

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84328 ; File No. SR-NASDAQ-2018-077)

October 1, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Minimum Quantity Order Attribute

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 September 19, 2018, 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 specify that an Order with a Minimum Quantity Order Attribute is ineligible to participate in the Nasdaq Opening, Halt or Closing Crosses and is not included in the calculation of the Cross price

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

The Exchange is proposing to specify that an Order³ with a Minimum Quantity Order Attribute⁴ is ineligible to participate in the Nasdaq Opening,⁵ Halt⁶ or Closing⁷ Crosses (collectively, the “Nasdaq Crosses”) and is not included in the calculation of the Cross price. Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. In 2011, the Exchange amended its rules concerning the Minimum Quantity Order Attribute to remove a restriction from the rule, which only allowed Orders with a Minimum Quantity Order Attribute

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 4752.

⁶ See Rule 4753.

⁷ See Rule 4754.

to immediately execute.⁸ Thus, the proposed change allowed an Order with a Minimum Quantity Order Attribute to post to the Nasdaq Book⁹ if it is not able to execute immediately and, once posted to the Nasdaq Book, the Order would execute if an incoming Order that is marketable against it would satisfy its minimum quantity requirement.¹⁰ In proposing the new Order Attribute, the Exchange did not address participation of the Order Attribute in the Nasdaq Crosses; however, it never intended for Orders with a Minimum Quantity Order Attribute to participate in any of the Nasdaq Crosses. The Minimum Quantity Order Attribute allows market participants avoid transacting with smaller Orders that they believe ultimately increase the cost of the transaction. In particular, if a market participant that seeks to execute a large number of shares is able to execute in larger sizes, the contra-party to the execution is less likely to be a participant that reacts to short term changes in the stock price. As such, the price impact to the stock could be less acute when larger individual executions are obtained by the market participant. The Minimum Quantity Order Attribute is also designed to give a participant flexibility in whether its Order will receive partial executions in a volatile market. Because the Nasdaq Crosses offer a controlled price discovery process, flexibility and avoidance of small-sized executions is not required. In proposing the Minimum Quantity Order Attribute amendments in 2011, Nasdaq stated:

A Minimum Quantity Order provides a means by which a market participant may avoid partial executions of orders at sizes that it considers inadequate to achieve its purposes. For example, a market participant seeking to sell a large position in

⁸ See Securities Exchange Act Release No. 65536 (October 12, 2011), 76 FR 64411 (October 18, 2011) (SR-NASDAQ-2011-140).

⁹ See Rule 4701(a)(1).

¹⁰ See note 8, supra.

a trading session with high volatility may use the order type to avoid selling only a small portion of the order at the price it considers acceptable.¹¹

Consequently, use of the Minimum Quantity Order Attribute outside of the continuous market is inconsistent with the purpose of this Order Attribute. Upon adoption of the Minimum Quantity Order Attribute amendments in 2011, the Exchange also clearly notified market participants via an Equity Trader Alert that Orders with a Minimum Quantity Order Attribute are ineligible to participate in the Nasdaq Crosses.¹²

In light of this ambiguity in the Rules,¹³ the Exchange is proposing to specify that an Order with a Minimum Quantity Order Attribute is ineligible to participate in the Nasdaq Opening, Halt or Closing Crosses and is not included in the calculation of the Cross price.¹⁴

¹¹ See note 8, *supra* at 64412.

¹² Specifically, the Exchange provided a series of FAQ's, which included the following: "Can orders with Minimum Quantity instructions participate in auctions (i.e. open, halt, close)? No, orders with MinQty instructions will not participate in auctions (i.e. open, halt, close)." See Nasdaq Equity Trader Alert #2011-51 (available at: <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2011-51>).

¹³ Notwithstanding the ambiguity in the Rules, no market participant has requested participation of their Orders with a Minimum Quantity Order Attribute in any of the Nasdaq Crosses.

¹⁴ The Exchange notes that it recently identified an issue with the handling of Orders with a Minimum Quantity Order Attribute, which allowed such Orders to participate in the Crosses but they were not included in the calculation of the Cross price. See Nasdaq Market System Status Alert, August 24, 2018 and August 30, 2018 (available at: <http://www.nasdaqtrader.com/Trader.aspx?id=MarketSystemStatusSearch>). The Exchange further notes that neither the Rules concerning the Nasdaq Crosses nor the Minimum Quantity Rule addressed participation of Minimum Quantity Orders in the Nasdaq Crosses. To make the treatment consistent with the Exchange's original intent when implementing the new Order Attribute, the Exchange has determined to exclude Orders with a Minimum Quantity Order Attribute from both the calculation of the Cross price (which is currently the case) and possible execution in the Nasdaq Crosses. The Exchange is correcting the issue concurrent with the implementation of this proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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 specifying in its rules that an Order with a Minimum Quantity Order Attribute may not participate in the Nasdaq Crosses and is not included in the calculation of the Cross price. As described above, the Minimum Quantity Order Attribute allows market participants to avoid transacting with smaller Orders that they believe ultimately increase the cost of the transaction, particularly if they have a large number of shares to be executed. As such, the price impact to the stock could be less acute when larger individual executions are obtained by the market participant. The Minimum Quantity Order Attribute is also designed to give a participant flexibility in whether its Order will receive partial executions in a volatile market. Because the Nasdaq Crosses offer a controlled price discovery process, flexibility and avoidance of small-sized executions is not required. The Exchange notes that no market participant has requested participation of their Orders with a Minimum Quantity Order Attribute in any of the Nasdaq Crosses. The proposed change will further perfect the Exchange's rules and protect investors and the public interest by avoiding any confusion caused by vague rules. Adding specificity to the rules with respect to Orders with a Minimum Quantity Order Attribute will ensure that the rule concerning this Order Attribute is consistent with the Exchange's intent upon its adoption.¹⁷

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See note 12, supra.

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. Rather, the proposed rule change makes the Exchange's rules more specific by explicitly stating that an Order with a Minimum Quantity Order Attribute is ineligible to participate in the Nasdaq Opening, Halt or Closing Crosses and is not included in the calculation of the Cross price, which will enhance market participants' understanding of the operation of Orders with a Minimum Quantity Order Attribute in the Nasdaq Crosses. Moreover, the proposed change is consistent with the intent of the Order Attribute. As described above, the Minimum Quantity Order Attribute is designed to help market participants reduce costs of executing large-sized Orders, which otherwise may execute in many small transactions, each potentially increasing the price of the transaction. The Nasdaq Crosses provide a controlled price discovery process, in which the control and flexibility of the Minimum Quantity Order Attribute is not needed. The Exchange notes that no market participant has requested participation of the Minimum Quantity Order Attribute in any of the Nasdaq Crosses. Accordingly, the proposed rule change does not implicate competition whatsoever.

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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²¹ 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to promptly amend its rule to exclude Orders with a Minimum Quantity Order Attribute from the Nasdaq Crosses and Cross price calculations,²² and promptly implement system changes in accordance with the rule. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²³

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

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

²² According to the Exchange, no market participant has requested participation of the Minimum Quantity Order Attribute in any of the Nasdaq Crosses.

²³ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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.

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-2018-077 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-2018-077. 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-2018-077, 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.²⁴

Eduardo A. Aleman
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).