SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84454; File No. SR-NASDAQ-2018-068)

October 19, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Extend the Cutoff Times for Accepting On Close Orders Entered for Participation in the Nasdaq Closing Cross and to Make Related Changes

I.   Introduction

On August 15, 2018, 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 extend the cutoff times for accepting on close orders entered for participation in the Nasdaq Closing Cross and to make related changes. The proposed rule change was published for comment in the Federal Register on September 5, 2018.[3] On October 15, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the original filing in its entirety.[4] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

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1   15 U.S.C. 78s(b)(1).

2   17 CFR 240.19b-4.

3   See Securities Exchange Act Release No. 83988 (August 29, 2018), 83 FR 45165.

4   In Amendment No. 1, the Exchange: (1) proposed conforming changes to Nasdaq Rule 7018(a)(3) to reflect the proposed cutoff times and provided additional discussion regarding the proposed changes to Nasdaq Rule 7018(a); (2) proposed to implement the proposal in Q4 2018; and (3) made other technical changes. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at https://www.sec.gov/comments/sr-nasdaq-2018-068/srnasdaq2018068-4523622-176030.pdf.

II.   Description of the Proposed Rule Change, as Modified by Amendment No. 1[5]

The Exchange proposes to amend certain cutoff times for on close orders entered for

participation in the Nasdaq Closing Cross, to reject Closing Cross/Extended Hours Orders[6] that

have been assigned a Pegging Attribute[7] regardless of when such orders are entered, and to make

changes to the Order Imbalance Indicator.

A.   Nasdaq Closing Cross Cutoff Times

Nasdaq Rule 4702(b)(11) currently provides that Market On Close ("MOC") Orders[8]

may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50

p.m. ET. MOC Orders entered after 3:50 p.m. ET are rejected. Between 3:50 p.m. ET and

immediately prior to 3:55 p.m. ET, MOC Orders can be cancelled and/or modified only if the

participant requests that Nasdaq correct a legitimate error in the order (e.g., side, size, symbol,

price, or duplication of an order). MOC orders cannot be cancelled or modified for any reason at

or after 3:55 p.m. ET.

Nasdaq Rule 4702(b)(12) currently provides that Limit On Close ("LOC") Orders[9] may

be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m.

ET. LOC Orders may be entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET

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

6   See infra note 18.

7   See infra note 19.

8   A MOC Order is an order type entered without a price that may be executed only during
        the Nasdaq Closing Cross. See Nasdaq Rule 4702(b)(11)(A).

9   A 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 Nasdaq Rule
        4702(b)(12)(A).

provided that there is a First Reference Price.[10] LOC Orders entered at or after 3:55 p.m. ET are

rejected.[11] Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, LOC orders cannot be

modified, and they can be cancelled only if the participant requests that Nasdaq correct a

legitimate error in the order.

Nasdaq Rule 4702(b)(13) currently provides that Imbalance Only ("IO") Orders[12] may be

entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross.[13] IO

Orders may be cancelled and/or modified between 3:50 p.m. ET and immediately prior to 3:55

p.m. ET if the participant requests that Nasdaq correct a legitimate error in the order. IO Orders

may not be cancelled or modified for any reason at or after 3:55 p.m. ET.

The Exchange now proposes to amend these cutoff times. As proposed, Nasdaq Rule

4702(b)(11) would provide that MOC Orders may be entered, cancelled, and/or modified

between 4 a.m. ET and immediately prior to 3:55 p.m. ET. MOC Orders entered at or after 3:55

p.m. ET would be rejected. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, MOC

Orders could be cancelled and/or modified only if the participant requests that Nasdaq correct a

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[10]   A LOC Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET is
       accepted at its limit price, unless its limit price is higher (lower) than the First Reference
       Price for a LOC Order to buy (sell), in which case the participant has the choice to have
       the order rejected or re-priced to the First Reference Price. The First Reference Price is
       the Current Reference Price in the first Order Imbalance Indicator disseminated at or after
       3:50 p.m. ET. See Nasdaq Rule 4754(a)(9).

[11]   Nasdaq Rule 4702(b)(12)(B) provides that a Closing Cross/Extended Hours Order
       entered through OUCH, FLITE, RASH, or FIX with a time-in-force other than
       immediate-or-cancel after the time of the Nasdaq Closing Cross will be accepted but the
       Nasdaq Closing Cross flag will be ignored. All other Closing Cross/Extended Hours
       Orders entered at or after 3:55 p.m. ET are rejected.

[12]   An IO Order is an order entered with a price that may be executed only in the Nasdaq
       Closing Cross and only against MOC Orders or LOC Orders. See Nasdaq Rule
       4702(b)(13)(A).

[13]   The Nasdaq Closing Cross begins at 4:00:00 p.m. ET and post-market hours trading
       commences when the Nasdaq Closing Cross concludes. See Nasdaq Rule 4754(b).

legitimate error in the order. MOC orders could not be cancelled or modified for any reason at or after 3:58 p.m. ET. As proposed, Nasdaq Rule 4702(b)(12) would provide that LOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. LOC Orders could be entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET provided that there is a First Reference Price.[14] LOC Orders entered at or after 3:58 p.m. ET would be rejected.[15] Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, LOC orders could not be modified, and they could be cancelled only if the participant requests that Nasdaq correct a legitimate error in the order. As proposed, Nasdaq Rule 4702(b)(13)[16] would provide that IO Orders may be cancelled and/or modified between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET if the participant requests that Nasdaq correct a legitimate error in the order. IO Orders could not be cancelled or modified for any reason at or after 3:58 p.m. ET.

The Exchange also proposes to make conforming changes throughout its rules to reflect the proposed cutoff times.[17]

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[14]   As proposed, a LOC Order entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET would be accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for a LOC Order to buy (sell), in which case the participant would have the choice to have the order rejected or re-priced to the First Reference Price.

[15]   Nasdaq Rule 4702(b)(12)(B) continues to provide that a Closing Cross/Extended Hours Order entered through OUCH, FLITE, RASH, or FIX with a time-in-force other than immediate-or-cancel after the time of the Nasdaq Closing Cross will be accepted but the Nasdaq Closing Cross flag will be ignored. As proposed, all other Closing Cross/Extended Hours Orders entered at or after 3:58 p.m. ET would be rejected.

[16]   Unchanged from the current rule, IO Orders may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross.

[17]   Specifically, the Exchange proposes to make conforming changes to Nasdaq Rule 4754(b)(7)(B) and Nasdaq Rules 7018(a)(1), (2), and (3) to reflect the proposed cutoff times.

B.   Closing Cross/Extended Hours Order with Pegging Attribute

Nasdaq Rule 4702(b)(12)(B) currently provides that a Closing Cross/Extended Hours Order[18] that is entered between 3:50 p.m. ET and the time of the Nasdaq Closing Cross will be rejected if it has been assigned a Pegging Attribute.[19] The Exchange proposes to delete the reference in this rule to the time period between 3:50 p.m. ET and the time of the Nasdaq Closing Cross. Therefore, as proposed, a Closing Cross/Extended Hours Order would be rejected if it has been assigned a Pegging Attribute regardless of when the order is entered.

C.   Order Imbalance Indicator

Currently, Nasdaq Rule 4754(b)(1) provides that, beginning at 3:50 p.m., Nasdaq disseminates by electronic means an Order Imbalance Indicator[20] every five seconds until market close. The Exchange proposes to begin disseminating the Order Imbalance Indicator for the Nasdaq Closing Cross at 3:55 p.m. ET and to disseminate the Order Imbalance Indicator every second.[21] The Exchange also proposes to disseminate the Order Imbalance Indicators for the

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[18]   A Closing Cross/Extended Hours Order is an order that is flagged to participate in the Nasdaq Closing Cross and that has a time-in-force that continues after the time of the Nasdaq Closing Cross. See Nasdaq Rule 4702(b)(12)(B). A Closing Cross/Extended Hours Order participates in the Nasdaq Closing Cross like a LOC Order, and it operates thereafter in accordance with its order type and order attributes (if not executed in full in the Nasdaq Closing Cross). See id.

[19]   Pegging is an order attribute that allows an order to have its price automatically set with reference to the national best bid or offer and is available only during Market Hours. See Nasdaq Rule 4703(d).

[20]   The Order Imbalance Indicator for the Nasdaq Closing Cross is a message disseminated by electronic means containing information about MOC, LOC, IO, and Close Eligible Interest and the price at which those orders would execute at the time of dissemination. See Nasdaq Rule 4754(a)(7).

[21]   Because the Exchange proposes to begin disseminating the Order Imbalance Indicator for the Nasdaq Closing Cross at 3:55 p.m. ET, the Exchange also proposes to amend the definition of First Reference Price to mean the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:55 p.m. ET. See proposed Nasdaq Rule 4754(a)(9).

Nasdaq Opening Cross,[22] the Nasdaq Halt Cross,[23] and the LULD Closing Cross[24] every second instead of every five seconds.

The Exchange proposes to implement the proposed changes in Q4 2018, and will announce the implementation date in an Equity Trader Alert issued to participants prior to implementing the changes.

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.[25] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[26] 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, 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 extend the cutoff times for entering MOC and LOC Orders, for modifying and cancelling MOC, LOC, and IO Orders, for modifying MOC and IO Orders to correct legitimate errors, and for cancelling MOC, LOC, and IO Orders to

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22	See proposed Nasdaq Rule 4752(d)(1).
23	See proposed Nasdaq Rule 4753(b)(1).
24	See proposed Nasdaq Rule 4754(b)(6)(B).
25	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).
26	15 U.S.C. 78f(b)(5).

correct legitimate errors.[27] The Commission believes that extending these cutoff times would

allow Exchange participants to retain flexibility with respect to entering, modifying, and

cancelling their on close orders until a later time, while still providing time for Exchange

participants to react to and resolve imbalances in the Nasdaq Closing Cross.[28] As a result, the

Commission believes that the proposal could encourage participation in the Nasdaq Closing

Cross by market participants who are unwilling to give up flexibility and control over their on

close orders starting at 3:50 p.m. ET.[29]

As discussed above, the Exchange also proposes to amend its rules to provide that a

Closing Cross/Extended Hours Order would be rejected if it has been assigned a Pegging

Attribute (i.e., regardless of the time the order is entered).[30] The Commission notes that Pegging

Attributes are available only during Market Hours[31] and Closing Cross/Extended Hours Orders

only operate outside of Market Hours.[32] The Commission believes that the proposal would

reflect the current operation of the Pegging Attribute and Closing Cross/Extended Hours Orders.

In addition, as discussed above, the Exchange proposes to disseminate the Order

Imbalance Indicator for the Nasdaq Closing Cross beginning at 3:55 p.m. ET instead of 3:50

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[27] See supra Section II.A.

[28] The Commission also notes that the proposal would continue to provide a brief period of additional time after 3:55 p.m. ET for Exchange participants to submit LOC Orders provided that there is a First Reference Price, and to correct legitimate errors in their on close orders.

[29] The Commission notes that Cboe BZX Exchange Inc. ("BZX") has a 3:55 p.m. cutoff time for entering market-on-close and limit-on-close orders, and that BZX accepts late-limit-on-close orders between 3:55 p.m. and 4:00 p.m. See BZX Rule 11.23(c)(1)(A). The Commission also notes that NYSE Arca, Inc. ("NYSE Arca") initiates its closing auction imbalance freeze for market-on-close and limit-on-close orders one minute before the scheduled time for the closing auction. See NYSE Arca Rule 7.35-E(d)(2).

[30] See supra Section II.B.

[31] See supra note 19 and Nasdaq Rule 4703(d).

[32] See supra note 18 and Nasdaq Rule 4702(b)(12)(B).

p.m. ET, and to disseminate the Order Imbalance Indicators for the Nasdaq Opening Cross,

Nasdaq Halt Cross, Nasdaq Closing Cross, and LULD Closing Cross every second instead of

every five seconds.[33] The Commission notes that because Exchange participants would have

more flexibility to enter, modify, and cancel on close orders before 3:55 p.m. ET than after,[34] the

proposal would permit the Exchange to start disseminating the Order Imbalance Indicator for the

Nasdaq Closing Cross when on close interest is relatively locked in.[35] The Commission also

believes that disseminating the Order Imbalance Indicators every second would provide a

timelier and more frequent view of the market before a cross.[36]

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[33]   See supra Section II.C.

[34]   See supra Section II.A.

[35]   The Commission notes that, currently, the Exchange also begins disseminating the Order
       Imbalance Indicator for the Nasdaq Closing Cross when on close interest is relatively
       locked in (i.e., at 3:50 p.m. ET).

[36]   The Commission notes that NYSE Arca updates its auction imbalance information at
       least every second, unless there is no change to the information. See NYSE Arca Rule
       7.35-E(a)(4)(A).

IV.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[37] that the

proposed rule change (SR-NASDAQ-2018-068), as modified by Amendment No. 1, be, and

hereby is, approved.

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

authority.[38]

Eduardo A. Aleman
Assistant Secretary

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[37]   15 U.S.C. 78s(b)(2).

[38]   17 CFR 200.30-3(a)(12).