

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81930; File No. SR-NASDAQ-2017-107)

October 24, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq Closing Cross Rules

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 October 10, 2017, 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 amend Rule 4702 (Order Types) and Rule 4754 [sic] (Nasdaq Closing Cross) to enhance the Nasdaq Closing Cross by permitting members to submit LOC Orders until immediately prior to 3:55 p.m. ET subject to certain conditions, and to make other changes related to Closing Cross/Extended Hours Orders [sic].

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

On July 13, 2017, the Exchange filed a proposed rule change to amend Rule 4702 (Order Types) and Rule 4754 (Nasdaq Closing Cross) to enhance the Nasdaq Closing Cross by permitting members to submit Limit On Close (“LOC”) Orders³ until immediately prior to 3:55 p.m. ET subject to certain conditions.⁴ This proposed rule change was approved by the Commission on September 8, 2017,⁵ and the Exchange began to introduce this functionality pursuant to a symbol-by-symbol rollout beginning on October 2, 2017.⁶ The purpose of the proposed rule change is to amend the Nasdaq Closing Cross rules to: (1) reject all Market Maker Peg Orders flagged to participate in the Nasdaq Closing Cross; and (2) account for the minimum increment for Tick Size Pilot securities when re-pricing LOC Orders entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET.

A “Market Maker Peg Order” is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the

³ A “Limit On Close Order” or “LOC Order” is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. See Rule 4702(b)(12).

⁴ See Securities Exchange Act Release No. 81188 (July 21, 2017), 82 FR 35014 (July 27, 2017) (SR-NASDAQ-2017-061).

⁵ See Securities Exchange Act Release No. 81556 (September 8, 2017), 82 FR 43264 (September 14, 2017) (SR-NASDAQ-2017-061) (Approval Order).

⁶ See Equity Trader Alert # 2017-184.

quotation requirements for Market Makers set forth in Rule 4613(a)(2).⁷ Pursuant to SR-NASDAQ-2017-061, a Market Maker Peg Order will not be permitted to operate as a Closing Cross/Extend Hours Order.⁸ Instead, such orders will be rejected. Market Maker Peg Orders would, however, remain permitted to be flagged to participate solely in the Nasdaq Closing Cross if entered with a time-in-force (“TIF”) that does not continue after the time of the Nasdaq Closing Cross. After additional consideration, the Exchange believes that all Market Maker Peg Orders flagged with an on-close instruction should be rejected. The Exchange therefore proposes to amend its rules to state that a Market Maker Peg Order may not be flagged to solely participate in the Nasdaq Closing Cross. This will supplement current language stating that such Market maker Peg Orders may not operate as Closing Cross/Extended Hours Orders. With this change, all Market Maker Peg Orders entered with an on-close instruction will be rejected, regardless of whether the order is entered with a TIF that continues after the Nasdaq Closing Cross. The Exchange believes that this change will more closely align with member expectations and the design of this order type, which is to assist members with their quoting obligations. Market Maker Peg Orders that are not entered with an on-close instruction will remain eligible to participate in the Nasdaq Closing Cross if the order remains unexecuted at the time of the Nasdaq Closing Cross.

Furthermore, when the Nasdaq Closing Cross changes are introduced, the Exchange will re-price LOC Orders entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET to the

⁷ See Rule 4702(b)(7).

⁸ A Closing Cross/Extended Hours Order is an order that is flagged to participate in the Nasdaq Closing Cross and has a Time-in-Force that continues after the time of the Nasdaq Closing Cross.

less aggressive of the order's limit price or the First Reference Price⁹ in order to prevent these orders from having a significant impact on the price established by the Nasdaq Closing Cross.¹⁰ In addition, Rule 4702 provides that if the First Reference Price is not at a permissible minimum increment of \$0.01 or \$0.0001, as applicable, the First Reference Price will 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. Although the rule explicitly mentions the regular trading increments of \$0.01 or \$0.0001, however, it does not account for the minimum increments approved for securities selected for inclusion in the Tick Size Pilot Program, which are subject to \$0.05 minimum increments.¹¹ The Exchange therefore proposes to remove the explicit reference to these specific minimum increments. With the proposed change, the rule will state that if the First Reference Price is not at a permissible minimum increment, the First Reference Price will 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. The Exchange believes that this change will avoid potential member confusion with respect to the application of this rule to securities selected for inclusion in the Tick Size Pilot Program, and help ensure compliance with the Tick Size Pilot Program.

⁹ "First Reference Price" is the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:50 p.m. ET. See Rule 4754(a)(9).

¹⁰ See Rule 4702(b)(12)(A).

¹¹ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (Order Approving the Tick Size Pilot Program). See also Rule 4770 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot).

Implementation

The Exchange proposes to introduce the changes described in this proposed rule change on October 10, 2017. The Exchange began the rollout of functionality described in SR-NASDAQ-2017-061, as announced to members via Equity Trader Alert, with three symbols, VSAT, TEAM, and UNIT. The rollout of those changes will continue in the fourth quarter of 2017 after the completion of additional industry testing of the functionality.¹² The Exchange believes that implementing the proposed change to Market Maker Peg Order handling is important for the operation of the three symbols to which the functionality proposed in SR-NASDAQ-2017-061 currently applies. The changes to Market Maker Peg Order handling proposed herein cannot be applied on a symbol-by-symbol basis, but rather must be applied to all symbols simultaneously. Accordingly, the Exchange is proposing to implement the proposed changes applied to all symbols on October 10, 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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.

¹² The Exchange recently informed market participants that it will pause the rollout of the remaining symbols for the enhancements to the Nasdaq Closing Cross approved by the Commission on September 8, 2017, in an effort to provide further customer testing opportunities. See Nasdaq Equity Trader Alert # 2017-189. The Exchange anticipates continuing the implementation in the near future, with its completion in the fourth quarter consistent with its proposal. The Exchange will release an Equity Trader Alert announcing resumption of the rollout schedule.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

When the Exchange filed to restrict Market Maker Peg Orders from operating as Closing Cross/Extended Hours Orders, the Exchange explained that Market Maker Peg Orders were designed to assist members in meeting their quoting obligations and not as a means of submitting interest flagged with an on-close instruction. Furthermore, the Exchange explained that it did not believe that members want functionality that allows Market Maker Peg Orders to be entered with a flag designating an on-close instruction. The Exchange believes that this is true both for Market Maker Peg Orders entered with a TIF that continues after the time of the Nasdaq Closing Cross, and that therefore operate as Closing Cross/Extended Hours Orders, and Market Maker Peg Orders entered with a TIF that causes it to execute solely in the Nasdaq Closing Cross. The Exchange is therefore proposing to reject all Market Maker Peg Orders flagged to participate in the Nasdaq Closing Cross, regardless of TIF. The Exchange believes that this change will perfect the mechanism of a free and open market by eliminating the possibility that members can inadvertently enter this order type combination, while preserving the design of Market Maker Peg Orders to aid members in meeting their quoting obligations.

In addition, the Exchange believes that the current language in Rule 4702 could be confusing to members and investors when applied to securities that are selected for inclusion in the Tick Size Pilot Program, as these securities are subject to a \$0.05 minimum increment instead of the \$0.01 or \$0.0001 minimum increments cited in the rule today. The Exchange believes that removing the reference to these specific increments will reduce confusion because permissible minimum increments may be \$0.01 or \$0.0001 for most securities, and \$0.05 for a handful of securities selected for inclusion in the Tick Size Pilot Program. The Exchange must round to a permissible minimum increment whenever the First Reference Price is not in such a minimum increment. The proposed rule change makes this clear and will therefore increase

transparency to the benefit of members and investors, and help ensure compliance with the Tick Size Pilot Program.

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. With respect to Market Maker Peg Orders flagged for the Nasdaq Closing Cross, the proposed change eliminates an order type combination that is not consistent with the purpose of aiding members in meeting their quoting obligations. Furthermore, the proposed change related to minimum increments properly reflects the increments applicable to securities traded on the Exchange, including securities selected for inclusion in the Tick Size Pilot Program. Neither of these proposed changes is designed to have any significant competitive impact.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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. The Commission has waived this requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ 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 asked the Commission to waive the 30-day operative delay. The Commission notes that waiver of the operative delay would allow the Exchange to implement the proposed change to Market Maker Peg Orders for all symbols without delay, including the three symbols to which the functionalities described in SR-NASDAQ-2017-061 currently apply. Moreover, the proposed change relating to minimum increments is designed to avoid confusion and help ensure compliance with the Tick Size Pilot Program. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁹

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 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.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2017-107 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-2017-107. 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-2017-107 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.²⁰

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Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).