

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83482; File No. SR-NASDAQ-2018-046)

June 20, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4702

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 8, 2018, 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(b)(12)(A) so that Participants can choose to have their Limit On Close Orders rejected if subject to being re-priced when entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET.

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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

On July 13, 2017, the Exchange filed a proposed rule change to enhance the Nasdaq Closing Cross by permitting Participants to submit Limit On Close (“LOC”) Orders until immediately prior to 3:55 p.m. ET subject to certain conditions, including that such LOC Orders would be re-priced in certain situations.<sup>3</sup> This rule change was approved by the Commission on September 8, 2017.<sup>4</sup> The Exchange now proposes to amend Rule 4702(b)(12)(A) so that Participants can choose to have their Limit On Close Orders rejected if subject to being re-priced when entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET.

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.<sup>5</sup> Subject to the qualifications provided below, LOC Orders may be entered, cancelled, and/or modified between 4 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, an LOC Order may be entered provided that there is a First Reference Price.<sup>6</sup> Currently, an

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<sup>3</sup> See Securities Exchange Act Release No. 81188 (July 21, 2017), 82 FR 35014 (July 27, 2017) (SR-NASDAQ-2017-061).

<sup>4</sup> See Securities Exchange Act Release No. 81556 (September 8, 2017), 82 FR 43264 (September 14, 2017) (SR-NASDAQ-2017-061) (Approval Order).

<sup>5</sup> See Rule 4702(b)(12).

<sup>6</sup> “First Reference Price” is the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:50 p.m. ET. See Rule 4754(a)(9). During this time period an LOC Order can also be cancelled but not modified, and only if the Participant

LOC Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET will be accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for an LOC Order to buy (sell), in which case the LOC Order will be re-priced to the First Reference Price.<sup>7</sup>

The Exchange now proposes to permit Participants to choose to have LOC Orders rejected if subject to being re-priced when entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET. While the Exchange believes that accepting LOC Orders after the regular 3:50 p.m. ET cutoff enhances price discovery, in order to promote price stability during the Nasdaq Closing Cross, the Exchange re-prices these LOC Orders if the First Reference price is less aggressive than the Order's limit price. Nevertheless, certain Participants may prefer not to have LOC Orders re-priced. A re-priced LOC Order would only have priority at the less aggressive First Reference Price, and as a result would be less likely to receive an execution in the Nasdaq Closing Cross than if it had been accepted at its stated limit price. For example, if the First Reference Price in ABC is \$10, an LOC Order to buy entered at 3:52 with a stated limit price of \$12 would be accepted at \$10 today. If the Nasdaq Closing Cross is subsequently executed at a price of \$11, the LOC Order would not participate even though its stated limit price indicates a willingness to pay up to \$12. Some Participants would therefore prefer to have this LOC Order rejected at the outset to avoid this possibility when the Nasdaq Closing Cross is ultimately executed. Giving the option to have those LOC Orders rejected on entry rather than re-priced will give Participants more flexibility with respect to how such LOC Orders are handled.

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requests that Nasdaq correct a legitimate error in the Order (e.g., Side, Size, Symbol, or Price, or duplication of an Order).

<sup>7</sup> 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.

Participants that would prefer that LOC Orders be accepted to participate in the Nasdaq Closing Cross can continue to enter these LOC Orders subject to the current re-pricing logic, which will be the default configuration for Participants that have not chosen to have these LOC Orders rejected instead.

### Implementation

The Exchange proposes to introduce the change described in this proposed rule change in Q3 or Q4 2018. The Exchange will announce the implementation date of this change in an Equity Trader Alert issued to Participants prior to implementing the change.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> 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. Specifically, the Exchange believes that the proposed changes will give Participants more flexibility with respect to how their LOC Orders are handled, to the benefit of Participants and investors.

While the Exchange permits Participants to submit LOC Orders between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, the Exchange re-prices these LOC Orders to the First Reference Price if the First Reference price is less aggressive than the Order's limit price. As mentioned in the purpose section of this proposed rule change, this re-pricing is done to promote stability in the Nasdaq Closing Cross price. However, certain Participants may prefer not to have LOC Orders re-priced, and instead would like to have these LOC Orders rejected on entry

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

instead. The Exchange therefore proposes to facilitate this by giving Participants the choice to have LOC Orders handled in this manner. The Exchange believes that this is consistent with the protection of investors and the public interest as it allows Participants to have more flexibility in how they may achieve their trading goals. Specifically, Participants that choose to have an LOC Order rejected instead of re-priced could thereafter execute their trading interest in a different manner, such as by entering it onto the continuous book, rather than waiting for an uncertain execution in the Nasdaq Closing Cross where the LOC Order may have a lower priority at the re-priced price. Participants that consume and house the First Reference Price in their systems can already do this themselves today by checking if an LOC Order would be subject to re-pricing (i.e., because the limit price is more aggressive than the First Reference Price disseminated by the Exchange) prior to entering this interest on the Exchange. The Exchange believes, however, that many Participants would benefit from the Exchange performing this determination for them, and is therefore proposing to do so.

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 functionality would be available to all Participants of the Exchange, who will now have the flexibility to choose to have LOC Orders rejected on entry in situations where those LOC Orders would otherwise be re-priced to the First Reference Price. Although Participants could implement this logic themselves, implementing it on the Exchange will ensure that it is readily available to all Participants. Furthermore, other exchanges are free to offer similar functionality if they so desire.

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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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:

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission 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 satisfied this requirement.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2018-046 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-2018-046. 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. 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-2018-046 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.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).