

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87186; File No. SR-NASDAQ-2019-080)

October 1, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Fees for the MIDP Routing Option

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 18, 2019, 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 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 adopt fees for the MIDP order routing option.

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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Exchange is proposing³ to adopt fees for the MIDP order routing option.⁴ MIDP is an order routing⁵ option under Rule 4758(a)(1)(A), which will allow members to seek midpoint liquidity on Nasdaq and other markets on the System routing table.⁶ Specifically, the MIDP order routing option may be assigned only to a Non-Displayed Order Type⁷ with a Midpoint Pegging Order Attribute.⁸ An Order with MIDP to buy (sell) will check the System for available

³ The Exchange initially filed the proposed pricing changes on August 27, 2019 (SR-NASDAQ-2019-068). On September 9, 2019, the Exchange withdrew that filing and submitted a replacement filing (SR-NASDAQ-2019-076). On September 18, 2019, the exchange withdrew that filing and submitted this filing.

⁴ See <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2019-60>; see also Securities Exchange Act Release No. 86087 (June 11, 2019), 84 FR 28117 (June 17, 2019) (SR-NASDAQ-2019-050).

⁵ Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies (also called "routing options") offered by Nasdaq, as described in Rule 4758; such an Order may be referred to as a "Routable Order." Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, including MIDP, the Order will attempt to access liquidity available on Nasdaq in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to Nasdaq, where they will (i) again attempt to access liquidity available on Nasdaq and (ii) post to the Nasdaq Book or be cancelled, depending on the Time-in-Force of the Order. See Rule 4703(f).

⁶ The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. Nasdaq reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. See Rule 4758(a)(1)(A).

⁷ See Rule 4702(b)(3).

⁸ Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). See Rule 4703(d).

shares and then the remaining shares are routed to destinations on the System routing table⁹ that support midpoint eligible orders with a limit price that is at the lesser (greater) of: (1) the current NBO (NBB); or (2) the Order's entered limit price (if applicable).¹⁰ If shares remain unexecuted after routing, the Order returns to Nasdaq and will check the System for available shares, with remaining shares posted on the Nasdaq Book¹¹ as a Non-Displayed Order with a Midpoint Pegging Order Attribute (unless an IOC).¹²

The Exchange is proposing to adopt fees under Equity 7, Section 118(a) for use of the MIDP order routing option. First, the Exchange is proposing to adopt a fee of \$0.0030 per share executed in securities of all three Tapes,¹³ charged to a member entering an MIDP Order that routes and executes at venues with a protected quotation under Regulation NMS other than BX, or Nasdaq. Rule 600(b)(62) of Regulation NMS defines a protected quotation as a protected bid or a protected offer, which are defined as a quotation in an NMS stock that: (i) is displayed by an

⁹ The Order is routed sequentially to the various venues on the System routing table in the full amount. An Order with MIDP and a Minimum Quantity Order Attribute will similarly route to the venues sequentially.

¹⁰ If the entered limit price of a buy (sell) Order entered with MIDP is less (greater) than the current Midpoint price, the Order will not be routed but will instead be posted on the Nasdaq Book as a Midpoint Peg Order (if not an IOC). Once on the Nasdaq Book, if the NBBO moves and the Order's limit price is equal to the midpoint of the NBBO, the Order would not subsequently route. If the NBBO updates so that a resting Order with MIDP should be updated to a new midpoint price, it will be routed again and if shares remain unexecuted after routing, the Order will check the System for available shares with remaining shares reposted to the Nasdaq Book.

¹¹ See Rule 4701(a).

¹² An Order with the MIDP routing option will only be accepted with a Time-in-Force of Market Hours DAY or IOC and may not be flagged to participate in any of the Nasdaq Crosses. Unexecuted shares of an order with the MIDP routing option will check the System for available shares with remaining shares posted on the Nasdaq Book (unless an IOC Order) as a Non-Displayed Order with a Midpoint Pegging Order Attribute.

¹³ Securities listed on Nasdaq are Tape C securities, securities listed on NYSE are Tape A securities, and securities listed on exchanges other than Nasdaq and NYSE are Tape B securities (collectively, the "Tapes").

automated trading center;¹⁴ (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc.¹⁵ The Exchange is proposing to adopt a \$0.0012 per share executed fee in securities of all three Tapes, charged to a member entering an MIDP Order that routes and executes at venues ineligible for a protected quotation under Regulation NMS. The Exchange is proposing to not charge members for entering an MIDP Order that routes and executes at BX.

The Exchange is also proposing to assess the applicable charges and credits under Equity 7, Sections 114¹⁶ and 118(a) to a member entering an MIDP Order that routes and executes at Nasdaq. Thus, a liquidity-removing MIDP Order on Nasdaq would be charged a fee based on the tier that the member qualifies for under the fee schedule of each of the Tapes for removing liquidity, and a liquidity-adding MIDP Order on Nasdaq would be provided a credit, depending

¹⁴ Trading center is defined as a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. See Rule 600(b)(82) of Regulation NMS. An automated trading center is a trading center that: (i) has implemented such systems, procedures, and rules as are necessary to render it capable of displaying quotations that meet the requirements for an automated quotation set forth in Rule 600(b)(4) of Regulation NMS; (ii) identifies all quotations other than automated quotations as manual quotations; (iii) immediately identifies its quotations as manual quotations whenever it has reason to believe that it is not capable of displaying automated quotations; and (iv) has adopted reasonable standards limiting when its quotations change from automated quotations to manual quotations, and vice versa, to specifically defined circumstances that promote fair and efficient access to its automated quotations and are consistent with the maintenance of fair and orderly markets. See Rule 600(b)(5) of Regulation NMS.

¹⁵ See Rule 600(b)(61) of Regulation NMS.

¹⁶ Equity 7, Section 114 provides the Exchange's market quality incentive programs, which provide beneficial pricing in lieu of, or in addition to, the fees and credits provided under Equity 7, Section 118(a).

on the tier that the member qualifies for under the fee schedule of each of the Tapes for providing liquidity. Last, the Exchange is proposing to assess the existing fee of 0.3% of the total transaction cost to a member with a MIDP Order in a security priced at less than \$1 that receives an execution.¹⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal is reasonable, equitable and not unfairly discriminatory because the pricing proposed above for MIDP Orders is generally set at levels that the Exchange is assessed for the execution of such orders at away venues. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess a \$0.0030 per share executed fee for securities in all three Tapes priced at \$1 or more per share to a member that enters an MIDP Order that routes and executes at venues with a protected quotation under Regulation NMS other than BX, or Nasdaq because, as an example, PHLX assesses a standard transaction charge of \$0.0030 per share executed to a member organization that enters an order in a security that it trades priced at \$1 or more per share that executes in Nasdaq PSX.²⁰

¹⁷ See Equity 7, Section 118(b).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ See PHLX Equity 7, Section 3.

Similarly, CBOE BZX assesses a standard fee of \$0.0030 per share executed for orders that remove liquidity.²¹

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess a fee of \$0.0012 per share executed for securities in all three Tapes priced at \$1 or more per share to a member that enters an MIDP Order that routes and executes at venues ineligible for a protected quotation under Regulation NMS because the Exchange is assessed various fees for the execution of such orders at away venues and the proposed fee is reflective of the value provided by the Exchange in providing this functionality and the overall fees assessed by such venues.

The Exchange believes that assessing no charge for an MIDP Order that routes and executes at BX is reasonable, equitable and not unfairly discriminatory because it is reflective of the fee assessed the Exchange for the execution of such orders at BX, which currently assesses no fee for an Order with Midpoint pegging that removes liquidity.²² Similarly, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to apply the applicable charges as provided in Equity 7, Sections 114 and 118(a) to a member that enters an MIDP Order that routes and removes liquidity from Nasdaq because such fees are reflective of the fees that other similarly situated members would receive for execution of Orders on Nasdaq. For the same reason, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to apply the applicable credits as provided in Equity 7, Sections 114 and 118(a) to a member that enters an MIDP Order that routes and provides liquidity to Nasdaq.

²¹ See Cboe BZX U.S. Equities Exchange Fee Schedule, available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

²² See BX Equity 7, Section 118(a).

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess the proposed charge for MIDP Orders in any Tape securities priced below \$1 per share because it is consistent with what it currently charges for all orders in securities priced at less than \$1 per share that execute on Nasdaq or at an away venue.²³ Last, the Exchange believes that the proposed pricing changes are equitable and not unfairly discriminatory because they will apply uniformly to all members.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed pricing for MIDP Orders are intended to recoup the Exchange's costs associated with providing routing services, which are wholly optional. As discussed above, the Exchange believes that its proposed pricing remains competitive with other equity exchanges, as they are reflective of the costs incurred by the Exchange in receiving

²³ See Equity 7, Section 118(b).

executions of routed midpoint orders to the various venues. In addition, because the Exchange's routing services are the subject of competition, including price competition, from other exchanges and broker-dealers that offer routing services, as well as the ability of members to use their own routing capabilities, it is likely that the Exchange will lose market share as a result of the proposed fees if they are unattractive to market participants. In this regard, the Exchange notes that the proposed fees are similar to the RMPT and RMPL routing strategies of BYX and EDGA,²⁴ respectively, which may be used with a Mid-Point Peg Order to check the exchanges' respective Systems for available shares and any remaining shares are then sent to destinations on their routing tables that support midpoint eligible orders. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁵

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,

²⁴ See Cboe BYX U.S. Equities Exchange Fee Schedule (available at https://markets.cboe.com/us/equities/membership/fee_schedule/byx/) and Cboe EDGA U.S. Equities Exchange Fee Schedule (available at https://markets.cboe.com/us/equities/membership/fee_schedule/edga/).

²⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2019-080 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-2019-080. 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 such 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-2019-080, 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.²⁶

Jill M. Peterson
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).