cannot be executed via AIM.[13] Such opportunity could help protect the interest of investors by helping to ensure that ineligible AIM Agency Orders are processed, rather than cancelled.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–2016–024), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–12015 Filed 5–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77839; File No. SR–NASDAQ–2016–066]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 4703

May 16, 2016.

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 May 4, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''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 Nasdaq. 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 4703 (Order Attributes).

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, 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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 is proposing to amend Rule 4703(a)(7). This rule currently provides that a market participant entering an order using the SCAN routing strategy prior to 8:00 a.m. Eastern time (''ET'') may designate the order to activate upon entry or at 8:00 a.m. ET. The Exchange proposes to extend this functionality to the recently approved Retail Order Process (''RTFY'') order routing option.[3]

The RTFY order routing option is designed to enhance execution quality and benefit retail investors by providing price improvement opportunities to retail order flow. Previously, retail order firms often sent non-marketable order flow, that is—orders that are not executable against the best prices available in the market place based on their limit price—to post and display on exchanges. Some of the orders that have been deemed to be non-marketable by the entering firm become marketable by the time the exchange receives them and ultimately remove liquidity from the exchange order book. The RTFY routing option is an alternative method for posting non-marketable order flow on the Exchange order book. Rather than allowing the marketable Designated Retail Orders (''DROs'') [4] to immediately remove liquidity from the Exchange order book (unless explicitly instructed to do so), the order is routed to destinations in the System routing table [5] to increase price improvement opportunities for the DROs. RTFY may remove liquidity from the Exchange book after routing to other destinations. Any non-marketable RTFY orders will post on the Exchange book.

Under the SCAN [6] routing strategy orders can check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. Shares that remain unexecuted after routing are posted on the Exchange book. Once on the Exchange book, if the order is subsequently locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

Currently, RFTY users may enter extended hours orders, which may execute, route, or post to the book prior to the beginning of regular hours trading. Extended hours orders are accepted starting at 4 a.m. ET. SCAN users may also send extended hours orders which are eligible for execution, routing, and posting prior to regular market hours trading. However, SCAN users may also designate that their extended hours orders not activate until 8 a.m. Some market participants maintain systems that do not allow executions prior to 8 a.m. The Exchange believes this functionality for SCAN orders supports market participants by giving them the ability to allow orders to flow through to the Exchange while keeping them inactive until 8 a.m.

The Exchange believes that the market participants who currently use this functionality for the SCAN order routing option, as described in Nasdaq Rule 4703(a)(7), are similar to the market participants who use the new RTFY order routing option. While the users of the SCAN routing strategy are diverse, the users of the 8 a.m. activation functionality are generally retail focused broker-dealers. RTFY is an order routing option designed specifically for DROs in order to provide more opportunities for price improvement to individual retail investor's orders. Because the firms that choose to utilize the 8 a.m. activation feature of SCAN are generally firms that represent retail orders, the Exchange believes that it makes sense to provide this functionality to the retail firms that make use of the RTFY routing option. The Exchange proposes to update the fifth bullet point under Nasdaq Rule 4703(a) for consistency as to this point as well.

The proposed rule change will allow market participants using RTFY to benefit by having the added flexibility

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[13] *See* Notice, *supra* note 4, at 20699.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76335 (Nov. 3, 2015), 80 FR 69256 (Nov. 9, 2015) (SR–NASDAQ–2015–112).

[4] *See* Nasdaq Rule 7018.

[5] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. NASDAQ reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. *See* NASDAQ Rule 4758(a)(1)(A).

[6] *See* Nasdaq Rule 4758(a)(1)(A)(iv).

to allow their orders to activate at 8:00 a.m. ET in the same way current users of this functionality do with SCAN. Additionally, Nasdaq believes that by extending this functionality to the RTFY order routing option it will support these market participants as they seek ways in which to more efficiently manage the retail order flow that they submit to the Exchange.

The Exchange also proposes to eliminate the final sentence of Nasdaq Rule 4703(a)(7), which refers to the term ''ESCN''. ESCN denotes an order using the SCAN routing strategy entered prior to 8:00 a.m. ET and that is not activated until 8:00 a.m. ET. The inclusion of this term is unnecessary and its elimination will simplify the rule and lessen potential confusion for market participants regarding this rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[7] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Nasdaq believes that the proposed rule change promotes just and equitable principles of trade, as well as serves to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest because it adds flexibility to the recently approved RTFY routing option. Specifically, the proposed rule change amends both Nasdaq Rule 4703(a)(7) and the fifth bullet point under Nasdaq Rule 4703(a), which currently apply to the SCAN order routing option, to also apply to the new RTFY order routing option as well. This added functionality for RTFY will allow market participants using the RTFY order routing strategy prior to 8:00 a.m. ET to designate whether their RTFY orders will activate upon entry or at 8:00 a.m. ET.

Nasdaq believes that this additional functionality will allow the Exchange to compete more successfully for retail order flow. The Exchange bases this upon its determination that the market participants who currently use the SCAN order routing option and use this functionality are similar to the market participants who use the new RTFY order routing option. Nasdaq believes that extending this functionality to the RTFY order routing option will assist market participants in efficiently managing the order flow that they submit to the Exchange.

This added functionality is an example of different approaches to market challenges and is what drives innovation, market quality, and ultimately competition. The Exchange competes vigorously for order flow in a marketplace where participants have many trading venue choices. The Exchange believes making this functionality available to market participants using the RTFY routing option will increase competition by providing value to retail order firms and their retail investor customers, which will in turn result in more order flow being sent to the Exchange.

The Exchange also believes that its proposal to eliminate the final sentence of Nasdaq Rule 4703(a)(7) to remove the reference to ''ESCN'' serves to promote just and equitable principles of trade and to protect investors and the public interest through the elimination of a sentence that is unnecessary and unhelpful for market participants. Since ESCN denotes an order using the SCAN routing strategy entered prior to 8:00 a.m. ET and that is not eligible for execution until 8:00 a.m. ET, the inclusion of this term is no longer necessary and is unhelpful for market participants. The elimination of this sentence will clarify and lessen potential confusion for market participants regarding this rule.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The [sic] does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the functionality in Nasdaq Rule 4703(a)(7) being made available to market participants using the recently approved RTFY order routing strategy will promote competition by providing value to retail order firms and their retail investor customers, which will in turn result in more order flow being sent to the Exchange. This development could enhance competition to the benefit of the markets and investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor 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[9] and Rule 19b–4(f)(6) thereunder.[10]

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 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 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 email to *rule-comments@sec.gov*. Please include File No. SR–NASDAQ–2016–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and 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 fulfilled this requirement.

and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2016–066. This file number should be included on the subject line if email 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 Web site (*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 Web site 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 such filing will also 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 No. SR–NASDAQ–2016–066 and should be submitted on or before June 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11879 Filed 5–19–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77837; File No. SR–NYSEARCA–2016–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Professional Customer in Rule 6.1A(a)(4A)

May 16, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 3, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the definition of Professional Customer in Rule 6.1A(a)(4A) to specify the manner in which the Exchange calculates average daily order submissions for purposes of counting Professional Customer orders. The proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of Professional Customer in Rule 6.1A(a)(4A) to adopt a methodology for counting average daily order submissions in listed options to determine whether a person or entity meets the definition of a Professional Customer ("Professional Customer order counting"). The proposed rule change is designed to harmonize Professional Customer order counting with the recently adopted rules of competing options exchanges—specifically the Chicago Board of Options Exchange, Inc. ("CBOE") and NASDAQ OMX PHLX LLC ("PHLX").[4]

Rule 6.1A(a)(4A) defines Professional Customer "as an individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)." In adopting the Rule 6.1A(a)(4A), the Exchange noted that identifying Professional Customer accounts based upon the average number of orders entered in qualified accounts is an appropriate, objective approach that will reasonably distinguish such persons and entities from non-professional, retail investors or market participants. In order to properly represent orders entered on the Exchange, OTP Holders and OTP Firms are required to indicate whether Customer orders are "Professional Customer" orders.[5] To comply with this requirement, member organizations are required to review their Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Customer orders or Professional Customer orders.[6]

The advent of new multi-leg spread products and the proliferation of the use of complex orders and algorithmic execution strategies by both institutional and retail market participants has raised questions as to what should be counted as an "order" for Professional Customer order counting purposes. The proposed changes would specifically address the

[11] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 77450 (March 25, 2016), 81 FR 18668, (March 31, 2016) (SR–CBOE–2016–005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (SR–Phlx–2016–10) (approval orders). The Exchange notes that it recently issued guidance regarding Professional Customer order counting. *See e.g.,* NYSE Arca, Inc.'s and NYSE MKT LLC's Joint Regulatory Bulletin (RBO–15–03 and RBO–15–06, respectively) dated September 9, 2015. This proposal codifies that guidance in a manner that is consistent with CBOE and PHLX's approved rules.

[5] *See e.g.,* Rule 6.69 (Reporting Duties), Commentary .03 (requiring that manual orders submitted be marked with an origin code "PC.").

[6] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Customer orders for the next calendar quarter. OTP Holders and OTP Firms would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While members only would be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Customer orders but that has averaged more than 390 orders per day during a month, the Exchange would notify the OTP Holder and the OTP Holder would be required to change the manner in which it is representing the customer's orders within five business days.