

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94277; File No. SR-NASDAQ-2021-101)

February 17, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change to Amend Equity 4, Rule 4754 Relating to Certain Order Handling in the Limit Up-Limit Down Closing Cross

I. Introduction

On December 22, 2021, The Nasdaq Stock Market LLC (“Exchange” or “Nasdaq”) 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 Equity 4, Rule (“Rule”) 4754 relating to certain order handling in the Limit Up-Limit Down (“LULD”) closing cross. The proposed rule change was published for comment in the Federal Register on January 5, 2022.³ The Commission has not received any comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Nasdaq closing cross is the Exchange’s process for determining the price at which orders will be executed at the close and for executing those orders.⁴ In advance of the closing cross, the Exchange disseminates an early order imbalance indicator (“EOII”) every 10 seconds, beginning at 3:50 p.m.⁵ until the order imbalance indicator (“NOII”) begins to disseminate.⁶ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 93876 (December 29, 2021), 87 FR 501 (“Notice”).

⁴ See Rule 4754(a)(6).

⁵ All times referenced are in Eastern Time.

⁶ See Rule 4754(b)(1)(A).

Exchange disseminates the NOII every second, beginning at 3:55 p.m. until market close.⁷ Both the EOII and the NOII include, among other things, the current reference price for a security, which is the single price that is at or within the current Nasdaq best bid and offer at which the maximum number of shares of market on close, limit on close (“LOC”), and imbalance only orders can be paired.⁸

Currently, Exchange participants may enter LOC orders between 4 a.m. and immediately prior to 3:55 p.m. for participation in the closing cross.⁹ Exchange participants may also enter LOC orders between 3:55 p.m. and immediately prior to 3:58 p.m. (“Late LOC orders”), provided that there is a First Reference Price (i.e., the current reference price disseminated in the EOII at 3:50 p.m.¹⁰) or a Second Reference Price (i.e., the current reference price disseminated in the NOII at 3:55 p.m.¹¹) for the security.¹² A Late LOC order to buy (sell) is accepted at its limit price, unless its limit price is higher (lower) than the higher (lower) of the First Reference Price and the Second Reference Price, in which case the Late LOC order will be handled consistent with the participant’s instruction that order is to be either rejected or re-priced to the higher (lower) of the First Reference Price and the Second Reference Price.¹³

⁷ See Rule 4754(b)(1)(B).

⁸ See Rule 4754(a)(7)(A) (also setting forth various tie breakers if more than one price meets this definition) and Rule 4754(a)(10).

⁹ See Rule 4702(b)(12).

¹⁰ See Rule 4754(a)(9).

¹¹ See Rule 4754(a)(11).

¹² See Rule 4702(b)(12).

¹³ See *id.* (also describing the rounding methodology if the First Reference Price or Second Reference Price is not at a permissible minimum increment).

The LULD closing cross is the Exchange’s process for executing closing trades in Nasdaq-listed securities when an LULD trading pause exists at or after 3:50 p.m. and before 4:00 p.m.¹⁴ In May 2021, the Commission approved SR-NASDAQ-2021-009, which included certain changes to the Exchange’s LULD closing cross process.¹⁵ As approved, consistent with the regular closing cross, the Exchange would disseminate the EOII for the LULD closing cross every 10 seconds beginning at 3:50 p.m. until the Exchange begins to disseminate the NOII, and the NOII would be disseminated every second beginning at 3:55 p.m. until market close.¹⁶ Unlike the regular closing cross, the reference price contained in such EOII and NOII represents the price at which the LULD closing cross would execute should the cross conclude at that time, and that price is bound by benchmarks that are calculated using either the LULD price bands or the auction collars for reopening following an LULD trading pause, depending on the time the trading pause was initiated and whether the trading pause was extended.¹⁷ Also as approved in SR-NASDAQ-2021-009, consistent with the regular closing cross, LOC orders (including Late LOC orders) for the LULD closing cross may be entered, modified, and cancelled pursuant to Rule 4702(b)(12).¹⁸ In accordance with Rule 4702(b)(12), the Exchange would determine whether Late LOC orders may be entered, rejected, or re-priced using the reference prices disseminated in the EOII and NOII.

¹⁴ See Rule 4754(b)(6).

¹⁵ See Securities Exchange Act Release No. 92068 (May 28, 2021), 86 FR 29864 (June 3, 2021). The Exchange has not yet implemented the changes made in SR-NASDAQ-2021-009. See Notice, supra note 3, at 501.

¹⁶ See Rule 4754(b)(6)(C).

¹⁷ See id. and Rule 4754(b)(6)(E).

¹⁸ See Rule 4754(b)(6)(F)(ii).

The Exchange now proposes to amend the handling of Late LOC orders in an LULD closing cross. Specifically, for purposes of determining whether to accept, reject, or re-price a Late LOC order, the Exchange would use the First Reference Price and the Second Reference Price, if any, that was disseminated in the regular closing cross EOII and NOII, instead of any First Reference Price and Second Reference Price that was disseminated in the LULD closing cross EOII and NOII.

Accordingly, as proposed, if a security entered an LULD trading pause prior and up to 3:50 p.m., the Exchange would not accept Late LOC orders in that security,¹⁹ because that security would not have a regular closing cross First Reference Price or Second Reference Price.²⁰ In addition, if a security entered an LULD trading pause after 3:50 p.m. and up to 3:55 p.m., the Exchange would accept Late LOC orders in that security, provided that there is a regular closing cross First Reference Price.²¹ A security that entered an LULD trading pause after 3:50 p.m. and up to 3:55 p.m. could have a regular closing cross First Reference Price, but would not have a regular closing cross Second Reference Price.²² Finally, if a security entered an LULD trading pause after 3:55 p.m., the Exchange would accept Late LOC orders in that security, provided that there is a regular closing cross First Reference Price or Second Reference

¹⁹ See proposed Rule 4754(b)(6)(F)(ii)(a).

²⁰ See Notice, *supra* note 3, at 503 n.15. A security that entered an LULD trading pause prior and up to 3:50 p.m. would instead have an LULD closing cross First Reference Price and Second Reference Price. See *id.* at 503.

²¹ Such orders may then be rejected or subject to re-pricing in accordance with Rule 4702(b)(12), in either case consistent with the participant's instructions. See proposed Rule 4754(b)(6)(F)(ii)(b).

²² See Notice, *supra* note 3, at 503 n.16. A security that entered an LULD trading pause after 3:50 p.m. and up to 3:55 p.m. would instead have an LULD closing cross Second Reference Price. See *id.* at 503.

Price.²³ A security that entered an LULD trading pause after 3:55 p.m. could have both a regular closing cross First Reference Price and a regular closing cross Second Reference Price.²⁴

III. Discussion and Commission Findings

The Commission finds that the proposed rule change 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 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 described above, the Exchange proposes to use the First Reference Price and the Second Reference Price, if any, that was disseminated in the regular closing cross EOII and NOII, for purposes of determining whether to accept, reject, or re-price a Late LOC order in the LULD closing cross. The Commission believes that the Exchange's proposal would allow consistent handling of Late LOC orders in the LULD closing cross and the regular closing cross. The Commission also believes that the proposal would allow the Exchange to consistently use reference prices that are bound by the Nasdaq best bid and offer (i.e., the First Reference Price

²³ Such orders may then be rejected or subject to re-pricing in accordance with Rule 4702(b)(12), in either case consistent with the participant's instructions. See proposed Rule 4754(b)(6)(F)(ii)(c).

²⁴ See Notice, supra note 3, at 503 n.17.

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).

and Second Reference Price, if any, disseminated for the regular closing cross) for purposes of determining whether to accept, reject, or re-price Late LOC orders, regardless of whether a security entered an LULD trading pause prior and up to 3:50 p.m., after 3:50 p.m. and up to 3:55 p.m., or after 3:55 p.m.²⁷ Accordingly, the Commission believes that the proposal would promote a more consistent experience for Exchange participants that choose to submit Late LOC orders to participate in the Exchange's closing crosses.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NASDAQ-2021-101), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier
Assistant Secretary

²⁷ See supra notes 20, 22, and 24 and accompanying text (describing the different First and Second Reference Prices that are calculated for a security, depending on whether the security entered an LULD trading pause prior and up to 3:50 p.m., after 3:50 p.m. and up to 3:55 p.m., or after 3:55 p.m.).

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).