

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77226; File No. SR-NASDAQ-2016-023)

February 24, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rules 4702 and 4703

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 February 10, 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 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 a proposed [sic] rule change to amend Rule 4702(b)(9)(B) to harmonize the processing of Orders with a Pegging Attribute or that are designated for routing, which are eligible to participate in the Opening Cross. The Exchange is also proposing to make minor technical corrections to Rules 4702 and 4703.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Background

Rule 4702(b) concerns NASDAQ’s Order Types³ and provides a description of the various Order Attributes⁴ available to NASDAQ Participants.⁵ NASDAQ is proposing to harmonize treatment of Orders with a Pegging Order Attribute and Orders that are designated for routing pursuant to Rule 4758(a) (“Routable Orders”) entered between 9:28 a.m. ET and initiation of the NASDAQ Opening Cross.⁶ The Exchange is also making minor technical corrections to Rules 4702 and 4703.

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 Id.

⁵ See Rule 4701(c).

⁶ See Rule 4752 for a description of NASDAQ’s opening process, including the Opening Cross.

All Order Types, except Supplemental Orders,⁷ participate in the Opening Cross if the Order has a Time-in-Force⁸ that would cause it to be active at the time of the Opening Cross.⁹ Time-in-Force is an Order Attribute¹⁰ selected by the Participant that provides the period of time that the NASDAQ System¹¹ 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. If the Participant enters an Order for participation in the Opening Cross¹² prior to completion thereof and with a Time-in-Force that continues after the time of the Opening Cross, the Order will participate in the Opening Cross like an LOO Order,¹³ while operating thereafter (if unexecuted) in accordance with its designated Order Type and Order Attributes (if not executed in full in the NASDAQ Opening Cross, held by the System as discussed below, or cancelled by the Participant). Such an Order may be referred to as an "Opening Cross/Market Hours Order."

⁷ A Supplemental Order is an Order Type with a Non-Display Order Attribute that is held on the NASDAQ Book in order to provide liquidity at the NBBO through a special execution process described in Rule 4757(a)(1)(D). See Rule 4702(b)(6)(A).

⁸ See Rule 4703(a).

⁹ As described in Rule 4703(l), Market On Open ("MOO") Orders, Limit On Open ("LOO") Orders, and Opening Imbalance Only ("OIO") Orders participate in the NASDAQ Opening Cross in the manner specified in Rule 4752. Other order types eligible to participate in the Opening Cross operate as "Market Hours Orders" or "Open Eligible Interest" as specified in Rule 4752. Rule 4703(l), also notes that Supplemental Orders, Retail Orders, and RPI Orders are ineligible to participate in the Opening Cross. As discussed herein, the Exchange is deleting references to Retail Orders and RPI Orders since they are no longer available on NASDAQ.

¹⁰ See Rule 4701(e).

¹¹ As defined by Rule 4701(a).

¹² An Order may be designated by a Participant for participation in the Opening Cross by adding a "flag" to the order, or an Order may participate in the Opening Cross without such a flag if, by its nature, must participate (e.g., LOO Order).

¹³ See Rule 4702(b)(9).

In addition to a Time-in-Force, an Order may have other Attributes associated with it, such as price, size, eligibility to participate in the NASDAQ Opening and Closing Crosses, Pegging, and whether the Order is Routable.¹⁴ An Order that is designated as Routable¹⁵ employs one of several Routing Options described in Rule 4758(a)(1)(A). Routable Day Orders eligible to participate in the Opening Cross that are entered into the System prior to 9:28 a.m. ET are added to the NASDAQ book as they were entered by the Participant (i.e., Order Type and Order Attributes).¹⁶ If such an Order has a Time-in-Force that will allow it to continue after completion of the Opening Cross and the Order was not executed fully in the Cross, the order will be entered into the NASDAQ book for participation in Market Hours¹⁷ trading.

An Order may have a Pegging Attribute. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if NASDAQ is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Pegging will be set with reference to the highest bid or lowest offer disseminated by a market center other than NASDAQ.¹⁸

There are three varieties of Pegging; Primary, Market, and Midpoint. Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid

¹⁴ See Rule 4703.

¹⁵ See Rule 4703(f) for a description of the Routing Order Attribute.

¹⁶ Any Order with a Pegging Order Attribute entered prior to 9:28 a.m. ET, other than a Market Pegging designated for participation in the Opening Cross, is not accepted by the System. See Rule 4703(d) for a discussion of Pegging.

¹⁷ See Rule 4701(g).

¹⁸ See Rule 4703(d).

and the Inside Offer. NASDAQ also has a Market Maker Peg Order, which is an Order Type designed to assist a Market Maker in maintaining a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2).¹⁹ Pegging is available only during Market Hours. Orders with a Pegging Attribute entered into the System prior to 9:28 a.m. ET are rejected, unless the Order is a Market Maker Peg Order or a Market Peg Order designated to participate in the Opening Cross.

Opening Cross/Market Hours Orders entered into the System at 9:28 a.m. ET up to initiation of the Opening Cross (the “Late Period”) are designated as “Late Market Hours Orders,”²⁰ which are handled differently than Orders entered prior to the Late Period. Under the current rule, an Opening Cross/Market Hours Order that is entered during the Late Period will be (i) held and entered into the System after the completion of the NASDAQ Opening Cross if it has been assigned a Pegging Attribute or Routing Attribute, (ii) treated as an “Opening Imbalance Only Orders [sic]” or “OIO Orders [sic]”²¹ for the purposes of the Opening Cross and, if not executed in full, entered into the System after the completion of the NASDAQ Opening Cross if entered through RASH, QIX, or FIX but not assigned a Pegging Attribute or Routing Attribute, or (iii) treated as an OIO Order and cancelled after the NASDAQ Opening Cross if entered through OUCH or FLITE.²² An Opening Cross/Market Hours Order entered through

¹⁹ See Rule 4702(a)(7) [sic]. A Market Maker Peg Order may be entered through RASH, FIX or QIX only.

²⁰ See Rule 4752(a)(7).

²¹ An OIO Order is an Order Type entered with a price that may be executed only in the Opening Cross and only against MOO Orders (Rule 4702(b)(8)), LOO Orders (Rule 4702(b)(9)), or Early Market Hours Orders (Rule 4752(a)(7)). See Rule 4702(b)(10).

²² NASDAQ maintains several communications protocols for Participants to use in entering Orders and sending other messages to the NASDAQ Market Center. These are OUCH, RASH, QIX, and FLITE, which are NASDAQ proprietary protocols, and FIX, which is a non-proprietary protocol. See

RASH or FIX after the time of the NASDAQ Opening Cross will be accepted but the NASDAQ Opening Cross flag will be ignored. A Routable Order flagged to participate in the NASDAQ Opening Cross with a Time-in-Force other than IOC and entered at or after 9:28 a.m. will be held and entered into the System after the NASDAQ Opening Cross. All other LOO Orders and Opening Cross/Market Hours Orders entered at or after 9:28 a.m. will be rejected.

Proposed Changes

The Exchange is proposing to make two changes to how it handles Opening Cross/Market Hours Order entered into the System during the Late Period. Currently, the Exchange will hold Orders entered during the Late Period that have been assigned certain Pegging and Routing Attributes and enter them into the System after the completion of the Opening Cross,²³ while it will reject Orders entered during the Late Period with certain other Pegging and Routing Attributes. As discussed below, Opening Cross/Market Hours Orders entered into the System during the Late Period that have a Pegging Attribute or Routing Attribute are held and entered into the System after the completion of the Opening Cross with the exception of Orders with a Primary or Midpoint Pegging Attribute, which are instead rejected by the System, or Orders with a DOT or LIST Routing Attribute, which are instead converted by the System to an OIO Order.²⁴

<http://www.nasdaqtrader.com/Trader.aspx?id=TradingSpecs> for a description of the various order entry port specifications.

²³ The Exchange notes that the System will hold such an Order notwithstanding that the market participant flags the Order as eligible for participation in the Opening Cross.

²⁴ DOT and LIST Orders entered during the Late Period are sent to the Primary Listing Market for the security. If an Order in a NASDAQ-listed security is assigned a DOT or LIST Routing Attribute and entered into the System during the Late Period, the System will convert the Order to an OIO Order for participation in the Opening Cross.

First, the Exchange is proposing to harmonize how it handles Opening Cross/Market Hours Orders entered into the System during the Late Period that have a Pegging Attribute. As noted above, the Exchange will hold an Order entered into the System during the Late Period that has been assigned a Market Pegging Attribute and will enter it into the System after the completion of the Opening Cross. The Exchange is proposing to instead reject all Orders with a Market, Midpoint, or Primary Pegging attribute.²⁵ The Exchange notes that a Market Pegged Order entered during the Late Period is the only type of Order with a Pegging Attribute currently held by the System until after completion of the Opening Cross. Primary Pegged and Midpoint Pegged Orders entered during the Late Period are currently rejected. NASDAQ is proposing to harmonize the treatment of Market, Midpoint, or Primary Pegged Orders entered during the Late Period by rejecting any such Order. As a consequence, the Exchange is amending Rule 4702(b)(9) to reflect that an Order with a Market, Midpoint, or Primary Pegging Attribute entered during the Late Period will be rejected.

Second, the Exchange is proposing to harmonize how all Routable Orders entered during the Late Period that are eligible to participate in the Opening Cross are handled. Currently, any Order employing a DOT²⁶ or LIST²⁷ Routing Option that is eligible to participate in the Opening

²⁵ Market Maker Peg Orders entered during the Late Period are accepted and treated as OIO Orders for potential participation in the Opening Cross, and thereafter entered into the continuous book as a Market Maker Peg Order if not executed in full in the Opening Cross. The Exchange is proposing to add new text to Rule 4702(b)(9)(B) to make clear that Market Maker Peg Orders are not included as an Order that will be rejected by the System. The Exchange is not proposing to change how Market Maker Peg Orders are handled.

²⁶ DOT is a Routing Option that allows the entering firm to designate an Order for participation in the NYSE or NYSE MKT opening or closing processes. See Rule 4758(a)(1)(A)(i).

²⁷ LIST is a Routing Option designed to allow orders to participate in the opening and/or closing process of the primary listing market for a security. See Rule 4758(a)(1)(A)(x).

Cross and that is entered into the System during the Late Period is either sent to the appropriate primary listing market for participation in that market's opening process or, in the case of securities whose primary listing market is NASDAQ or another market not supported by DOT, converted by the System to OIO Order.²⁸ If such a converted Routable Order does not execute in the Opening Cross, then it reverts back to the Order Type as was entered by the Participant for participation in Market Hours trading. By contrast, an Order employing any of the other Routing Options under Rule 4758(a)(1)(A) that is eligible to participate in the Opening Cross and that is entered into the System during the Late Period is held by the System until completion of the Opening Cross and thereafter is added to the continuous order book for Market Hours trading, consistent with the Order Type and Attributes, which is consistent with the current rule as discussed above. The Exchange is proposing to harmonize how all Routable Orders entered during the Late Period that are eligible to participate in the Opening Cross are handled by converting all such Orders into OIO Orders and, upon completion of the Opening Cross, converting any such Order that is not fully executed back to its original Order Type and Attributes.²⁹

Last, the Exchange is making technical corrections to Rules 4702 and 4703 to remove references to Retail Orders and RPI Orders, which were erroneously included in the rules when they were adopted.³⁰

²⁸ An Order with a Market Pegging Attribute entered during the Late Period is rejected back to the Participant. In both scenarios, the Orders are not eligible to participate in the Opening Cross since Pegging is available only during Market Hours. See Rule 4703(d).

²⁹ An Order with a TIF of IOC would be canceled upon completion of the Opening Cross instead of being converted back to an IOC Order.

³⁰ Retail Orders and RPI Orders were part of the Retail Price Improvement Program under Rule 4780, which was eliminated. See Securities Exchange Act Release No. 75252 (June 22, 2015), 80 FR 36865 (June 26, 2015) (SR-NASDAQ-2015-024).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,³¹ in general, and further the objectives of Section 6(b)(5) of the Act,³² in particular, in that 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the proposed changes promote just and equitable principles of trade and perfects the mechanisms of a free and open market and the national market system by providing greater clarity concerning the System's operation with respect to Pegged and Routable Orders during the Opening Cross process and how such orders with a Time-in-Force characteristic that allows them to trade during Market Hours are processed upon initiation of the Opening Cross.

The proposed change will contribute to the protection of investors and the public interest by bringing consistency to the processing of Orders in the Opening Cross, thereby avoiding any Participant confusion that may be caused by dissimilar treatment of Routable and Pegged Orders. With respect to Routable Orders, uniformly converting such Orders, which are designated to participate in the Opening Cross, is consistent with a Participant's intent to first potentially execute during the Opening Cross and, to the extent not fully executed, thereafter join Market Hours trading consistent with the Order Type and Routing Option employed, unless otherwise cancelled after the Opening Cross as discussed above.

³¹ 15 U.S.C. 78f.

³² 15 U.S.C. 78f(b)(5).

With respect to Pegged Orders, uniformly canceling all Pegged Orders as described under Rule 4703(d) is consistent with the nature of a Pegged Order, which is only available during Market Hours. Further, these changes simplify the processing making it easier for all participants to understand how their orders behave with respect to the Opening Cross and thereafter. The proposed elimination of references to Retail Orders and RPI Orders will also serve to avoid potential Participant confusion arising from including references thereto in light of the elimination of the Retail Price Improvement Program.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the change is designed to promote consistency in the treatment of Pegged and Routable Orders in the Opening Cross. Such a change does not place a burden on competition between market participants as the changes are applied consistently to all participants. Moreover, the proposed change does not impose a burden on competition among exchanges as they are done to clarify NASDAQ's rules and do not impact competition.

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 Exchange consents, the Commission will:

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-2016-023 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-2016-023. 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-2016-023 and should be submitted on or before [insert date 21days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Robert W. Errett
Deputy Secretary

³³ 17 CFR 200.30-3(a)(12).