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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73266; File No. SR-NASDAQ-2014-095)

September 30, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Provide a New Optional Functionality to Minimum Quantity Orders

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 September 18, 2014, 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, II, and III, 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

NASDAQ proposes a rule change to provide a new optional functionality to Minimum Quantity Orders. The text of the proposed rule change is available from NASDAQ's website at http://nasdaq.cchwallstreet.com/Filings/, 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, NASDAQ 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

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

2 17 CFR 240.19b-4.

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 provide a new optional functionality to Minimum Quantity Orders.[3] A Minimum Quantity Order allows a market participant to specify a minimum share amount at which it will execute. For example, a market participant seeking to buy or sell a large position may desire to execute only if a large quantity of shares can be traded to reduce the price impact of the security being bought or sold. A Minimum Quantity Order will not execute unless the volume of contra-side liquidity available to execute against the order meets or exceeds the designated minimum. When a Minimum Quantity Order is received by the Exchange, it will execute immediately[4] if there is sufficient liquidity available on the Exchange within the limit price of the Minimum Quantity Order. Furthermore, the order will execute if the sum of the shares of one or more orders is equal to or greater than its minimum quantity. In the case of multiple orders being aggregated to meet the minimum quantity, each contra-side order creates a separate execution and thus there can be multiple executions that, in aggregate, equal or exceed the minimum quantity. If a Minimum Quantity Order does not execute immediately due to lack of contra-side liquidity that is equal to or greater than the designated minimum, the order will post[5] to the NASDAQ order book as a Non-Displayed Order.[6] Once posted, a Minimum

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3 Rule 4751(f)(5).

4 A Minimum Quantity Order would satisfy the requirements of Regulation NMS and not trade through a protected quotation.

5 Orders post to the NASDAQ book only if they are designated with a time in force that allows for posting. For example, an IOC order never posts to the book.

6 A Non-Displayed Order is a limit order that is not displayed in the NASDAQ system, but nevertheless remains available for potential execution against all incoming orders until

Quantity Order will execute only if an incoming order is marketable against the resting Minimum Quantity Order and is equal to or greater than the minimum quantity set on the resting Minimum Quantity Order. Once posted, multiple potential executions cannot be aggregated to meet the minimum quantity requirement of the Minimum Quantity Order. If a Minimum Quantity Order executes partially and the number of shares remaining is less than the minimum quantity of the order, the minimum quantity of the order is reduced to the remaining share size. If a Minimum Quantity Order is received that is marketable against a resting contra-side order with size that does not meet the minimum quantity requirement, the Minimum Quantity Order will be posted on the book as a Non-Displayed Order at the locking price.[7] For example, if a Minimum Quantity Order is received to buy 1,000 shares at $10 with a minimum quantity restriction of 500 shares and there is a resting sell order for 300 shares at $10, the Minimum Quantity Order will be posted as a Non-Displayed Order at $10. Furthermore, the Exchange notes that a subsequent order without a minimum quantity restriction that is marketable against the resting contra-side interest will result in an execution because the market participant entering the Minimum Quantity Order has expressed its intention not to execute against liquidity below a certain minimum size, and therefore cedes execution priority to any new orders that would otherwise have a lower priority.

NASDAQ is proposing to add a new optional functionality to further enhance the utility of Minimum Quantity Orders to market participants.[8] In particular, some market participants

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executed in full or cancelled. See Rule 4751(e)(3). Minimum Quantity Orders are always Non-Displayed when posted on the Exchange book.

7 SEC Rule 610(d) under Regulation NMS restricts displayed quotations that lock or cross protected quotations in NMS stock, but does not apply to non-displayed trading interest, like a resting Minimum Quantity Order. See 17 CFR 242.610(d).

8 The option is available at the port level. Accordingly, all orders entered through a particular port will receive the selected functionality. All trading ports default to the

have noted that they avoid sending large Minimum Quantity Orders to NASDAQ out of concern that such orders may interact against small orders entered by professional traders. These participants are concerned that such interaction may negatively impact the execution of their larger orders. Often institutional orders are much larger in size than the average order in the marketplace. Furthermore, in order to facilitate the liquidation or acquisition of a large position, multiple orders are submitted into the market, which although larger than the average order in the market, only represent a small proportion of the overall institutional position to be executed. The various strategies used to execute large size are based on a desire to limit price movement of the stock the institution is pursuing. Executing in small sizes, even if in aggregate it meets a minimum quantity designation, may impact the market such that the additional orders that the institution has yet to submit to the market may be more costly to execute. If an institution is able to execute in larger sizes, the contra-party to the execution is less likely to be a participant that reacts to short term changes in the stock price and as such the price impact to the stock could be less acute when larger individual executions are obtained by the institution.[9] As a consequence of this concern, these orders are often executed away from the Exchange in dark pools, at least some of which have the functionality proposed herein,[10] or via broker-dealer internalization.

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current functionality.

9 The Commission has long recognized this concern: "Another type of implicit transaction cost reflected in the price of a security is short-term price volatility caused by temporary imbalances in trading interest. For example, a significant implicit cost for large investors (who often represent the consolidated investments of many individuals) is the price impact that their large trades can have on the market. Indeed, disclosure of these large orders can reduce the likelihood of their being filled." See Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577, 10581 (February 28, 2000) (SR-NYSE-99-48) (emphasis added).

10 For example, IEX Services LLC ("IEX") is an alternative trading venue, regulated by the SEC pursuant to Regulation ATS. 17 CFR 242.300-303. IEX describes itself as "Dedicated to institutionalizing fairness in the markets…." (See http://www.iextrading.com/about/). IEX provides a Minimum Quantity order parameter

Accordingly, to attract larger Minimum Quantity Orders to the Exchange NASDAQ is proposing new optional functionality that will allow a market participant to designate a minimum individual execution size, and thus allow users to avoid interaction with such smaller orders resting on the book. As discussed above, under the current rule a Minimum Quantity Order will execute against any number of smaller contra-side orders that, in aggregate, meet the minimum quantity set by the market participant. For example, if a market participant entered a Minimum Quantity Order to buy with a price of $10, a size of 1,000 and a minimum quantity of 500, and the order was marketable against two resting sell orders for 300 and 400 shares, the System would aggregate both orders for purposes of meeting the minimum quantity, thus resulting in executions of 300 shares and 400 shares respectively with the remaining 300 shares of the Minimum Quantity Order posting to the book with a minimum quantity restriction of 300 shares. The proposed new optional functionality will not allow aggregation of smaller executions to satisfy the minimum quantity of a Minimum Quantity Order. Using the same scenario as above, but with the proposed new functionality and a minimum execution size requirement of 400 shares selected by the market participant, the Minimum Quantity Order would not execute against the two sell orders because the order at the top of the NASDAQ order book is less than 400 shares. The new functionality will reprice the Minimum Quantity Order to the next best

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("MQTY"), which allows a subscriber to designate a minimum indicated share size that must be satisfied for the order to be executed. See http://www.iextrading.com/services/. There are two methods that IEX will apply to determine the satisfaction of MQTY condition of orders. Under "Method #2," an MQTY order may have a Minimum Execution size, which provides execution of the order if the resting order with the highest priority which would trade with the active order would trade shares equal to or greater than the minimum quantity defined on the active order. This is precisely the functionality the Exchange is proposing. The Exchange notes that the BIDS Alternative Trading System also has functionality that allows its subscribers to select a minimum size requirement, which prevents a subscriber's interest from interacting with contra-side interest if its size is less than the specified minimum. See http://www.bidstrading.com/solutions/faqs/.

price and post the order to the NASDAQ order book as a Non-Displayed Order when the top of the NASDAQ order book is of insufficient size to satisfy the minimum execution size requirement. Applied to the example above, the order would post to the NASDAQ order book as a Non-Displayed Order to buy 1,000 shares at $9.99. NASDAQ notes that the market participant entering the Minimum Quantity Order has expressed its intention not to execute against liquidity below a certain minimum size, and therefore cedes execution priority when it would lock resting orders against which it would otherwise execute if it were not for the minimum execution size restriction.

NASDAQ believes that it is appropriate to adjust the price to the next best price prior to posting on the NASDAQ order book because, by using the minimum execution size option, the submitter of the order is choosing to reduce the number of situations in which the order could potentially execute. Thus an order without this further restriction provides greater contribution to the price discovery process of the market. All bona fide market participation that results in an execution on a data feed contributes to the price discovery process that is essential to a proper functioning market. However, there are different degrees to which activity within the market contributes to price discovery. A displayed order at the NBBO of an Exchange, and the subsequent execution thereof, contributes significantly to price discovery because both the displayed order prior to execution, and the execution itself, provide a reference price to the market. Further, a non-displayed order on an exchange contributes to price discovery as it is part of the continuous auction on a market with publicly displayed orders and quotes - albeit the contribution of a non-displayed order on an exchange is less than the contribution of a displayed order on the exchange. Furthermore, a non-displayed order on a dark pool contributes less to price discovery because it is resting in a less transparent trading venue that is not part of the

continuous auction of a lit exchange. If one were to rank the contribution to price discovery that different market activity provides, it would include the following (listed from least price discovery contribution to most):

- Order resting in dark pool (no contribution)
- Non-Displayed order on exchange (no or very little contribution)
- Order execution in dark pool (some contribution, execution reported publicly via TRF)
- Non-Displayed order execution on Exchange (contribution as part of continuous auction, execution reported publicly, and priority is behind displayed – i.e., priority is ceded to orders that contribute more to price discovery)
- Displayed order on exchange (significant contribution)
- Displayed order execution on exchange (significant contribution, publicly displayed order plus execution reported publicly)

In this sense the proposed change continues to contribute more meaningfully to price discovery than an order in a dark pool because it is part of the continuous auction market on NASDAQ[11] but, similar to a regular non-displayed order ceding priority to displayed orders on the Exchange, the enhanced MAQ order will cede price priority to orders that do not contain the minimum execution size restriction. Also unlike the current process, the proposed new functionality will cancel the remainder of a marketable Minimum Quantity Order that is partially filled upon entry if the partially executed Minimum Quantity Order would lock resting contra-side liquidity that

[11] It is worth noting that NASDAQ has the single biggest pool of liquidity among individual exchanges. For example, in July The NASDAQ Stock Market accounted for 16.3% of consolidated NMS security volume. The next biggest single pool of liquidity was NYSE with 11.2%. See http://www.NASDAQTrader.com historical volume for more information.

does not meet the minimum execution size requirement. Under the current process, a Minimum Quantity Order that receives a partial execution has the remainder of the order posted to the NASDAQ order book as a Non-Displayed Order. The proposed new functionality will, instead, cancel any shares not executed after a partial execution of a Minimum Quantity Order if there are more shares that remain resting on the book at a price that would satisfy the limit price of the Minimum Quantity Order but that are not executable against the incoming Minimum Quantity Order due to the minimum execution size set on the order. For example, a Minimum Quantity Order to buy priced at $10 with a size of 1,000 and a minimum quantity of 500, that is marketable against two sell orders on the NASDAQ order book, one for 500 shares and one for 400 shares, would result in the execution of 500 shares and the cancellation of the remaining 500 shares. Under the current process, the order would receive two partial executions of 500 and 400 shares, and the remaining 100 shares would be posted to the NASDAQ order book as a Non-Displayed Order to buy priced at $10.

NASDAQ notes that when a non-IOC Minimum Quantity Order is partially executed and cancelled in this situation, the contra-side liquidity that is not executed may be Non-Displayed. If a Minimum Quantity Order is cancelled due to Non-Displayed contra-side liquidity, the submitter of the order will know that there may be a resting order or orders at the price of the Minimum Quantity Order and also that the resting order or orders are for fewer shares than the minimum execution size required by the order. NASDAQ believes this is acceptable because the Minimum Quantity Order has already partially executed for a size of at least one round lot and thus the order submitter has taken on risk due to the execution and therefore contributed to price discovery in the market place. Furthermore, this is not unlike the information that is obtained

when a Post-Only Order[12] is repriced due to resting Non-Displayed contra-side liquidity. In fact, this Minimum Quantity Order scenario is more beneficial to the market as it results in an execution which provides a greater contribution to price discovery.

Under the proposed change, a resting MAQ order will operate the same way as it does currently. When an order with a minimum quantity is posted on the book, it will only execute against incoming orders if the individual incoming order is equal to or greater than the minimum designated on the order. The primary difference between the current functionality and the proposed new functionality is that upon receipt, an incoming order with a minimum quantity designation will only execute against individual resting orders if the order at the top of the book meets or exceeds the minimum on the order. The Exchange believes that this is no different than a recently-adopted change to the NYSE Arca MPL-IOC order type,[13] which allows ETP holders to designate a minimum execution size when checking the book for liquidity and does not allow an execution unless it is against an order that is equal to or greater than the minimum designated on the order.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(5) of the Act,[15] in particular, in that the proposal is 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions

12 Rule 4751(f)(10).

13 See NYSE Arca Rule 7.31(h)(6); see also Securities Exchange Act Release No. 71366 (January 22, 2014), 79 FR 4515 (January 28, 2014) (SR-NYSEArca-2014-01).

14 15 U.S.C. 78f.

15 15 U.S.C. 78f(b)(5).

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. Specifically, the proposed change to the functioning of the Minimum Quantity Order will provide market participants, including institutional firms who ultimately represent individual retail investors in many cases, with better control over their orders, thereby providing them with greater potential to improve the quality of their order executions. Currently, the rule allows the market participant to designate a minimum acceptable quantity on an order that, upon entry, may aggregate multiple executions to meet the minimum quantity requirement. Once posted to the book, however, the minimum quantity requirement is equivalent to a minimum execution size requirement. The Exchange is now proposing to provide a market participant with control over the execution of their Minimum Quantity Order by allowing them an option to designate the minimum individual execution size upon entry. The control offered by the proposed change is consistent with the various types of control currently provided by exchange order types. For example, NASDAQ and other exchanges offer limit orders, which allow a market participant control over the price it will pay or receive for a stock.[16] Similarly, exchanges offer order types that allow market participants to structure their trading activity in a manner that is more likely to avoid certain transaction cost related economic outcomes.[17] Moreover and as discussed above, other trading venues provide the very functionality that the Exchange is proposing.

As discussed above, some market participants have requested the functionality proposed herein so they may avoid transacting with smaller orders that they believe ultimately increases the cost of the transaction. Market participants such as large institutions that transact a large number of orders on behalf of retail investors have noted that, because NASDAQ does not have

16 See, e.g., Rule 4751(f)(3).

17 For example, NASDAQ's Post-Only Order. See Rule 4751(f)(10).

this functionality, they avoid sending large orders to NASDAQ to avoid potentially more expensive transactions.[18] In this regard, NASDAQ notes that the proposed new optional functionality may improve the NASDAQ market by attracting more order flow, which is currently trading on less transparent venues that contribute less to price discovery and price competition than executions and quotes that occur on lit exchanges. Such new order flow will further enhance the depth and liquidity on the Exchange, which supports just and equitable principals of trade. Furthermore, the proposed modification to the Minimum Quantity Order is consistent with providing market participants with greater control over the nature of their executions so that they may achieve their trading goals and improve the quality of their executions.

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

The Exchange 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, as amended. Specifically, the proposed change allows market participants to condition the processing of their orders based on a minimum execution size. The changes to the Minimum Quantity Order will enhance the functionality offered by NASDAQ to its members, thereby promoting its competitiveness with other exchanges and non-exchange trading venues that plan to, or already, offer similar functionality. As a consequence, the proposed change will promote

[18] As noted, the proposal is designed to attract liquidity to the Exchange by allowing market participants to designate a minimum size of contra-side order to interact with, thus providing them with functionality available to them on dark markets. The designation of a minimum size may reduce the interaction that such new order flow would have with smaller contra-side orders on the Exchange, some of which may be retail order flow. The Exchange notes that, since the order flow attracted by this functionality may also represent retail investors and is in addition to the existing order flow currently on the Exchange, market quality for retail investors should not be negatively impacted ultimately. Accordingly, the Exchange does not believe that retail orders will be disadvantaged by the proposed change.

competition among exchanges and their peers, which, in turn, will decrease the burden on competition rather than place an unnecessary burden thereon.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2014-095 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-2014-095. 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; 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 Number SR-NASDAQ-2014-095 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.[19]

Kevin M. O'Neill
Deputy Secretary

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[19] 17 CFR 200.30-3(a)(12).