

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87198; File No. SR-NASDAQ-2019-064)

October 2, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Certain Cutoff Times for On-Close Orders Entered for Participation in the Nasdaq Closing Cross and Adopt a Second Reference Price for Limit-on-Close Orders

I. Introduction

On July 31, 2019, 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 certain cutoff times for on-close orders entered for participation in the Nasdaq Closing Cross and adopt a Second Reference Price for limit-on-close orders. The proposed rule change was published for comment in the Federal Register on August 19, 2019.³ On September 6, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.⁴ The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86642 (August 13, 2019), 84 FR 42964.

⁴ In Amendment No. 1, the Exchange revised the proposal to: (1) specify the time during which market-on-close orders can be cancelled or modified; (2) remove proposed changes to the Nasdaq Pricing Schedule in Equity 7, Section 118; (3) include additional description, examples, and justification related to the proposed rule change; and (4) make technical, clarifying, and conforming changes. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2019-064/srnasdaq2019064-6088461-191827.pdf>.

comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Nasdaq Closing Cross is the Exchange's process for determining the price at which orders would be executed at the close and for executing those orders.⁵ Currently, the Exchange disseminates the Order Imbalance Indicator ("NOII") for the Nasdaq Closing Cross beginning at 3:55 p.m. ET or five minutes prior to the early closing time on a day when the Exchange closes early.⁶ The NOII is an electronically disseminated message containing information about market-on-close ("MOC"),⁷ limit-on-close ("LOC"),⁸ and imbalance only ("IO")⁹ orders, as well as close eligible interest¹⁰ and the price at which those orders would execute at the time of the NOII dissemination.¹¹ The Exchange recently also adopted rules for the early order imbalance indicator ("EOII"), which the Exchange will begin disseminating at 3:50 p.m. ET or ten minutes prior to the early closing time on a day when the Exchange closes early¹² and will contain a

⁵ See Rule 4754(a)(6).

⁶ See Rule 4754(b)(1)(B).

⁷ A MOC order is an order entered without a price that can be executed only during the Nasdaq Closing Cross. See Rule 4702(b)(11).

⁸ A LOC order is an order entered with a price that can 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).

⁹ An IO order is an order entered with a price that can be executed only in the Nasdaq Closing Cross and only against MOC orders or LOC orders. See Rule 4702(b)(13).

¹⁰ Close eligible interest is any quotation or any order that can be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC. See Rule 4754(a)(1).

¹¹ See Rule 4754(a)(7).

¹² See Rule 4754(b)(1)(A).

subset of the information comprising the NOIL.¹³ The Exchange intends to implement the EOII in conjunction with the changes in the current proposal.¹⁴

Currently, pursuant to Rule 4702(b)(11)(A), MOC orders can be entered, cancelled, or modified between 4:00 a.m. ET and immediately prior to 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, a MOC order can be cancelled or modified only if the participant requests that the Exchange correct a legitimate error in the order.¹⁵ MOC orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. The Exchange proposes to amend this rule to provide that MOC orders can be cancelled or modified between 4:00 a.m. ET and immediately prior to 3:50 p.m. ET and that, between 3:50 p.m. ET and immediately prior to 3:58 p.m. ET, a MOC order can be cancelled or modified only if the participant requests that the Exchange correct a legitimate error in the order.

Currently, pursuant to Rule 4702(b)(13)(A), an IO order can be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross, but cannot be cancelled or modified at or after 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, however, an IO order can be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order. IO orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. The Exchange proposes to amend this rule to provide that IO orders cannot be cancelled or modified at or after 3:50 p.m. ET, except that, between 3:50 p.m. ET and

¹³ See Securities Exchange Act Release No. 85292 (March 12, 2019), 84 FR 9848 (March 18, 2019) (SR-NASDAQ-2019-010).

¹⁴ See Amendment No. 1, *supra* note 4, at 4.

¹⁵ A legitimate error for a MOC, LOC, or IO order includes an error in the side, size, symbol, or price, or the duplication of an order, as set forth in the applicable rule for each order type. See *id.* at 5 n.9. See also Rule 4702(b)(11)(A), (12)(A), and (13)(A).

immediately prior to 3:58 p.m. ET, an IO order can be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order.

Currently, pursuant to Rule 4702(b)(12)(A), LOC orders can be entered, cancelled, or modified between 4:00 a.m. ET and immediately prior to 3:55 p.m. ET. A LOC order can be entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET (“Late LOC order”) provided that there is a First Reference Price.¹⁶ Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, LOC orders can be cancelled (but not modified) only if the participant requests that the Exchange correct a legitimate error in the order. Currently, a Late LOC order will be accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for a Late LOC order to buy (sell), in which case the Late LOC order will be handled consistent with the participant’s instruction that the Late LOC order is to be either: (1) rejected; or (2) re-priced to the First Reference Price, provided 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.¹⁷

¹⁶ “First Reference Price” is currently defined as “the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:55 p.m. ET.” See Rule 4754(a)(9). “Current Reference Price” means: (i) the single price that is at or within the current Nasdaq market center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired; (ii) if more than one price exists under (i), the price that minimizes any imbalance; (iii) if more than one price exists under (ii), the entered price at which shares will remain unexecuted in the cross; and (iv) if more than one price exists under (iii), the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination. See Rule 4754(a)(7)(A).

¹⁷ The default configuration for participants that do not specify otherwise is to have Late LOC orders re-priced rather than rejected. See Rule 4702(b)(12)(A).

The Exchange proposes to amend Rule 4702(b)(12)(A) to provide that LOC orders can be cancelled or modified between 4:00 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, a LOC order can be entered but can only be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, a LOC order can only be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order.

The Exchange also proposes to amend Rule 4702(b)(12)(A) to permit a Late LOC order to be entered if there is either a First Reference Price or a Second Reference Price. In connection with this proposed change, the Exchange proposes to amend the definition of First Reference Price in Rule 4754(a)(9) to refer to the Current Reference Price in the EOII disseminated at 3:50 p.m. ET, or ten minutes prior to the early closing time on a day the Exchange closes early. The Exchange also proposes to add a new definition of Second Reference Price in Rule 4754(a)(11) to refer to the Current Reference Price in the NOII disseminated at 3:55 p.m. ET, or five minutes prior to the early closing time on a day the Exchange closes early.

Moreover, the Exchange proposes to amend Rule 4702(b)(12)(A) to provide that a Late LOC order to buy (sell) will be 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 the Late LOC order is to be either: (1) rejected; or (2) re-priced to the higher (lower) of the First Reference Price and the Second Reference Price.¹⁸ If the First Reference Price for a security is

¹⁸ If either the First Reference Price or the Second Reference Price is not at a permissible minimum increment, the First Reference Price or the Second Reference Price, as

zero, Late LOC orders to buy (sell) will be priced at the lower (higher) of the Second Reference Price and the order's limit price. If the Second Reference Price for a security is zero, Late LOC orders to buy (sell) will be priced at the lower (higher) of the First Reference Price and the order's limit price. If both the First Reference Price and Second Reference Price are zero, all Late LOC orders to buy or sell will be rejected.¹⁹

Finally, the Exchange proposes to replace the term "Eligible Interest" with the defined term "Close Eligible Interest" in the definition of "Near Clearing Price" in Rule 4754(a)(7)(E)(ii) to correct an inadvertent error.²⁰

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.²¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²² 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

applicable, 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. See proposed Rule 4702(b)(12)(A). As is currently the case, the default configuration for participants that do not specify otherwise will be to have Late LOC orders re-priced rather than rejected. See id.

¹⁹ See Amendment No. 1, supra note 4, for additional description and examples of the proposed rule change.

²⁰ See id. at 10.

²¹ 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).

²² 15 U.S.C. 78f(b)(5).

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 expand the time periods during which MOC, LOC, and IO orders can be cancelled or modified only if the participant requests that the Exchange correct a legitimate error in the order (i.e., from between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, to between 3:50 p.m. ET and immediately prior to 3:58 p.m. ET). The Commission believes that the proposal could reduce the possibility of large price movements in the Nasdaq Closing Cross process that may result from modifications and cancellations of MOC, LOC, and IO orders starting at 3:50 p.m. ET in response to the EOII.²³ The Commission also notes that the time periods for entering MOC, LOC, and IO orders remain unchanged, and participants may consider information in the EOII and NOII, as applicable, in entering these orders.

In addition, as discussed above, the Exchange proposes to permit the entry of Late LOC orders provided that there is either a First Reference Price or a Second Reference Price, and to permit a Late LOC order to be priced at the more aggressive of the First Reference Price, Second Reference Price, or its limit price. The Commission believes that the proposal may encourage additional participation in the Nasdaq Closing Cross by allowing participants to consider the information disseminated in both the EOII and NOII in making decisions with respect to the use of Late LOC orders. Moreover, the proposal may increase participation in the Nasdaq Closing Cross because, under the proposal, a Late LOC order with a limit price that is more aggressive

²³ The proposal could also result in an increased number of MOC, LOC, and IO orders that participate in the Nasdaq Closing Cross because it restricts the cancellation and modification of these orders by providing for a longer period of time during which these orders can only be cancelled or modified if the participant requests that the Exchange correct a legitimate error in the order.

than the Second Reference Price would not be rejected or re-priced if its limit price is less aggressive than the First Reference Price.²⁴

The Commission also believes the proposal to replace the term “Eligible Interest” with the defined term “Close Eligible Interest” in the definition of “Near Clearing Price” in Rule 4754(a)(7)(E)(ii) is consistent with the Act because using a defined term would render the rule text more precise and accurate.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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-2019-064 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-2019-064. 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

²⁴ Currently, a Late LOC order with a limit price that is more aggressive than the Second Reference Price (which is currently defined as the “First Reference Price”) is either rejected or re-priced to the Second Reference Price.

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-2019-064, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. As discussed above, in Amendment No. 1, the Exchange revised the proposal to: (1) specify the time during which MOC orders can be cancelled or modified; (2) remove proposed changes to the Nasdaq Pricing Schedule in Equity 7, Section 118; (3) include additional description, examples, and justification related to the proposed rule change; and (4) make technical, clarifying, and conforming changes. The Commission believes that Amendment No. 1 does not raise any novel regulatory issues or make any significant substantive changes to the original proposal, which was subject to a full notice and comment period during which no comments were received. The Commission also notes that

Amendment No. 1 provides additional accuracy, clarity, and justification to the proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁵ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASDAQ-2019-064), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Jill M. Peterson
Assistant Secretary

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ Id.

²⁷ 17 CFR 200.30-3(a)(12).