

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81556; File No. SR-NASDAQ-2017-061)

September 8, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rules 4702 and 4754 Relating to the Nasdaq Closing Cross and to Make Other Related Changes

I. Introduction

On July 13, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rules 4702 and 4754 relating to the Nasdaq Closing Cross and to make other related changes. The proposed rule change was published for comment in the Federal Register on July 27, 2017.³ On August 22, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81188 (July 21, 2017), 82 FR 35014 (“Notice”).

⁴ In Amendment No. 1, the Exchange proposes to remove a reference to Retail Order from Exchange Rule 4702(b)(12)(B) and to remove a reference to Retail Orders and RPI Orders from Exchange Rule 4703(l), as these two order types are no longer available on the Exchange. The Exchange also provides an example to illustrate its assertion that permitting members to submit Limit On Close (“LOC”) Orders until immediately prior to 3:55 p.m. would facilitate price discovery in the Nasdaq Closing Cross. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2017-061/nasdaq2017061.htm>.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1⁵

As described in more detail below, the Exchange proposes to enhance the operation of the Nasdaq Closing Cross by extending the time period during which members may submit LOC Orders,⁶ and to make other changes relating to the Nasdaq Closing Cross and the Nasdaq Opening Cross.

A. Acceptance of LOC Orders and Related Changes

Currently, Exchange Rule 4702(b)(12)(A) provides that LOC Orders may be entered between 4:00 a.m. ET and immediately prior to 3:50 p.m. ET. The Exchange proposes to amend this rule to permit LOC orders to be entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, provided that there is a First Reference Price.⁷ The Exchange proposes to define the First Reference Price to mean the Current Reference Price⁸ in the first Order Imbalance Indicator⁹ disseminated at or after 3:50 p.m. ET.¹⁰ As proposed, a LOC Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET would be accepted at its limit price, unless the limit price is higher (lower) than the First Reference Price for a LOC order to buy (sell), in

⁵ For a more detailed description of the proposal, see Notice, supra note 3 and Amendment No. 1, supra note 4.

⁶ See Exchange Rule 4702(b)(12) (defining LOC Order).

⁷ The Exchange proposes a related change to Exchange Rule 4702(b)(12)(B) to provide that LOC Orders and Closing Cross/Extended Hours Orders entered at or after 3:55 p.m. ET would be rejected.

⁸ See Exchange Rule 4754(a)(7)(A) (defining Current Reference Price for the Nasdaq Closing Cross).

⁹ See Exchange Rule 4754(a)(7) (defining Order Imbalance Indicator for the Nasdaq Closing Cross).

¹⁰ See proposed Exchange Rule 4754(a)(9). According to the Exchange, if there is no First Reference Price, a value of zero will be disseminated in the first Order Imbalance Indicator, and a non-zero value indicates that there is a First Reference Price. See Notice, supra note 3, at 35015 n.16. The Exchange also states that the presence of a First Reference Price indicates that there is matched buy and sell interest that is eligible to participate in the Nasdaq Closing Cross. See id., at 35015.

which case the LOC order would be re-priced to the First Reference Price.¹¹ If the First Reference Price is not at a permissible minimum increment of \$0.01 or \$0.0001, as applicable, the First Reference Price would be rounded (i) to the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii) down if there is a sell imbalance.¹²

The Exchange also proposes to amend its rules relating to the LULD Closing Cross¹³ and the Primary Contingency Procedures to reflect that LOC Orders can be entered until immediately prior to 3:55 p.m. Specifically, the Exchange proposes to amend Exchange Rule 4754(b)(6)(C)(i) to permit Market On Close (“MOC”), LOC, and Imbalance Only (“IO”) Orders intended for the Nasdaq Closing Cross that are entered into the system and placed on the book prior to a Trading Pause to remain on the book to participate in the LULD Closing Cross.¹⁴ As a result, if the Exchange conducts an LULD Closing Cross, LOC Orders would be eligible to be entered until the earlier of the Trading Pause or immediately prior to 3:55 p.m.¹⁵ Similarly, the

¹¹ See proposed changes to Exchange Rule 4702(b)(12)(A).

¹² See *id.*

¹³ The Exchange currently uses the LULD Closing Cross when a Trading Pause pursuant to Exchange Rule 4120(a)(12) is triggered at or after 3:50 p.m. and before 4:00 p.m. See Exchange Rule 4754(b)(6). The Commission recently approved a proposed rule change that provided that the LULD Closing Cross would be used when a Trading Pause exists at or after 3:50 p.m. and before 4:00 p.m. See Securities Exchange Act Release No. 79876 (January 25, 2017), 82 FR 8888 (January 31, 2017) (SR-NASDAQ-2016-131). The Exchange represents that the recently approved change is not yet operative, and the discussion in this proposed rule change is based on currently implemented functionality. See Notice, *supra* note 3, at 35015. n.19.

¹⁴ The Exchange also proposes a conforming change to Exchange Rule 4754(b)(6)(C)(iii).

¹⁵ See Notice, *supra* note 3, at 35015. This change would also correct the rule to reflect that, consistent with current functionality, IO Orders entered prior to a Trading Pause would participate in the LULD Closing Cross, instead of only those IO Orders entered prior to 3:50 p.m. See *id.* MOC Orders entered after 3:50 p.m. would continue to be rejected, and therefore would not be eligible for the LULD Closing Cross. See *id.*, at 35015 n.21.

Exchange proposes to amend Exchange Rule 4754(b)(7)(B) to permit LOC Orders entered prior to 3:55 p.m. to participate in the Contingency Closing Cross.¹⁶

B. Closing Cross/Extended Hours Orders

Currently, Exchange Rule 4702(b)(12)(B) states that, following the Nasdaq Closing Cross, a Closing Cross/Extended Hours Order¹⁷ may not operate as a Post-Only Order, Midpoint Peg Post-Only Order, Supplemental Order, Retail Order, or RPI Order. The Exchange proposes to amend this rule to provide that Post-Only Orders, Midpoint Peg Post-Only Orders, and Supplemental Orders may not operate as Closing Cross/Extended Hours Orders. According to the Exchange, these order types are eligible to participate in the Nasdaq Closing Cross as part of the continuous book, but cannot be entered with a flag designating an on-close instruction, and therefore cannot be Closing Cross/Extended Hours Orders.¹⁸ The Exchange also proposes that Market Maker Peg Orders would no longer be eligible to be entered with a flag designating an on-close instruction, and therefore would no longer be able to operate as Closing Cross/Extended Hours Orders.¹⁹ In addition, the Exchange proposes to delete the reference to Retail Order and RPI Order from Exchange Rule 4702(b)(12)(B), because these order types are no longer offered on the Exchange.²⁰

¹⁶ The Exchange also proposes to correct a typographical error in Exchange Rule 4754(b)(7)(E). In addition, the Exchange proposes to amend Exchange Rule 4754(b)(5), related to auxiliary procedures for the Closing Cross, to correct an erroneous subparagraph cross-reference from (c)(2)(D) to (b)(2)(E).

¹⁷ See Exchange Rule 4702(b)(12)(B) (defining Closing Cross/Extended Hours Order).

¹⁸ See Notice, supra note 3, at 35016.

¹⁹ See proposed changes to Exchange Rule 4702(b)(12)(B) and Notice, supra note 3, at 35016.

²⁰ See Amendment No. 1, supra note 4. See also proposed changes to Exchange Rule 4703(l) (deleting a reference to Retail Orders and RPI Orders).

Finally, Exchange Rule 4702(b)(12)(B) currently provides that certain Closing Cross/Extended Hours Orders entered between 3:50 p.m. and the time of the Nasdaq Closing Cross are treated as IO Orders. The Exchange proposes to remove this functionality.

C. Order Imbalance Indicator

Currently, Exchange Rule 4752(a)(2) provides that the Order Imbalance Indicator for the Nasdaq Opening Cross includes, among other things, the Current Reference Price, the Imbalance, and the number of paired shares. The definitions of Imbalance,²¹ Current Reference Price,²² and the number of paired shares²³ currently include Open Eligible Interest.²⁴ The Exchange proposes to delete references to Open Eligible Interest from these definitions.²⁵ According to the Exchange, in practice, Open Eligible Interest is not included in the Imbalance, the Current Reference Price, or the number of paired shares.²⁶

Similarly, Exchange Rule 4754(a)(7) provides that the Order Imbalance Indicator for the Nasdaq Closing Cross includes, among other things, the Current Reference Price, the Imbalance, and the number of paired shares. The definitions of Imbalance,²⁷ Current Reference Price,²⁸ and

²¹ See Exchange Rule 4752(a)(1) (defining Imbalance for the Nasdaq Opening Cross).

²² See Exchange Rule 4752(a)(2)(A) (defining Current Reference Price for the Nasdaq Opening Cross).

²³ See Exchange Rule 4752(a)(2)(B) (describing the calculation of the number of paired shares for the Nasdaq Opening Cross).

²⁴ See Exchange Rule 4752(a)(8) (defining Open Eligible Interest).

²⁵ See proposed changes to Exchange Rules 4752(a)(1), 4752(a)(2)(A)(i), and 4752(a)(2)(B).

²⁶ See Notice, supra note 3, at 35016-17.

²⁷ See Exchange Rule 4754(a)(2) (defining Imbalance for the Nasdaq Closing Cross).

²⁸ See Exchange Rule 4754(a)(7)(A)(i) (defining Current Reference Price for the Nasdaq Closing Cross).

the number of paired shares²⁹ currently include Close Eligible Interest.³⁰ The Exchange proposes to delete references to Close Eligible Interest from these definitions.³¹ According to the Exchange, in practice, Close Eligible Interest is not included in the Imbalance, the Current Reference Price, or the number of paired shares.³²

D. Implementation

The Exchange proposes to implement the functionality described in the proposal in a symbol-by-symbol rollout in either Q3 or Q4 2017.³³ The Exchange will announce the implementation date and the symbol rollout in an Equity Trader Alert issued to members prior to the implementation date.³⁴

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,

²⁹ See Exchange Rule 4754(a)(7)(B) (describing the calculation of the number of paired shares for the Nasdaq Closing Cross).

³⁰ See Exchange Rule 4754(a)(1) (defining Close Eligible Interest).

³¹ See proposed changes to Exchange Rules 4754(a)(2), 4754(a)(7)(A)(i), and 4754(a)(7)(B).

³² See Notice, supra note 3, at 35016-17.

³³ See id., at 35017.

³⁴ See id.

³⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁶ 15 U.S.C. 78f(b)(5).

to foster cooperation and coordination with persons engaged in 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.

As discussed above, the Exchange proposes to permit members to submit LOC Orders between 3:50 p.m. and immediately prior to 3:55 p.m. if there is a First Reference Price. The Exchange also proposes to re-price LOC Orders entered during this time period to the First Reference Price if their limit price is more aggressive than the First Reference Price. The Commission believes that these changes could encourage additional participation in the Nasdaq Closing Cross, reduce imbalances, and promote price discovery, without creating a significant impact on the price of the Nasdaq Closing Cross. In addition, as discussed above, the Exchange proposes to permit MOC, LOC, and IO Orders intended for the Closing Cross that are entered into the system and placed on the book prior to the Trading Pause to remain on the book and participate in an LULD Closing Cross. Similarly, the Exchange proposes to permit LOC Orders entered prior to 3:55 p.m. to participate in a Contingency Closing Cross. The Commission believes that these changes are consistent with the proposal to permit members to submit LOC Orders between 3:50 p.m. and immediately prior to 3:55 p.m., and would allow these LOC Orders to participate in an LULD Closing Cross or Contingency Closing Cross.³⁷

As discussed above, the Exchange proposes to amend Exchange Rule 4702(b)(12)(B) to identify the order types that are currently not eligible to operate as Closing Cross/Extended Hours Orders, provide that Market Maker Peg Orders cannot operate as Closing Cross/Extended Hours Orders, and delete a reference to Retail Order and RPI Order. The Commission believes

³⁷ The Commission also notes that the proposal to correct a typographical error in Exchange Rule 4754(b)(7)(E) and to change a cross-reference in Exchange Rule 4754(b)(5) are technical corrections to the rules.

that these proposed changes are reasonable. The Commission notes that, according to the Exchange, Market Maker Peg Orders are designed to assist Nasdaq members in meeting their quoting obligations, and not to submit interest flagged with an on-close instruction.³⁸ The Commission also notes that Retail Orders and RPI Orders are no longer available on the Exchange.³⁹

Moreover, as discussed above, the Exchange proposes to amend Exchange Rule 4702(b)(12)(B) to eliminate provisions that would treat certain Closing Cross/Extended Hours Orders entered between 3:50 p.m. and the time of the Nasdaq Closing Cross as IO Orders. The Commission notes that the proposal would allow Closing Cross/Extended Hours Orders entered between 3:50 p.m. and immediately prior to 3:55 p.m. to operate as LOC Orders,⁴⁰ rather than converting to IO Orders, which, unlike LOC Orders, do not trade if there is no Imbalance and do not maintain price priority as a result being continuously re-priced to the best bid or offer.⁴¹ The Commission also notes that Nasdaq members may continue to enter IO Orders until the time of execution of the Nasdaq Closing Cross, and may continue to enter other Close Eligible Interest on the continuous book up until the time of the Nasdaq Closing Cross.⁴²

Finally, as discussed above, the Exchange proposes to exclude Open Eligible Interest and Close Eligible Interest from certain information disseminated in the Order Imbalance Indicator for the Nasdaq Opening Cross and the Nasdaq Closing Cross. The Commission notes that, as

³⁸ See Notice, supra note 3, at 35018. The exchange also notes that the proposed changes to Closing Cross/Extended Hours Orders would align its on-close order handling with the characteristics of various order types. See id., at 35014.

³⁹ See Amendment No. 1, supra note 4.

⁴⁰ As noted above, LOC Orders and Closing Cross/Extended Hours Orders entered after 3:55 p.m. would be rejected.

⁴¹ See Notice, supra note 3, at 35018.

⁴² See id., at 35014.

proposed, the Imbalance, Current Reference Price, and paired shares calculations would not include types of orders that may be executed in the continuous market before the Opening Cross or the Closing Cross.⁴³ The Commission also notes that these changes would enhance transparency because they would reflect the information that is currently disseminated in the Order Imbalance Indicator.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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-2017-061 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-2017-061. 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

⁴³ See id., at 35018.

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-2017-061, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of Amendment No. 1 in the Federal Register. In Amendment No. 1, the Exchange proposes to remove outdated references to Retail Orders and RPI Orders, which are no longer offered on the Exchange. The Commission believes that deleting these outdated references would help to bring clarity and accuracy to the Exchange rules. The Commission also believes that these changes are of a technical nature and do not materially or substantively alter the proposed rule change. In addition, in Amendment No. 1, the Exchange provides an example to illustrate and support its assertion that extending the time period for the entry of LOC orders until immediately prior to 3:55 p.m. should facilitate the price discovery mechanism of the Nasdaq Closing Cross.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁴ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁵ that the proposed rule change (SR-NASDAQ-2017-061), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

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Assistant Secretary

⁴⁴ 15 U.S.C. 78s(b)(2).

⁴⁵ Id.

⁴⁶ 17 CFR 200.30-3(a)(12).