

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80593; File No. SR-NASDAQ-2017-042)

May 4, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes)

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 April 21, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 4703 (Order Attributes) to specify the behavior of Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging after initial entry and posting to the Nasdaq Book when the market is crossed, or when there is no best bid and/or offer. Nasdaq also proposes to change certain references to cancelling or rejecting orders in Rule 4702 and Rule 4703.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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

Nasdaq proposes to amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to specify the behavior of Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging that are cancelled or rejected when the market is crossed, or when there is no best bid and/or offer after initial entry and posting to the Nasdaq Book. Nasdaq also proposes to change certain references to cancelling or rejecting orders in Rule 4702 and Rule 4703.

Rule 4702(b)(5) describes the Midpoint Peg Post-Only Order. Among other things, the Rule states that the Midpoint Peg Post-Only Order is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the National Best Bid and Offer ("NBBO") and that will execute upon entry only in circumstances where economically beneficial to the party entering the Order. The Midpoint Peg Post-Only Order is available during Market Hours only.

Rule 4703(d) describes the Pegging Order Attribute, including Midpoint Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO. Midpoint Pegging means Pegging with reference to the midpoint

between the Inside Bid and the Inside Offer (the “Midpoint”).³ An Order with Midpoint Pegging is not displayed.

Nasdaq recently proposed changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging, which were approved by the SEC on November 10, 2016.⁴ With this change, if the NBBO is crossed or if there is no NBBO, any existing Midpoint Peg Post-Only Order would be cancelled and any new Midpoint Peg Post-Only Order would be rejected. Similarly, if the Inside Bid and Inside Offer are crossed, any existing Order with Midpoint Pegging would be cancelled and any new Order with Midpoint Pegging would be rejected.⁵

Nasdaq now proposes to add language to Rule 4702(b)(5)(B) to specify the treatment of a Midpoint Peg Post-Only Order after initial entry and posting to the Nasdaq Book when the NBBO is subsequently crossed, or when there is subsequently no NBBO. Specifically, for Midpoint Peg Post-Only Orders entered through RASH, QIX or FIX, if the Order is on the Nasdaq Book and subsequently the NBBO is crossed, or if there is subsequently no NBBO, the Order will be removed from the Nasdaq Book and will be re-entered at the new midpoint once there is a valid NBBO that is not crossed.

Similarly, Nasdaq proposes to add language to Rule 4703(d) to specify the treatment of Orders with Midpoint Pegging after initial entry and posting to the Nasdaq Book when the Inside Bid and Inside Offer are subsequently crossed, or if there is subsequently no Inside Bid and/or Inside Offer. Specifically, for Orders with Midpoint Pegging entered through RASH, QIX or FIX, if the Order is on the Nasdaq Book and subsequently the Inside Bid and Inside Offer

³ Thus, if the Inside Bid was \$11 and the Inside Offer was \$11.06, an Order with Midpoint Pegging would be priced at \$11.03.

⁴ See Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR-NASDAQ-2016-111).

⁵ Id.

become crossed, or if there is no Inside Bid and/or Inside Offer, the Order will be removed from the Nasdaq Book and will be re-entered at the new midpoint once there is a valid Inside Bid and Inside Offer that is not crossed.

As stated in the filing proposing the new functionality for Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging, Nasdaq believes that the midpoint of a crossed market, or where there is no NBBO, is not a clear and accurate indication of a valid price, and may produce sub-optimal execution prices for members and investors.⁶ Prior to this change, Midpoint Peg Post-Only Orders entered through RASH, QIX or FIX would have been nevertheless repriced to the midpoint of the NBBO if the NBBO subsequently became crossed, or would have been cancelled if there was subsequently no NBBO. Nasdaq is proposing to re-enter such Orders at the new midpoint once there is a NBBO that is not crossed because the new NBBO is indicative of a valid price.

Similarly, prior to this change, Orders with Midpoint Pegging entered through RASH, QIX or FIX would have been nevertheless repriced to the midpoint of the Inside Bid and Inside Offer if the Inside Bid and Inside Offer subsequently became crossed, or would have been cancelled if there was subsequently no Inside Bid and/or Inside Offer. As with the change to Midpoint Peg Post-Only Orders, Nasdaq is therefore proposing to re-enter such Orders at the new midpoint once there is an Inside Bid and Inside Offer that is not crossed because the new Inside Bid and Inside Offer is indicative of a valid price. Nasdaq is proposing to re-enter Orders submitted through RASH, QIX or FIX because Nasdaq typically assumes a more active role in managing the order flow submitted by users of these protocols, and this functionality reflects the order flow management practices of these participants.

⁶ See Securities Exchange Act Release No. 78908 (September 22, 2016), 81 FR 66702 (September 28, 2016) (SR-NASDAQ-2016-111).

While Nasdaq is only proposing to adopt this re-entry functionality for Orders that are entered through RASH, QIX or FIX, Nasdaq believes that it is appropriate to also modify the treatment of Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging entered through OUCH or FLITE where the NBBO subsequently becomes crossed, or there is subsequently no NBBO or Inside Bid and/or Offer. Accordingly, Nasdaq is also proposing to amend Rule 4702(b)(5)(B) to state that if, after a Midpoint Peg Post-Only Order entered through OUCH or FLITE is posted to the Nasdaq Book, the NBBO changes so that the NBBO is crossed, or there is no NBBO, the Midpoint Peg Post-Only Order will be cancelled back to the Participant. Similarly, Nasdaq will amend Rule 4703(d) to state that if, after an Order with Midpoint Pegging is entered through OUCH or FLITE, the Inside Bid and Inside Offer changes so that the Midpoint is lower than (higher than) the price of an Order to buy (sell), the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Pegged Order will be cancelled back to the Participant.⁷

Finally, Nasdaq is proposing to change certain instances in Rule 4702 and Rule 4703 that describe the cancellation or rejection of an Order. For example, Rule 4702(b)(5)(A) currently states that, if the NBBO is locked when a Midpoint Peg Post-Only Order is entered, the Midpoint Peg Post-Only Order will be priced at the locking price, and if the NBBO is crossed or if there is no NBBO, the Order will be cancelled or rejected. Rule 4702(b)(5)(A) also provides that a Midpoint Peg Post-Only Order that would be assigned a price of \$1 or less per share will be rejected or cancelled, as applicable. Similarly, Rule 4703(d) states that, in the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at

⁷ Nasdaq is proposing to change the reference in this sentence from NBBO to Inside Bid and Inside Offer to make this sentence more consistent with the rest of Rule 4703, which uses the concept of the Inside Bid and Insider Offer rather than the NBBO.

the locking price, and if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will be cancelled or rejected.

Nasdaq proposes to change references to cancelling or rejecting an order to “not accepting” an Order. Depending on the context, the reference to rejecting an order may have one of two meanings.⁸ Nasdaq believes that changing references from rejecting or cancelling an Order to not accepting an Order is appropriate because the proposed language resolves the ambiguity that may arise when referring to an Order rejection, and is sufficiently broad to encompass the contexts in which the concept of Order rejection or cancellation may be used.

This proposed change supplements the recently-approved changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging, and the resulting modifications to Nasdaq systems.⁹

⁸ Specifically, an Order may be referred to as “rejected” if it is not initially accepted by the customer-facing Nasdaq interface. Alternatively, after an Order has been initially accepted by the customer-facing interface, and is being transmitted from one Nasdaq interface to another, it may be “rejected” if the Order is not accepted by another part of the Nasdaq system for various reasons.

⁹ See Securities Exchange Act Release No. 79290 (November 10, 2016), 81 FR 81184 (November 17, 2016) (SR-NASDAQ-2016-111). Nasdaq initially proposed to implement the new functionality for Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging on November 21, 2016. See Equity Trader Alert #2016-291. However, following testing, Nasdaq has decided to delay the implementation of this new functionality to provide additional time for systems testing. The new functionality shall be implemented no later than May 31, 2017. See Securities Exchange Act Release No. 80045 (February 15, 2017), 82 FR 11389 (February 22, 2017) (SR-NASDAQ-2017-013) (extending the implementation date to no later than March 31, 2017); Securities Exchange Act Release No. 80391 (April 6, 2017), 82 FR 17714 (April 12, 2017) (SR-NASDAQ-2017-034) (extending the implementation date to no later than May 31, 2017).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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.

The proposed change is consistent with the Act because it supplements the recently-approved changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging and the resulting modifications to Nasdaq systems, and reflects the Exchange's belief that the midpoint of a crossed market, or where there is no NBBO or Inside Bid and/or Inside Offer, is not a clear and accurate indication of a valid price, and may produce sub-optimal execution prices for members and investors. The proposal adopts a functionality for Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging after initial entry and posting to the Nasdaq Book where the NBBO or Inside Bid and Inside Offer subsequently becomes crossed, or where there is subsequently no NBBO or Inside Bid and/or Inside Offer, that reflects the order flow management practices of the participants that use those protocols, e.g., re-submitting such Orders that are entered through RASH, QIX or FIX, and cancelling such Orders that are submitted through OUCH or FLITE.

The proposal to replace certain references to rejecting or cancelling an order to “not accepting” an order is consistent with the Act because the proposed language encompasses the contexts in which the concept of order rejection or cancellation may be used and resolves any ambiguity that may arise when referring to an order rejection.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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. The proposed change supplements the recently-approved changes to Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging and the resulting modifications to Nasdaq systems by adopting a functionality for Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging after initial entry and posting to the Nasdaq Book where the NBBO subsequently becomes crossed, or where there is subsequently no NBBO or Inside Bid and/or Inside Offer, that reflects the order flow management practices of the participants that use those protocols. Moreover, the use of Exchange Order types and attributes is voluntary, and no member is required to use any specific Order type or attribute or even to use any Exchange Order type or attribute or any Exchange functionality at all. If an Exchange member believes for any reason that the proposed rule change will be detrimental, that perceived detriment can be avoided by choosing not to enter or interact with the Order type modified by this proposed rule change. Finally, the proposal will apply equally to all Orders that meet its criteria.

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 Act and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ 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 Exchange states that the proposal supplements the recently-approved changes to Midpoint Peg Post-Only Orders and Orders with Midpoint PEGGING, and that it intends to implement these previously-approved changes shortly (and no later than May 31, 2017).¹⁵ Waiver of the 30-day operative delay would allow the Exchange to implement the previously-approved changes concurrently with the supplemental changes in this proposal. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.¹⁶

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

¹² 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with 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.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See supra note 9.

¹⁶ 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).

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.

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-2017-042 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2017-042. 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; 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-2017-042 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).