

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82152; File No. SR-NASDAQ-2017-122)

November 22, 2017

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4702

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 November 9, 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(b)(5) to provide that Midpoint Peg Post-Only Orders may not participate in the Nasdaq Closing Cross, and to make other technical changes with respect to Order Types flagged for the Nasdaq Closing Cross pursuant to Rule 4702(b)(12).

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

The purpose of the proposed rule change is to amend Rule 4702(b)(5) to provide that Midpoint Peg Post-Only Orders ("MPPOs") may not participate in the Nasdaq Closing Cross, and to make other technical changes with respect to Order Types flagged for the Nasdaq Closing Cross pursuant to Rule 4702(b)(12).

An "MPPO" is defined in Rule 4702(b)(5) as an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the national best bid and offer, and that will execute upon entry only in circumstances where economically beneficial to the party entering the Order. Today, MPPOs are available during Market Hours only, and MPPOs remaining on the Nasdaq Book at 4:00 p.m. ET are cancelled by the System. Due to how the Exchange currently processes these cancel messages, however, Rule 4702(b)(5)(C) also provides that an MPPO may participate in the Nasdaq Closing Cross if the Nasdaq Closing Cross occurs prior to the cancellation message being fully processed. The Exchange believes that it would be beneficial to members and investors to completely prevent MPPOs from executing in the Nasdaq Closing Cross rather than having their participation determined by whether the cancel message is processed prior to the Nasdaq Closing Cross. The Exchange therefore proposes to eliminate language indicating that MPPOs may participate in the Nasdaq Closing Cross if the Nasdaq Closing Cross for the security occurs prior to the cancellation message being fully processed, and instead provide that MPPOs may not participate in the Nasdaq Closing Cross. In connection with

this change, the Exchange also proposes to remove language indicating that the trading system “attempts to” cancel MPPOs prior to the commencement of the Nasdaq Closing Cross as the “attempts to” language is no longer necessary with the elimination of the race condition described above. With this change members will have more certainty with respect to MPPO handling for the Nasdaq Closing Cross since no MPPOs will be allowed to participate, which is consistent with how the Exchange believes members want these order treated. In addition, since the Exchange is explicitly addressing MPPO availability for the Nasdaq Closing Cross in this rule, the Exchange also proposes to add language indicating that MPPOs may not participate in the Nasdaq Opening Cross. MPPOs are excluded from the Nasdaq Opening Cross today as they can only be entered during Market Hours and are cancelled at the end of the trading day. Furthermore, Rule 4703(l) provides that Order Types except Supplemental Orders participate in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross if the Order has a Time-in-Force that would cause the Order to be in effect at the time of the Nasdaq Opening Cross and/or Nasdaq Closing Cross. Since MPPOs will not be permitted to participate in the Nasdaq Opening Cross or Nasdaq Closing Cross under any circumstances, the Exchange proposes to amend Rule 4703(l) to state that MPPOs do not participate in these crosses.

Furthermore, Rule 4702(b)(12) contains language explaining which Order Types are not available to be flagged for the Nasdaq Closing Cross, including orders entered with a time-in-force of IOC, or orders entered with a time-in-force that continues after the time of the Nasdaq Closing Cross, i.e., Closing Cross/Extended Hours Orders. MPPOs cannot be flagged for the Nasdaq Closing Cross today as closing cross participation is not permitted for this Order Type, with the one exception being remedied above. The same is also true of Supplemental Orders. 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). Pursuant to Rule 4702(b)(6)(B), Supplemental Orders are not permitted to participate in the Nasdaq Closing Cross. In connection with the other changes described above, the Exchange therefore proposes to amend Rule 4702(b)(12) to state that MPPOs and Supplemental Orders may not be flagged to solely participate in the Nasdaq Closing Cross. Rule 4702(b)(12) already contains language indicating that these order types are not permitted to be entered as Closing Cross/Extended Hours Orders. The Exchange believes that adding this additional detail to the rule will make the operation of the Exchange more transparent to members and other market participants.

Implementation

The Exchange proposes to introduce the MPPO changes described in this proposed rule change in Q4 2017 or Q1 2018. The Exchange will announce the implementation date of this functionality in an Equity Trader Alert issued to members prior to the launch date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴ 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. As indicated in the Exchange's current rules, MPPOs are designed for Market Hours trading and are therefore cancelled at 4:00 p.m. ET each day when the Exchange begins processing the Nasdaq Closing Cross pursuant to Rule 4754. Nevertheless, MPPOs may trade in the Nasdaq Closing Cross in the race condition described above where the

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

cancellation of the MPPO is not processed by the trading system prior to the Nasdaq Closing Cross. The Exchange believes that it is consistent with the protection of investors and the public interest to eliminate this race condition and ensure that no MPPOs participate in the Nasdaq Closing Cross. This change will perfect the mechanism of a free and open market by eliminating the possibility that MPPOs can inadvertently make it into the Nasdaq Closing Cross due to the sequence of messages received by the trading system. The Exchange believes that members prefer not to have their MPPOs executed in the Nasdaq Closing Cross, and therefore cancels these orders immediately prior to the closing auction today. The proposed changes would further enhance MPPO handling by ensuring that no MPPOs are permitted to trade in the Nasdaq Closing Cross. Furthermore, the proposed rule change would increase transparency surrounding the operation of the Exchange, and, in particular, the availability of MPPOs and Supplemental orders to be flagged for the Nasdaq Closing Cross. The Exchange believes that the proposed changes will benefit members and other market participants by specifying with additional clarity that these Order Types cannot be flagged for participation in the Nasdaq Closing Cross, as closing cross participation is not available for either MPPOs or Supplemental Orders.

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. Currently, MPPOs can participate in the Nasdaq Closing Cross if the cancel message is not fully processed prior to the closing auction. The Exchange is now enhancing MPPO handling to prevent all MPPOs from participating in the Nasdaq Closing Cross. The Exchange does not believe this change will have any significant impact on competition as no members will have their MPPOs participate in the Nasdaq Closing Cross, which is how the Exchange believes members want these orders treated. Furthermore, the other proposed change with respect to handling of MPPOs

and Supplemental Orders that are flagged for the Nasdaq Closing Cross is a non-substantive clarifying change and will therefore have no impact on 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

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 Act⁵ and Rule 19b-4(f)(6) thereunder.⁶

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, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 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 Exchange has satisfied this requirement.

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-2017-122 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-2017-122. 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-2017-122 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.⁷

Eduardo A. Aleman
Assistant Secretary

⁷ 17 CFR 200.30-3(a)(12).