

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84454; File No. SR-NASDAQ-2018-068]

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 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5, 2018.³ On October 15, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the original filing in its entirety.⁴ The Commission has received no comments on the proposed rule change.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. 1⁵

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 Orders⁶ that have been assigned a Pegging Attribute⁷ 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”) Orders⁸ 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”) Orders⁹ may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. LOC Orders may be entered between 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”) Orders¹² 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.

⁸ A MOC Order is an order type entered without a price that may be executed only during the Nasdaq Closing Cross. See Nasdaq Rule 4702(b)(11)(A).

⁹ 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. See Nasdaq Rule 4702(b)(12)(A).

¹⁰ A LOC Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET is accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for a LOC Order to buy (sell), in which case the participant has the choice to have the order rejected or re-priced to the First Reference Price. The First Reference Price is the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:50 p.m. ET. See Nasdaq Rule 4754(a)(9).

¹¹ Nasdaq Rule 4702(b)(12)(B) provides that a Closing Cross/Extended Hours Order entered through OUCH, FLITE, RASH, or FIX with a time-in-force other than immediate-or-cancel after the time of the Nasdaq Closing Cross will be accepted but the Nasdaq Closing Cross flag will be ignored. All other Closing Cross/Extended Hours Orders entered at or after 3:55 p.m. ET are rejected.

¹² An IO Order is an order entered with a price that may be executed only in the Nasdaq Closing Cross and only against MOC Orders or LOC Orders. See Nasdaq Rule 4702(b)(13)(A).

¹³ The Nasdaq Closing Cross begins at 4:00:00 p.m. ET and post-market hours trading commences when the Nasdaq Closing Cross concludes. See Nasdaq Rule 4754(b).

¹⁴ As proposed, a LOC Order entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET would be accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for a LOC Order to buy (sell), in which case the participant would have the choice to have the order rejected or re-priced to the First Reference Price.

¹⁵ Nasdaq Rule 4702(b)(12)(B) continues to provide that a Closing Cross/Extended Hours Order entered through OUCH, FLITE, RASH, or FIX with a time-in-force other than immediate-or-cancel after the time of the Nasdaq Closing Cross will be accepted but the Nasdaq Closing Cross flag will be ignored. As proposed, all other Closing Cross/Extended Hours Orders entered at or after 3:58 p.m. ET would be rejected.

¹⁶ Unchanged from the current rule, IO Orders may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross.

¹ 15 U.S.C. 78s(b)(1).

² 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(a)(3) to reflect the proposed cutoff times and provided additional discussion regarding the proposed changes to Nasdaq Rule 7018(a); (2) proposed to implement the proposal in Q4 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/sr-nasdaq-2018-068/srnasdaq2018068-4523622-176030.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 Order¹⁸ 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 in this rule 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 Indicator²⁰ 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 Cross²⁴ 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.

¹⁸ 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 order 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)(1).

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).

²⁶ 15 U.S.C. 78f(b)(5).

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

As discussed above, the Exchange also proposes to amend its rules to provide that a Closing Cross/Extended Hours Order would be rejected if it has been assigned a Pegging Attribute (*i.e.*, regardless of the time the order is entered).³⁰ The Commission notes that Pegging Attributes are available only during Market Hours³¹ and Closing Cross/Extended Hours Orders only operate outside of Market Hours.³² The Commission believes that the proposal would reflect the current operation of the Pegging Attribute and Closing Cross/Extended Hours Orders.

In addition, as discussed above, the Exchange proposes to disseminate the Order Imbalance Indicator for the Nasdaq Closing Cross beginning at 3:55 p.m. ET instead of 3:50 p.m. ET, and to disseminate the Order Imbalance Indicators for the Nasdaq Opening Cross, Nasdaq Halt Cross, Nasdaq Closing Cross, and LULD Closing Cross every second instead of every five seconds.³³ The Commission notes that because Exchange participants would have more flexibility to enter, modify, and cancel on close orders before 3:55 p.m. ET than after,³⁴ the proposal would permit the Exchange to start disseminating the Order Imbalance Indicator for the Nasdaq Closing Cross when on close interest is relatively locked in.³⁵ The Commission also believes that disseminating 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,³⁷ that the proposed rule change (SR-NASDAQ-

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 imbalance 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(d)(2).

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 (*i.e.*, at 3:50 p.m. ET).

³⁶ The Commission notes that NYSE Arca updates its auction imbalance information at least every second, unless there is no change to the information. See NYSE Arca Rule 7.35-E(a)(4)(A).

³⁷ 15 U.S.C. 78s(b)(2).

2018–068), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84458; File Nos. SR–DTC–2018–009; SR–FICC–2018–010; SR–NSCC–2018–009]

Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes To Amend the Clearing Agency Frameworks

October 19, 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 October 11, 2018, The Depository Trust Company (“DTC”), Fixed Income Clearing Corporation (“FICC”), and National Securities Clearing Corporation (“NSCC,” and together with DTC and FICC, the “Clearing Agencies”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes as described in Items I and II below, which Items have been prepared primarily by the Clearing Agencies. The Clearing Agencies filed the proposed rule changes pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Clearing Agencies’ Statements of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes would amend the Clearing Agency Stress Testing Framework (Market Risk) (“Stress Testing Framework”), Clearing Agency Liquidity Risk Management Framework (“Liquidity Risk Management Framework”), Clearing Agency Model Risk Management Framework (“Model Risk Management Framework”), Clearing Agency

Operational Risk Management Framework (“Operational Risk Management Framework”), Clearing Agency Risk Management Framework (“Risk Management Framework”), Clearing Agency Securities Valuation Framework (“Securities Valuation Framework”), Clearing Agency Policy on Capital Requirements (“Capital Policy”), and Clearing Agency Capital Replenishment Plan (“Capital Replenishment Plan,” and, together with the Stress Testing Framework, Liquidity Risk Management Framework, Model Risk Management Framework, Operational Risk Management Framework, Risk Management Framework, Securities Valuation Framework and Capital Policy, the “Clearing Agency Frameworks” or “Frameworks”) of the Clearing Agencies.

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 Counsels 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 Frameworks⁵ 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,⁶ 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 Counsels 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 the 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.

⁵ See Securities Exchange Act Release Nos. 82368 (December 19, 2017), 82 FR 61082 (December 26, 2017) (SR–DTC–2017–005; SR–FICC–2017–009; SR–NSCC–2017–006) (Stress Testing Framework); 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017) (SR–DTC–2017–004; SR–NSCC–2017–005; SR–FICC–2017–008) (Liquidity Risk Management Framework); 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (SR–DTC–2017–008; SR–FICC–2017–014; SR–NSCC–2017–008) (Model Risk Management Framework); 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014; SR–NSCC–2017–013; SR–FICC–2017–017) (Operational Risk Management Framework); 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR–DTC–2017–013; SR–NSCC–2017–012; SR–FICC–2017–016) (Risk Management Framework); 82006 (November 2, 2017), 82 FR 51892 (November 8, 2017) (SR–DTC–2017–016; SR–NSCC–2017–016; SR–FICC–2017–020) (Securities Valuation Framework); 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–FICC–2017–007, SR–NSCC–2017–004) (Capital Policy and Capital Replenishment Plan) (each, an “Initial Filing” and collectively, “Initial Filings”).

⁶ 17 CFR 240.17Ad–22(e).

³⁸ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(6).