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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81579; File No. SR-NASDAQ-2017-088]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rule 4703(a) to Allow Members to Designate when an Order with a RTFY or SCAN Routing Order Attribute will be Activated

September 12, 2017.

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 August 30, 2017, 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 4703(a) to allow members to designate when an Order with a RTFY or SCAN routing Order Attribute will be activated.

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 4703(a) to allow members to designate when an Order with a RTFY or SCAN routing Order Attribute³ will be activated. RTFY is a routing option available for an order that qualifies as a Designated Retail Order under which orders check the System for available shares only if so instructed by the entering firm and are thereafter

³ 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 remove non-conforming Order Attributes. See Rule 4701(e).

routed to destinations on the System routing table.⁴ If shares remain unexecuted after routing, they are posted to the book.⁵ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.⁶ RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. SCAN is a routing option under which orders check the System for available shares and simultaneously route the remaining shares to destinations on the System routing table. If shares remain un-executed after routing, they are posted on the book.⁷ Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.⁸

Rule 4703 provides the various Order Attributes that may be assigned to Orders entered into the System. All Orders have a Time-in-Force,⁹ during which the Order is active. During Pre-Market Hours,¹⁰ the Exchange has historically provided a member two options concerning when an Order with a RTFY or SCAN Order Attribute may become active – upon entry or at

⁴ See Rule 4758(a)(1)(A)(v)b.

⁵ Id.

⁶ Id.

⁷ See Rule 4758(a)(1)(A)(iv).

⁸ Id.

⁹ See Rule 4703(a).

¹⁰ The term “Pre-Market Hours” means the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term “Market Hours” means the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). The term “Post-Market Hours” means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET. The term “System Hours” means the period of time beginning at 4:00 a.m. ET and ending at 8:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). See Rule 4701(g).

single designated time, which is currently 8:00 a.m. ET. Orders with a RTFY or SCAN Order Attribute entered prior to 8:00 a.m. ET that are not designated to activate immediately are held by the System until 8:00 a.m. ET, at which time they become active. During Market Hours¹¹ and Post-Market Hours,¹² Orders with a RTFY or SCAN Order Attribute may only become active upon entry. The Exchange is proposing to provide members with greater control over their Orders with RTFY and SCAN Order Attributes by allowing members to designate when such Orders become active at any point during the trading day. Accordingly, the Exchange is amending Rule 4703(a) and paragraph (7) thereunder to make it clear that Orders with a RTFY or SCAN Order Attribute may either be active upon entry or at a time designated by the member. The Exchange is also clarifying under Rule 4703(a)(7) that Orders with a RTFY or SCAN Order Attribute may be designated to activate at any time during System Hours, which encompasses the full trading day on Nasdaq, on the same day.¹³ Thus, an Order with a RTFY or SCAN Order Attribute not designated to become active immediately may only be designated to activate during System Hours of the day on which the Order was entered.

The Exchange will implement the proposed changes upon approval by the Commission.

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

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing members with greater control over their Orders with a RTFY or SCAN Order Attribute and more flexibility to carry out their investment strategies. Currently, market participants are limited by the time at which their RTFY and SCAN Orders may activate – either upon entry or at 8:00 a.m. ET. The proposed rule change removes this limitation by allowing a member to designate the precise time at which it wishes the Order to become active. The Exchange notes that a member may currently replicate what is being proposed by entering an Order with a RTFY or SCAN Order Attribute precisely at the time that they wish it to become active during the trading day. The proposed change merely frees members from having to time their Order entry to achieve their investment goals. Currently, members may cancel an Order with a RTFY or SCAN Order Attribute at any time before it activates at 8 a.m. ET. Under the proposed change, members may cancel their inactive Orders with a RTFY or SCAN Order Attribute at any time, thus allowing them to react to market conditions that may cause them to violate their obligation of best execution to their customers should the Order activate and execute. Similarly, members may cancel their active Orders with RTFY or SCAN and enter new RTFY or SCAN Orders to activate at a time that the members believe will better satisfy their obligation of best execution.

With this change, and as is currently the case, all Nasdaq members may use the SCAN Order Attribute, and all Nasdaq members may use the RTFY Order Attribute if they meet its requirements.¹⁶ Thus, the proposed change will benefit all members that may use, or are eligible

¹⁶ As set forth in Rule 4758(a)(1)(A), RTFY is a routing option available for an order that qualifies as a Designated Retail Order. Rule 7018 defines a Designated Retail Order as an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the

to use, SCAN or RTFY Order Attributes by removing a limitation, and by providing more choice over their market participation.

The Exchange believes that it is equitable to limit the proposed change to RTFY or SCAN Orders because of the nature of the members that use these Order types with the current order activation delay. Currently, members that enter Orders with a RTFY or SCAN Order Attribute with delayed activation tend to represent customers on an agency basis – for example, individual retail investors.¹⁷ The Exchange has become aware that the proposed functionality would ease burdens associated with entering members’ agency Orders with these Routing Order Attributes. Consequently, the Exchange is proposing to apply the proposed change to Orders with a RTFY or SCAN Order Attribute. Should the Exchange become aware of other Routing Order Attributes that would also benefit from the flexibility proposed herein, it will consider filing a rule change to expand the time during which such Orders may be designated to become active.

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. All Nasdaq members may use the SCAN Order Attribute, and Nasdaq members may use the RTFY Order Attribute if they meet its requirements. Any member that may use, or is eligible to use, Orders with RTFY or SCAN Order Attributes may avail itself of the proposed change. The Exchange

order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

¹⁷ RTFY, by definition, is entered on behalf of retail customers, whereas the Orders with a SCAN Order Attribute are entered on behalf of a wide array of customer, including retail customers. Consequently, although the proposed change will relieve burdens placed on members using both RTFY and SCAN, it will beneficially impact SCAN Orders more so than RTFY Orders.

believes that the proposed rule change promotes competition by removing a restriction on the use of two Order Attributes, thereby making the process of entering Orders with RTFY and SCAN Order Attributes more efficient and less burdensome on members. Members may not have functionality that allows them to send large numbers of RTFY and SCAN Orders to the Exchange for execution at a designated time. As discussed above, such members must either enter RTFY and SCAN Orders for immediate execution or send them to the Exchange for execution at 8 a.m. ET, relying on the Exchange to queue and activate these Orders at this single time. The Exchange is proposing to allow such queuing and activation done by the Exchange to occur at any time, since the Exchange can better handle the large number of queued Orders received by certain members. Consequently, the proposed change eliminates the burden that affects these members, but will also allow any other member that currently queues RTFY and SCAN Orders for activation at a precise time to use the Exchange for this functionality instead. Should the Exchange find a similar burden placed on members using other Orders, it may extend the proposed activation functionality to other such Orders through rulemaking. The Exchange notes that providing members greater efficiency and control over their trading may make Nasdaq a more attractive venue, which may, in turn, cause other markets to consider similar changes that would remove unnecessary restrictions to the benefit of their members. For these reasons, the Exchange believes that the proposed change will not impose any burden on competition, but rather will reduce burdens, as described above.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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-2017-088 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-2017-088. 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-2017-088 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.¹⁸

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¹⁸ 17 CFR 200.30-3(a)(12).

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