

Rule 17f-4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets. If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations. All funds that deal directly with securities depositories in reliance on rule 17f-4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.⁵

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian. If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports. Custodians and depositories usually transmit financial reports to funds twice each year.⁶ The Commission staff estimates that 49 custodians spend approximately 914 hours (by support staff) annually in transmitting such reports to funds.⁷ In addition, approximately 80 funds (*i.e.*, two percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. Commission staff estimates that depositories spend approximately 19 hours (by support staff) annually

funds' custodians maintain some or all fund securities in a securities depository pursuant to rule 17f-4.

⁵ The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus, new funds would not be subject to this condition.

⁶ The estimated 49 custodians would handle requests for reports from 3,917 fund clients (approximately 80 fund clients per custodian) and the depositories from the remaining 80 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with industry representatives that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this PRA estimate, the Commission staff assumes that custodians transmit the reports to all fund clients.

⁷ (3,917 fund clients × 2 reports) = 7,834 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 914 hours (7 minutes × 7,834 transmissions).

transmitting reports to the 80 funds.⁸ The total annual burden estimate for compliance with rule 17f-4's reporting requirement is therefore 933 hours.⁹

If a fund deals directly with a securities depository, rule 17f-4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers' instructions). All funds that seek to rely on rule 17f-4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement.¹⁰

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's collection of information requirements is 933 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. This estimate is not derived from a comprehensive or even representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief

⁸ (80 fund clients who may deal directly with a securities depository × 2 reports) = 160 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 19 hours (7 minutes × 160 transmissions).

⁹ 914 hours for custodians and 19 hours for securities depositories.

¹⁰ The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: November 28, 2018.

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84671; File No. SR-NASDAQ-2018-096]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4756(c)(2)

November 28, 2018.

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 November 16, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or "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 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 allow the Exchange to aggregate Displayed odd-lot Orders across price levels for transmission to network processors as the Exchange's best priced Order under Rule 4756(c)(2). While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative in the first quarter of 2019, and will announce the precise date by Equity Trader Alert at least thirty days prior to implementation.

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

The Exchange is proposing to amend Rule 4756 to allow the Exchange to aggregate Displayed³ odd-lot Orders across price levels for transmission to network processors as the Exchange's best ranked Displayed Order(s), which is based on how NYSE Arca, Inc. handles such orders pursuant to NYSE Arca Rule 7.36–E(b)(3).⁴ Rule 4756 concerns entry and display of Quotes⁵ and Orders,⁶ and paragraph (c)

³ Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. Certain Order Types may be non-displayed if they are not assigned a Display Order Attribute, and all non-displayed Orders may be referred to as "Non-Displayed Orders" (See Rule 4703(b)(3)(A) [sic]). In contrast, an Order with a Display Order Attribute may be referred to as a "Displayed Order." See Rule 4703(k).

⁴ See Securities Exchange Act Release No. 74796 (April 23, 2015), 80 FR 23838 (April 29, 2015) (SR–NYSEArca–2015–08).

⁵ The term "Quote" means a single bid or offer quotation submitted to the System by a Market Maker or Nasdaq Electronic Communications Network and designated for display (price and size) next to the Participant's Market Participant Identifier in the Nasdaq Book. Quotes are entered in the form of Orders with Attribution (as defined in Rule 4703). Accordingly, all Quotes are also Orders. See Rule 4701(d).

⁶ The term "Order" means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. An "Order Type" is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. An "Order Attribute" is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or

thereunder provides how the System⁷ will display Quotes and Orders submitted to the System. Rule 4756(c)(2), which the Exchange is proposing to amend, describes what the Exchange transmits to the network processors as the Exchange's best priced Order. Specifically, Rule 4756(c)(2) provides that, for each System Security,⁸ the aggregate size of all Quotes and Orders at the best price to buy and sell resident in the System will be transmitted for display to the appropriate network processor, unless the aggregate size is less than one round lot, in which case the aggregate size will be displayed in the System Book Feed⁹ but not be transmitted to a network processor.¹⁰ Thus, pursuant to Rule 4756(c)(2) Orders with an aggregate size of less than one round lot at a particular price level are displayed in the System Book Feed, but are not transmitted to a network processor. For example, if the Nasdaq best bid is \$10.00, and there are the following three odd-lot Orders resting displayed on the Nasdaq Book with no other interest resting on the Nasdaq Book—25 shares to buy at \$10.00, 25 shares to buy at \$9.99, and 50 shares to buy at \$9.98—the System will not transmit any of these Orders to the appropriate processor, but rather will post them to the System Book Feed.¹¹

The Exchange is proposing to amend Rule 4756(c)(2) to allow the Exchange to aggregate odd-lot sized Displayed Orders at multiple price points that equal at least a round lot for purposes of transmitting the Exchange's best ranked Displayed Order(s) to the appropriate processor. In assigning a price to such aggregated odd-lot Orders,

remove non-conforming Order Attributes. See Rule 4701(e).

⁷ The term "Nasdaq Market Center," or "System" shall mean the automated system for order execution and trade reporting owned and operated by The Nasdaq Stock Market LLC. See Rule 4701(a).

⁸ The term "System Securities" shall mean (1) all securities listed on Nasdaq and (2) all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan except securities specifically excluded from trading via a list of excluded securities posted on www.nasdaqtrader.com. See Rule 4701(b).

⁹ The term "System Book Feed" shall mean a data feed for System Securities, generally known as the TotalView ITCH feed. See Rule 4701(l).

¹⁰ Consequently, the Exchange currently will aggregate and transmit to the network processor odd-lot Orders at a particular price level if such Orders aggregate to at least one round lot and are priced better than the best-priced round lot interest on the Nasdaq Book.

¹¹ The Exchange notes that the network processors only accept quotations in round lots. As a consequence, if aggregated Orders do not equal a round lot the Exchange will round down to the nearest round lot for purposes of reporting to the appropriate network processor. This proposal does not change this process.

the Exchange would use the highest (lowest) price to buy (sell) wherein the aggregate size of all displayed buy (sell) interest in the System greater (less) than or equal to that price is one round lot or greater. Consequently, because the aggregated Displayed odd-lot Orders represent the best price available on the Exchange, they would be transmitted to the network processor as such. Using the example above, all three odd-lot Orders resting displayed on the Nasdaq Book would be aggregated into a round lot Order and reported to the appropriate processor for quoting at a price of \$9.98.¹² The Exchange is proposing to amend Rule 4756(c)(2) to add four new subparagraphs to the rule, which provide that the Exchange will transmit to the appropriate processor the highest (lowest) price to buy (sell) wherein the aggregate size of all displayed buy (sell) interest in the System greater (less) than or equal to that price is one round lot or greater, and that the aggregate size of all displayed buy (sell) interest in the System greater (less) than or equal to that price will be transmitted rounded down to the nearest round lot.¹³

The Exchange is also proposing to make clarifying changes to Rule 4756(c)(2). Currently, the rule does not note that the obligation to report the highest (lowest) aggregate Displayed interest to buy (sell) arises from Rule 602 of Regulation NMS. The Exchange is amending the rule to affirmatively state that the transmission to the appropriate network processor is done pursuant to Rule 602 of Regulation NMS. The Exchange is also deleting the text concerning the display in the System Book Feed of all Quotes and Orders at the best price to buy and sell resident in the System that are less than one round lot. The Exchange believes that this text is redundant of paragraph (1) of Rule 4756(c) and serves no purpose under the clarified rule. The Exchange notes that the clarifying changes do not alter how it currently handles Quotes and Orders for display and trade reporting.

The Exchange plans to implement the change proposed herein in the first quarter of 2019, and will announce the precise date by Equity Trader Alert at least thirty days prior to implementation.

¹² The Exchange notes that it is not proposing to change how it processes Orders for execution. Thus, Orders resting on the Nasdaq Book will be executed in price/display/time priority pursuant to Rule 4757.

¹³ *Supra* note 10 [sic].

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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, because the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to aggregate odd lot Orders across multiple price levels for purposes of determining the Exchange's best ranked Displayed Order(s) for transmission to the appropriate network processor. The proposed change will provide market participants with greater visibility into liquidity available on the Exchange via the appropriate network processor. Because arriving marketable contra-side Orders execute in price-time priority against resting odd-lot Orders priced better than resting round-lot Orders, the Exchange believes that it is appropriate to display such odd-lot interest on the public data feeds as the Exchange's best bid or offer if in the aggregate, they equal a round lot or more. The Exchange further believes that aggregating such odd-lot Orders at the highest (lowest) price to buy (sell) wherein the aggregate size of all buy (sell) interest in the System greater (less) than or equal to that price is one round lot or greater would remove impediments to and perfect the mechanism of a free and open market because it represents the best aggregated execution price for incoming sell (buy) Orders. The Exchange notes that the incoming marketable interest would receive price improvement when executing against any odd-lot orders priced better than the aggregated displayed price. Last, the Exchange believes that the proposed clarifying changes will help promote a better understanding of the operation of the rule. As noted above, the clarifying changes do not alter how the Exchange currently handles Quotes and Orders for display and trade reporting.

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. As noted above, the Exchange is copying functionality that is currently in use by a competitor exchange. The proposed change may increase the Exchange's position at the National Best Bid and Offer, thus allowing the Exchange to receive greater Order flow and, consequently, executions. This is the same benefit that the competitor exchange has received since adopting the process proposed herein. Thus, the proposed change is a competitive response, but does not place any burden on competition because it is copying a process used by a competitor exchange, which was approved by the Commission.

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 Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

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.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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.

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 Number SR-NASDAQ-2018-096 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-2018-096. 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 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-2018-096 and should be submitted on or before December 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Eduardo A. Aleman,
Assistant Secretary.

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¹⁸ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).