

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85954; File No. SR-NASDAQ-2019-044)

May 29, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Allow an Odd Lot-Sized Order to Be Eligible for the Midpoint Extended Life 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 May 20, 2019, 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 allow an odd lot-sized Order to be eligible for the Midpoint Extended Life Order. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 allow an odd lot³-sized Order⁴ to be eligible for the Midpoint Extended Life Order.⁵ The Midpoint Extended Life Order is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will not be eligible to execute until the Holding Period of one half of a second has passed after acceptance of the Order by the System. Once a Midpoint Extended Life Order becomes eligible to execute, the Order may only execute against other eligible Midpoint Extended Life Orders. Nasdaq adopted the Midpoint Extended Life Order to address the needs of market participants that focus their trading on receiving midpoint execution where time to execution is less important

³ The terms “normal unit of trading” or “round lot” means [sic] the size generally employed by traders when trading a particular security, which is 100 shares in most instances. The term “odd lot” means a size of less than one normal unit of trading. See Rule 4703(b).

⁴ 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).

⁵ See Rule 4702(b)(14).

when working to meet their long term investment needs. Since its implementation in 2018,⁶ the Midpoint Extended Life Order Type has achieved its design expectations. One metric that Nasdaq measures is the change in the NBBO after a Midpoint Extended Life Order executes. In the month of April 2019, the NBBO price was the same as it was prior to a Midpoint Extended Life Order execution approximately 88 – 90 percent of the time one second later. This shows that the executions are generally not impacting the overall market price. Furthermore, Nasdaq believes the sample size is robust as there are approximately 12.5 million shares transacted as Midpoint Extended Life Orders a day.

Currently, a Midpoint Extended Life Order must be entered with a size of at least one round lot and any shares of a Midpoint Extended Life Order remaining after an execution that are less than a round lot will be cancelled by the System. Over the last several years, the number of high priced securities has increased (see Figure 1)

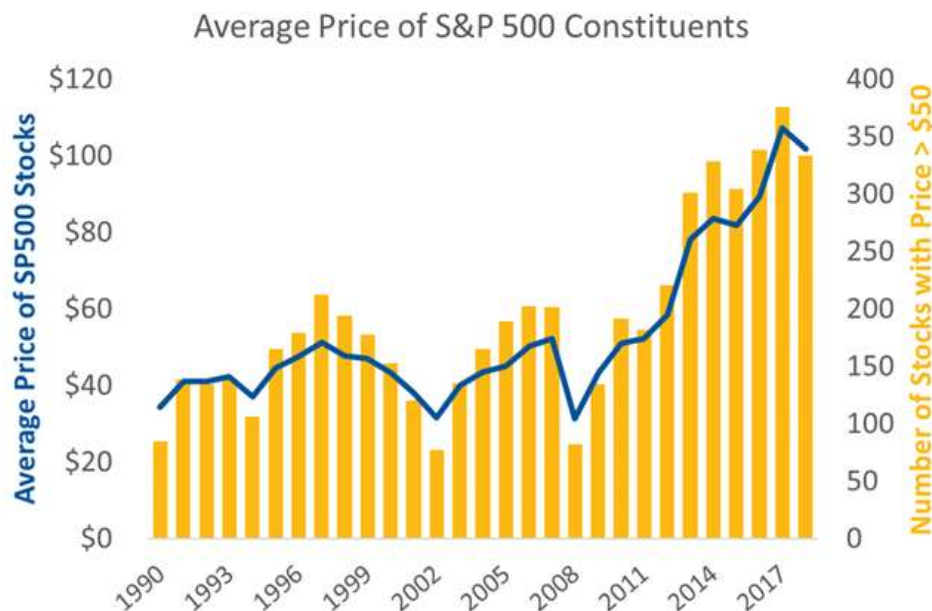


Figure 1 (Source: Nasdaq Economic Research)

⁶ See Securities Exchange Act Release No. 82825 (March 7, 2018), 83 FR 10937 (March 13, 2018) (SR-NASDAQ-2017-074).

and the number of stock splits have decreased (see Figure 2).

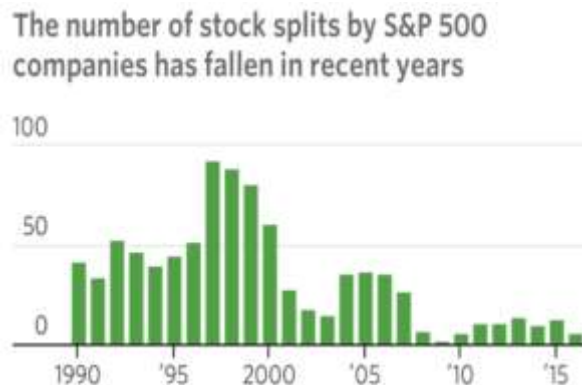


Figure 2 (Source: Nasdaq Economic Research)

There is a notably large percentage of odd lot trades in relatively high priced securities. For example, in October 2018, such transactions accounted for approximately 5 percent of total consolidated volume during the month, and accounted for 30 percent of all transactions occurring in the month across all securities. In contrast, for stocks with a price of \$500 or more during the same timeframe the Exchange observed that 39 percent of total consolidated volume was due to odd lot trades and 85 percent of all transactions occurring in the month were odd lots. Thus, a significant number of higher priced securities have transactions occurring in odd lot transactions. The Exchange believes that allowing entry of odd lot-sized Midpoint Extended Life Orders will eliminate a limitation of the Order and give users more control over their Orders.

In the first quarter of 2019 for example, the Exchange executed approximately 2,000,000 trades in one issuer whose stock has a price greater than \$1,000, with an average trade size of approximately 34 shares. Using this stock's closing price of approximately \$1,700 for March 2019, the notional value of a 34 share trade would be \$56,000. Most would agree that \$56,000 in value does not represent a small trade. For this stock to execute as a Midpoint Extended Life Order, the average trade size would need to triple to achieve the current minimum Order size of 100 shares or one round lot for this particular stock, and as such has only traded 20 times as a

Midpoint Extended Life Order in the first quarter of 2019. Nasdaq believes that eliminating the minimum Order size from the Midpoint Extended Life Order will provide like-minded investors the opportunity to transact in high-priced stocks such as the example above in an ecosystem where the quote remains stable approximately 88 – 90 percent of time one second post-execution,⁷ notably higher than off-exchange venues where the quote remains stable 75 – 80 percent of time one second post-execution based on Nasdaq’s internal assessment.

As of March 12, 2019, there are nearly 550 securities that trade on the Exchange that are priced greater than \$100, 76 securities greater than \$250, 24 securities greater than \$500, and 10 securities over \$1,000. Odd lot Orders account for 46 percent of trades for stocks above \$100, and for securities over \$500 this number rises to over 85 percent. Odd lot transactions now represent a large percentage of trades, yet are ineligible for the Midpoint Extended Life Order, even for transactions that would be identified by many as institutional sized and some even being classified as a block trade.⁸

Nasdaq recognizes that not all participants may desire to execute odd lots. Such participants may elect to use the Minimum Quantity Order Attribute to avoid such transactions, much like they would do for executing on the Nasdaq Book. Nasdaq notes that other exchanges and many Alternative Trading Systems (ATSS) allow for odd lots and customers there use minimum quantity attributes to manage the execution sizes for their orders. The Exchange notes that the Minimum Quantity Order Attribute is limited to Orders of at least one round lot upon entry.⁹ Consequently, members entering odd lot-sized Midpoint Extended Life Orders would not

⁷ As of April 2019.

⁸ See, e.g., <https://otctransparency.finra.org/otctransparency/AtsBlocks> (providing Block Data of \$100,000 transactions and greater).

⁹ See Rule 4703(e).

be able to limit their interaction with other odd lot-sized Midpoint Extended Life Orders based on size, which the Exchange believes is appropriate because members understand the limitation and have made the decision to accept such possible interaction.

In proposing the Midpoint Extended Life Order round lot requirement, the Exchange noted that round lots would promote size and provide members with the most efficient processing of Midpoint Extended Life Orders.¹⁰ This was based on the Exchange's observation at the time that many participants that would likely avail themselves of Midpoint Extended Life Orders tend to route their Orders in round lot sizes, and that many strategies are modeled based on receipt of a round lot execution. Nasdaq has since observed that the members that use Midpoint Extended Life Orders are now modeling strategies based on individual securities or grouping of securities based on attributes such as price, average daily volume, and volatility. Consequently, round lot size is no longer a wide-spread need among users of Midpoint Extended Life Orders. Notwithstanding, as noted above a member may elect to associate a Minimum Quantity Order Attribute with its round lot-sized Midpoint Extended Life Order to avoid interaction with odd lot-sized Midpoint Extended Life Orders, which because of their size may not be attractive as a contra-side Order to some market participants.¹¹ Last, the Exchange notes that most other Order Types under Rule 4702 allow entry of odd lot-sized Orders. Permitting entry of odd lot-sized Midpoint Extended Life Orders will increase liquidity in the Order Type and improve the chances that a Midpoint Extended Life Order will receive an execution for higher priced stocks.

¹⁰ See supra note 6.

¹¹ For example, an odd lot-sized Midpoint Extended Life Order takes on less risk as it rests in the Holding Period for any given security. As noted above, this may not be the case when comparing an odd lot-size Midpoint Extended Life Order in a high priced security and a Midpoint Extended Life Order in a low priced security of a round lot size.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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 allowing for more widespread use of Midpoint Extended Life Orders, particularly in high priced securities. Nasdaq adopted the Midpoint Extended Life Order to address the needs of market participants that focus their trading on receiving midpoint execution where time to execution is less important when working to meet their long term investment needs. As described above, the Exchange believes the proposed change will benefit market participants by expanding the available sizes of orders available which in turn will provide greater opportunities for interaction in higher priced securities in Midpoint Extended Life Orders. The Exchange notes that members with round lot-sized Midpoint Extended Life Orders that are seeking to interact with only other round lot-sized Midpoint Extended Life Orders may do so by applying the Minimum Quantity Order Attribute. Members that have odd lot-sized Midpoint Extended Life Orders are unable to similarly limit the size of Order [sic] with which they interact, since the Minimum Quantity Order Attribute is limited to Orders with a size of at least one round lot. The Exchange believes that this is consistent with the Act because it is the same limitation that all other Orders have with respect to the use of Minimum Quantity Order Attribute and a member may merely enter a round lot-sized Midpoint Extended Life Order with a Minimum Quantity Order Attribute if it does not want to interact with odd lot-sized Midpoint Extended Life Orders. Moreover, the Exchange believes the limitation is consistent with the Act

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

because members understand the limitation and have made the decision to accept possible interaction with Orders of any size. For these reasons, the Exchange believes that the proposed change is consistent with the purposes of the Order Type.

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 Midpoint Extended Life Order was adopted as a pro-competitive measure to improve participation on the Exchange by allowing certain market participants that may currently be underserved on regulated exchanges to compete based on elements other than speed. The proposed change is a natural extension of the original proposal because it broadens interaction opportunities in Midpoint Extended Life Orders, particularly in higher priced stocks, while also ensuring that market participants use the Order Type consistent with its original purposes. In sum, the proposed change will not burden competition but rather may promote competition for liquidity in Midpoint Extended Life Orders by expanding the pool of market participants that may seek to enter such Orders. These market participants may have otherwise found the cost of a round lot Order in the securities in which they desire to trade as Midpoint Extended Life Orders too high. The proposed change will not place a burden on competition among market venues, as any market may adopt an order type that operates like the Midpoint Extended Life Order, including allowing for the execution of odd lot-sized orders, as proposed herein.

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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-2019-044 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-2019-044. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2019-044, 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

Vanessa A. Countryman
Acting Secretary

¹⁴ 17 CFR 200.30-3(a)(12).