SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Extend the Cutoff Times for Accepting on Close Orders Entered for Participation in the Nasdaq Closing Cross and To Make Related Changes

October 19, 2018.

I. Introduction

On August 15, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) 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 2 thereunder, 2 a proposed rule change to extend the cutoff times for accepting on close orders entered for participation in the Nasdaq Closing Cross and to make related changes. The proposed rule change was published for comment in the Federal Register on September 5, 2018. 3 On October 15, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the original filing in its entirety. 4 The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to amend certain cutoff times for on close orders entered for participation in the Nasdaq Closing Cross, to reject Closing Cross/Extended Hours Orders 5 that have been assigned a Poggio Attribute 6 regardless of when such orders are entered, and to make changes to the Order Imbalance Indicator.

A. Nasdaq Closing Cross Cutoff Times

Nasdaq Rule 4702(b)(11) currently provides that Market On Close (“MOC”) Orders 8 may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. MOC Orders entered after 3:50 p.m. ET are rejected. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, MOC Orders can be cancelled and/or modified only if the participant requests that Nasdaq correct a legitimate error in the order (e.g., side, size, symbol, price, or duplication of an order). MOC orders cannot be cancelled or modified for any reason at or after 3:55 p.m. ET.

Nasdaq Rule 4702(b)(12) currently provides that Limit On Close (“LOC”) Orders 9 may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. LOC Orders entered after 3:50 p.m. ET and immediately prior to 3:55 p.m. ET provided that there is a First Reference Price. 10 LOC Orders entered at or after 3:55 p.m. ET are rejected. 11 Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, LOC orders cannot be modified, and they can be cancelled only if the participant requests that Nasdaq correct a legitimate error in the order.

Nasdaq Rule 4702(b)(13) currently provides that Imbalance Only (“IO”) Orders 12 may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross. 13 IO Orders may be cancelled and/or modified between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET if the participant requests that Nasdaq correct a legitimate error in the order. IO Orders may not be cancelled or modified for any reason at or after 3:55 p.m. ET.

The Exchange now proposes to amend these cutoff times. As proposed, Nasdaq Rule 4702(b)(11) would provide that MOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. MOC Orders entered at or after 3:55 p.m. ET would be rejected. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, MOC Orders could be cancelled and/or modified only if the participant requests that Nasdaq correct a legitimate error in the order. MOC orders could not be cancelled or modified for any reason at or after 3:58 p.m. ET. As proposed, Nasdaq Rule 4702(b)(12) would provide that LOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. LOC Orders could be entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET provided that there is a First Reference Price. 14 LOC Orders entered at or after 3:58 p.m. ET would be rejected. 15 Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, LOC orders could not be modified, and they could be cancelled only if the participant requests that Nasdaq correct a legitimate error in the order. As proposed, Nasdaq Rule 4702(b)(13) 16 would provide that IO Orders may be cancelled and/or modified between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET if the participant requests that Nasdaq correct a legitimate error in the order. IO Orders could not be cancelled or modified for any reason at or after 3:58 p.m. ET.

15 U.S.C. 78s(b)(1). 17 CFR 240.19b–4. 3 See Securities Exchange Act Release No. 83988 (August 29, 2018), 83 FR 45165. 4 In Amendment No. 1, the Exchange: (1) Proposed conforming changes to Nasdaq Rule 7018(b)(3) to reflect the proposed cutoff times and provided additional discussion regarding the proposed changes to Nasdaq Rule 7018(b); (2) proposed to implement the proposal in Q 2018; and (3) made other technical changes. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at https://www.sec.gov/comments/ se-corpfin/2018-068/sm/8nashq20180600-45252622-176030.pdf. 5 For a more detailed description of the proposal, see Amendment No. 1, supra note 4. 6 See infra note 18. 7 See infra note 19.
The Exchange also proposes to make conforming changes throughout its rules to reflect the proposed cutoff times.17

B. Closing Cross/Extended Hours Order With Pegging Attribute

Nasdaq Rule 4702(b)(12)(B) currently provides that a Closing Cross/Extended Hours Order that is entered between 3:50 p.m. ET and the time of the Nasdaq Closing Cross will be rejected if it has been assigned a Pegging Attribute.19 The Exchange proposes to delete the reference to the time period between 3:50 p.m. ET and the time of the Nasdaq Closing Cross. Therefore, as proposed, a Closing Cross/Extended Hours Order would be rejected if it has been assigned a Pegging Attribute regardless of when the order is entered.

C. Order Imbalance Indicator

Currently, Nasdaq Rule 4754(b)(1) provides that, beginning at 3:50 p.m., Nasdaq disseminates by electronic means an Order Imbalance Indicator 20 every five seconds until market close. The Exchange proposes to begin disseminating the Order Imbalance Indicator for the Nasdaq Closing Cross at 3:55 p.m. ET and to disseminate the Order Imbalance Indicator every second.21 The Exchange also proposes to disseminate the Order Imbalance Indicators for the Nasdaq Opening Cross,22 the Nasdaq Halt Cross,23 and the LULD Closing Cross 24 every second instead of every five seconds.

17 Specifically, the Exchange proposes to make conforming changes to Nasdaq Rule 4754(b)(7)(B) and Nasdaq Rules 7018(a)(1), (2), and (3) to reflect the proposed cutoff times.

19 A Closing Cross/Extended Hours Order is an order that is flagged to participate in the Nasdaq Closing Cross and that has a time-in-force that continues after the time of the Nasdaq Closing Cross. See Nasdaq Rule 4702(b)(12)(B). A Closing Cross/Extended Hours Order participates in the Nasdaq Closing Cross like a LOC Order, and it operates thereafter in accordance with its type and order attributes (if not executed in full in the Nasdaq Closing Cross). See id.

19 Pegging is an order attribute that allows an order to have its price automatically set with reference to the national best bid or offer and is available only during Market Hours. See Nasdaq Rule 4703(d).

20 The Order Imbalance Indicator for the Nasdaq Closing Cross is a message disseminated by electronic means containing information about MOC, LOC, IO, and Close Eligible Interest and the price at which those orders would execute at the time of dissemination. See Nasdaq Rule 4754(a)(7).

21 Because the Exchange proposes to begin disseminating the Order Imbalance Indicator for the Nasdaq Closing Cross at 3:55 p.m. ET, the Exchange also proposes to amend the definition of First Reference Price to mean the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:55 p.m. ET. See proposed Nasdaq Rule 4754(a)(9).

22 See proposed Nasdaq Rule 4752(d)(1).

23 See proposed Nasdaq Rule 4753(b)(4).

24 See proposed Nasdaq Rule 4754(b)(6)(B).

The Exchange proposes to implement the proposed changes in Q4 2018, and will announce the implementation date in an Equity Trader Alert issued to participants prior to implementing the changes.

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.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 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 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 extend the cutoff times for entering MOC and LOC Orders, for modifying and cancelling MOC, LOC, and IO Orders, for modifying MOC and IO Orders to correct legitimate errors, and for cancelling MOC, LOC, and IO Orders to correct legitimate errors.27 The Commission believes that extending these cutoff times would allow Exchange participants to retain flexibility with respect to entering, modifying, and cancelling their on close orders until a later time, while still providing time for Exchange participants to react to and resolve imbalances in the Nasdaq Closing Cross.28 As a result, the Commission believes that the proposal could encourage participation in the Nasdaq Closing Cross by market participants who are unwilling to give up flexibility and control over their on close orders starting at 3:50 p.m. ET.29

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).


27 See supra Section II.A.

28 The Commission also notes that the proposal would continue to provide a brief period of additional time after 3:55 p.m. ET for Exchange participants to submit LOC Orders provided that there is a First Reference Price, and to correct legitimate errors in their on close orders.

29 The Commission notes that Cboe BZX Exchange Inc. ("BZX") has a 3:55 p.m. cutoff time for entering market-on-close and limit-on-close orders, and that BZX accepts late-limit-on-close orders between 3:55 p.m. and 4:00 p.m. See BZX Rule 11.23(c)(1)(A). The Commission also notes that NYSE Arca, Inc. ("NYSE Arca") initiates its closing auction imbalances freeze for market-on-close and limit-on-close orders one minute before the scheduled time for the closing auction. See NYSE Arca Rule 7.35–E(4)(B).

30 See supra Section II.B.

31 See supra note 19 and Nasdaq Rule 4703(d).

32 See supra note 18 and Nasdaq Rule 4702(b)(12)(B).

33 See supra Section II.C.

34 See supra Section II.A.

35 The Commission notes that, currently, the Exchange also begins disseminating the Order Imbalance Indicator for the Nasdaq Closing Cross when on close interest is relatively locked in.36 The Commission also notes that the Order Imbalance Indicators every second would provide a timelier and more frequent view of the market before a cross.36

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–

Specifically, the proposed rule changes would (1) amend each of the Clearing Agency Frameworks to incorporate and align with an existing delegation of authority to the General Counsel and Deputy General Counsel of the Clearing Agencies to approve certain changes to the Clearing Agency Frameworks; (2) revise the identification of the individuals who own and manage the Frameworks, where applicable; (3) make further corrections and clarifications to the Stress Testing Framework, including revisions to the description of responsibilities of certain groups and expansion of reverse stress testing analyses, as further described below; and (4) correct the description of an assumption underlying a stress scenario in the Liquidity Risk Management Framework, as further described below.

II. Clearing Agencies’ Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Clearing Agencies included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Clearing Agencies have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agencies’ Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Clearing Agencies adopted the Clearing Agency Frameworks in order to set forth the manner in which each of the Clearing Agencies addresses certain risks as required by Rule 17Ad–22(e) under the Act, as described in the Initial Filings. In addition to setting forth the manner in which each of the Clearing Agencies addresses the requirements of Rule 17Ad–22(e), each Framework also contains a section titled ‘‘Framework Ownership and Change Management’’ that, among other matters, identifies the title of the individual or group who owns and is responsible for managing the Framework and describes the required governance process for review and approval of changes to the Framework.

The Clearing Agencies are proposing to (1) amend each of the Clearing Agency Frameworks in order to align with an existing delegation of authority to the General Counsel and Deputy General Counsel of the Clearing Agencies to approve certain changes to the Clearing Agency Frameworks; (2) revise the identification of the individuals who own and manage the Frameworks, where applicable; (3) make further corrections and clarifications to the Stress Testing Framework, including revisions to the description of responsibilities of certain groups and expansion of reverse stress testing analyses, as further described below; and (4) correct the description of an assumption underlying a stress scenario in the Liquidity Risk Management Framework, as further described below.


17 CFR 240.17Ad–22(e).