, 2017), 82 FR 11389 (February 22, 2017) (SR-NASDAQ-2017-013). Under the new Post-Only functionality, the behavior of Post-Only orders would be altered when the adjusted price of such orders lock or cross a non-displayed price on the Exchange’s Book. Specifically, if the adjusted price of the Post-Only Order would lock or cross a non-displayed price on the Exchange’s Book, the Post-Only order would be posted in the same manner as a Price to Comply Order. However, the Post-Only Order would execute if (i) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Nasdaq Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Nasdaq Book and subsequently provided liquidity, or (ii) it is priced at \$1.00 or more and the value of price improvement associated with executing against an Order on the Nasdaq Book (as measured against the original limit price of the Order) equals or exceeds \$0.01 per share. Additionally, if the Post-Only Order would not lock or cross a Protected Quotation but would lock or cross a Non-Displayed Order on the Exchange’s Book, the Post-Only Order would be posted, ranked, and displayed at its limit price. The Post-Only Order would execute if (i) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Nasdaq Book equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Nasdaq Book and subsequently provided liquidity, or (ii) it is priced at \$1.00 or more and the value of price improvement associated with executing against an Order on the Nasdaq Book equals or exceeds \$0.01 per share.

⁶ Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the “Midpoint”). Thus, if the Inside Bid was \$11 and the Inside Offer was \$11.06, an Order with Midpoint Pegging would be priced at \$11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price. See Rule 4703(d).

equal to the price of the highest sell Order (lowest buy Order) that would be eligible to execute against the Midpoint Peg Post-Only Order in such circumstances. Thus, a Midpoint Peg Post-Only Order to buy that locked a preexisting Non-Displayed Order to sell at \$11.03 would be deemed to have a price of \$11.02. With this change, Nasdaq will be adopting a similar functionality for an Order that is locked or crossed at its non-displayed price by a Post-Only Order for purposes of the Opening Cross, Closing Cross, and Halt Cross.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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. The proposed change is consistent with the Act because it reflects the intent of the Nasdaq Opening and Closing Cross functionality, which currently prices buy (sell) OIO Orders and IO Orders to the highest bid (lowest offer) on the Nasdaq Book (but not beyond the Order's stated limit price), and prevents buy and sell OIO and IO Orders from being priced at the same price and executing against each other. The proposed change also adopts a re-pricing functionality that is similar to a re-pricing functionality that is currently in effect for Midpoint Peg Post-Only Orders during the Opening Cross, Closing Cross and Halt Cross. Finally, the proposed change supplements the recently-approved changes to the Post-Only Order and the resulting modifications to Nasdaq systems.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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. The proposed change adopts a re-pricing functionality that is similar to a re-pricing functionality that is currently in effect for Midpoint Peg Post-Only Orders during the Opening Cross, Closing Cross and Halt Cross. Moreover, the use of Exchange Order types and attributes is voluntary, and no member is required to use any specific Order type or attribute or even to use any Exchange Order type or attribute or any Exchange functionality at all. If an Exchange member believes for any reason that the proposed rule change will be detrimental, that perceived detriment can be avoided by choosing not to enter or interact with the Order types modified by this proposed rule change. Finally, the proposal will apply equally to all Orders that meet its criteria.

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) of the Act and Rule 19b-4(f)(6) thereunder.⁹

⁹ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange represents that the proposal supplements the recently-approved changes to the Post-Only Order type and the resulting modifications to Nasdaq systems, and that it will implement those previously approved changes no later than March 31, 2017.¹² Waiver of the 30-day operative delay would allow the Exchange to implement the previously approved changes to the Post-Only Order type concurrently with the supplemental changes in this proposal. Accordingly, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² See supra note 5 and accompanying text. The Exchange also notes that the proposed functionality reflects the intent of the Nasdaq Opening and Closing Cross functionality and is similar to a functionality that is currently in effect for Midpoint Peg Post-Only Orders.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2017-028 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2017-028. 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, 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-2017-028 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).