



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83988; File No. SR-NASDAQ-2018-068]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Extend the Cutoff Times for Accepting On Close Orders Entered for Participation in the Nasdaq Closing Cross

August 29, 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 August 15, 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 extend the cutoff times for accepting on close orders entered for participation in the Nasdaq Closing Cross, and make related changes.

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 purpose of the proposed rule change is to extend the cutoff times for accepting on close orders entered for participation in the Nasdaq Closing Cross. The Nasdaq Closing Cross provides a transparent auction process that determines a single price for the close. As the equities markets continue to evolve and become more efficient and automated, the Exchange believes that the current cutoff times are overly restrictive to market participants that wish to participate in the Nasdaq Closing Cross and that typically have to tie up on close interest for ten minutes or more at the end of the trading day to participate in the cross. Similar to cutoffs provided by other equities exchanges that operate a closing auction, the Exchange believes that the proposed cutoff times would give Participants greater control over their on close orders while still leaving enough time at the end of the trading day for Participants to react to and offset Imbalances. Last, the Exchange is proposing to begin disseminating the Order Imbalance Indicator at the new Closing Cross Cutoff.

Current Cutoff Times

Generally, Market On Close (“MOC”)³ and Limit on Close (“LOC”)⁴ Orders are accepted today until immediately prior to 3:50 p.m. ET (“Closing Cross Cutoff”)⁵ when the Exchange begins disseminating an Order Imbalance Indicator⁶ that contains information about the Nasdaq Closing Cross. Imbalance Only (“IO”) Orders, on the other hand, are designed to allow Participants to offset Imbalances, and may therefore be entered until the time of execution of the Nasdaq Closing Cross, but may not be cancelled or modified at or after the Closing Cross Cutoff, except to correct legitimate errors as described below.⁷

The Exchange also continues to accept LOC Orders between the Closing Cross Cutoff and immediately prior to 3:55 p.m. ET (“Late Cutoff”)⁸ provided that there is a First Reference

³ A MOC Order is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. See Rule 4702(b)(11).

⁴ 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 Rule 4702(b)(12).

⁵ As used in this proposed rule change, the term “Closing Cross Cutoff” refers to the various 3:50 p.m. ET cutoff times described herein for the Nasdaq Closing Cross, including the regular cutoff time for entering MOC/LOC Orders described above and the related cutoff time for cancelling or modifying IO Orders, which is currently at or after 3:50 p.m. ET in contrast to MOC/LOC Orders whose cutoff times are immediately prior to 3:50 p.m. ET.

⁶ “Order Imbalance Indicator” means 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.

⁷ See Rule 4702(b)(13)(A).

⁸ As used in this proposed rule change, the term “Late Cutoff” refers to the various 3:55 p.m. ET cutoff times described herein for the Nasdaq Closing Cross, including the cutoff time for entering the LOC Orders described above and the cutoff time for correcting legitimate errors in an on close order.

Price.⁹ In order to promote price stability in the Nasdaq Closing Cross, such LOC Orders entered during this period are either canceled or re-priced to the First Reference Price, based on the Participant's instruction, if the LOC Order's limit price is more aggressive than the First Reference Price.¹⁰ Imbalance Only ("IO") Orders,¹¹ meanwhile, are designed to permit Participants to offset Imbalances and therefore may be entered until 4:00 p.m. ET when the Exchange executes the Nasdaq Closing Cross and disseminates the executions via the consolidated tape.¹²

Participants may also be able to cancel and/or modify their on close orders between the Closing Cross Cutoff and immediately prior to the Late Cutoff in limited circumstances. Specifically, during this time period: (1) MOC Orders and IO Orders can be cancelled and/or modified,¹³ and (2) LOC Orders can be cancelled but not modified,¹⁴ in each case to correct a legitimate error in the order (e.g., Side, Size, Symbol, or Price, or duplication of an Order).

Proposed Cutoff Times

The Exchange now proposes to change the Closing Cross Cutoff to 3:55 p.m. ET and the Late Cutoff to 3:58 p.m. ET.¹⁵ The Exchange believes that this proposed change will enhance the

⁹ "First Reference Price" shall mean the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:50 p.m. ET. See Rule 4754(a)(9).

¹⁰ See Rule 4702(b)(12)(A).

¹¹ 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 Rule 4702(b)(13).

¹² See Rule 4702(b)(13)(A).

¹³ See Rule 4702(b)(11)(A), (13)(A). As provided in these rules, MOC and IO Orders cannot be cancelled or modified at or after the Late Cutoff for any reason.

¹⁴ See Rule 4702(b)(12)(A).

¹⁵ The Exchange proposes to reflect the proposed cutoff times throughout the Nasdaq rulebook, including Rule 4702(b)(11)-(13), which defines MOC, LOC, and IO Orders, as well as Rules 4754(a)(9), (b)(1) and (b)(7)(B), which describe the Nasdaq Closing Cross. With the changed cutoff times, the Exchange will reject MOC Orders entered after the

experience provided to market participants who will be able to enter and interact with their on close orders later in the trading day.

The Nasdaq Closing Cross was established by the Exchange in 2004 to create a more robust close that would allow for price discovery, and an execution that would result in an accurate, tradable closing price.¹⁶ While the Exchange has made changes to the Nasdaq Closing Cross in the fourteen years since it was established, including by recently permitting LOC Orders to be entered until the Late Cutoff in certain circumstances, the normal Closing Cross Cutoff has remained at 3:50 p.m. ET. At the same time, the equities markets have become more efficient and automated. The Exchange therefore no longer believes that ten minutes is needed for market participants to react to and resolve Imbalances in the Nasdaq Closing Cross. As a result, the Exchange is proposing to extend the Closing Cross Cutoff time to 3:55 p.m. ET, which is consistent with the cutoff time provided in the CBOE BZX Exchange, Inc. (“BZX”) closing auction.¹⁷ While other exchanges operate closing auctions with various cutoff times as late as 3:59 p.m. ET,¹⁸ the Exchange believes that a 3:55 p.m. ET Closing Cross Cutoff strikes the appropriate balance for the Nasdaq Closing Cross in today’s trading environment.

The Exchange also continues to believe that it is beneficial to price discovery to permit Participants to submit LOC Orders after the regular Closing Cross Cutoff if there is a First Reference Price as provided in SR-Nasdaq-2017-061. Likewise, the Exchange continues to

3:55 p.m. ET cutoff, as described in proposed Rule 4702(b)(11)(B), and will reject LOC Orders and Closing Cross/Extended Hours Orders entered at or after 3:58 p.m. ET, as described in proposed Rule 4702(b)(12)(B).

¹⁶ See Securities Exchange Act Release Nos. 48878 (December 4, 2003), 68 FR 69098 (December 11, 2003) (Notice); 49406 (March 11, 2004), 69 FR 12879 (March 18, 2004) (Approval Order) (SR-NASD-2003-173).

¹⁷ See BZX Rule 11.23(c)(1)(A).

¹⁸ See *infra* note 20.

believe that it is appropriate to provide a brief period of additional time for Participants to correct legitimate errors in their orders entered for participation in the Nasdaq Closing Cross. The Exchange therefore proposes to extend the Late Cutoff to 3:58 p.m. ET. Other exchanges also accept similar orders in this timeframe. For example, BZX offers “Late-Limit-On-Close Orders” that are accepted until the execution of their closing auction at 4:00 p.m. ET,¹⁹ and NYSE Arca, Inc. (“Arca”) initiates its “Closing Auction Imbalance Freeze” for all MOC and LOC Orders at 3:59 p.m. ET.²⁰ LOC Orders submitted after the proposed Closing Cross Cutoff and before the proposed Late Cutoff will continue to be handled as they are today, and would therefore only be accepted if there is a First Reference Price, and would be subject to re-pricing if the limit price of the LOC Order is more aggressive than the First Reference Price or rejection, depending on the election of the member. Furthermore, the cancellation and/or modification of orders during the extended period would continue to be allowed only to correct a legitimate error in the order.

In addition, Rule 4702(b)(12)(A) 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. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the national best bid or offer (“NBBO”), and is therefore available only during Market Hours.²¹ Since a Pegging Attribute is only available during Market Hours, an Order with a Pegging Attribute can never be entered as a Closing Cross/Extended Hours Order, which would be valid only after Market Hours had concluded. The Exchange proposes to make this clear in Rule 4702(b)(12)(B) by removing the current reference to the time during which such an Order is entered. As proposed, the rule would

¹⁹ See BZX Rule 11.23(c)(1)(A).

²⁰ See Arca Rule 7.35-E(d)(2).

²¹ See Rule 4703(d).

provide that a Closing Cross/Extended Hours Order will be rejected if it has been assigned a Pegging Attribute.

Order Imbalance Indicator

Once MOC/LOC Orders are locked in at the Closing Cross Cutoff, the Exchange begins disseminating the Order Imbalance Indicator to provide market participants with information about the Nasdaq Closing Cross. With the proposed changes to the Closing Cross Cutoff, the Exchange is proposing to also begin disseminating the Order Imbalance Indicator at the new Closing Cross Cutoff of 3:55 p.m. ET.²² The Exchange has always disseminated the Order Imbalance Indicator once MOC/LOC Orders are locked in at the Closing Cross Cutoff. Prior to the Closing Cross Cutoff, Participants have significantly more leeway to enter new on close orders or cancel or modify on close orders already entered. The Exchange therefore believes that continuing to disseminate the Order Imbalance Indicator starting at the Closing Cross Cutoff, which as proposed will be 3:55 p.m. ET, will ensure that market participants receive a more complete picture of on close interest when such interest is relatively settled.

Currently, the Order Imbalance Indicator is disseminated every five seconds starting at the Closing Cross Cutoff discussed above. The Exchange believes, however, that more frequent dissemination will be beneficial to market participants that use this information, and is therefore proposing to increase the frequency of dissemination to every second. This proposed change will apply to the Order Imbalance Indicator for the Nasdaq Closing Cross as well as the similar Order

²² Because the First Reference Price refers to the Current Reference Price in the first Order Imbalance Indicator disseminated to market participants, Rule 4754(a)(9) will similarly be updated to reference 3:55 p.m. ET, which is when the first Order Imbalance Indicator will now be disseminated.

Imbalance Indicator provided for the LULD Closing Cross,²³ Nasdaq Opening Cross,²⁴ and the Nasdaq Halt Cross,²⁵ which each have a five second dissemination frequency today.

Conforming Changes

Last, the Exchange is proposing to make conforming changes to Rule 7018(a), which provides the fees and credits available to members for the use of the order execution and routing services of the Nasdaq Market Center for all securities priced at \$1 or more that it trades. Under Rules 7018(a)(1) and (2), Nasdaq has credits that exclude Limit-on-Close Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET. The Exchange is proposing to update these times to reflect the times proposed herein.

Implementation

The Exchange proposes to implement all of the changes described in this proposed rule change in either Q3 or Q4 2018. The Exchange will announce the implementation date of these changes in an Equity Trader Alert issued to Participants prior to implementing the change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁷ 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. Specifically, the Exchange believes that extending the cutoff times for submitting on close orders will allow market participants to retain control over their

²³ See Rule 4754(b)(6).

²⁴ See Rule 4752(d)(1).

²⁵ See Rule 4753(b)(1).

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(5).

orders for a longer period of time, and thereby assist those market participants in managing their trading at the close. Furthermore, the Exchange believes that the proposed changes to the Order Imbalance Indicator will protect investors and the public interest by continuing to provide complete and timely information to the market.

Cutoff Times

While the Exchange originally implemented a Closing Cross Cutoff time in 2004 that was ten minutes prior to the execution of the Nasdaq Closing Cross, the Exchange no longer believes that this much time is required for market participants to respond to and offset Imbalances. To promote price discovery in the Nasdaq Closing Cross, the Exchange disseminates an Order Imbalance Indicator with certain information about the cross to market participants beginning at 3:50 p.m. ET, at which time market participants have more limited means of entering orders to participate in the Nasdaq Closing Cross. Specifically, Participants cannot enter new MOC Orders on or after 3:50 p.m. ET, and between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET are limited to entering LOC Orders that are subject to being rejected or re-priced if too aggressive based on the First Reference Price disseminated at that time (or rejected if there is no First Reference Price). Otherwise, the ability to update MOC or LOC Orders is limited to correcting legitimate errors. The Exchange believes that market participants would be better served if the Closing Cross Cutoff was extended to 3:55 p.m. ET so that the period of time where they have limited control over their orders is reduced.²⁸ The

²⁸ The “Closing Cross Cutoff” refers to various 3:50 p.m. ET cutoff times for the Nasdaq Closing Cross. As such, this change will impact functionality that is tied to the regular cutoff time for entering MOC/LOC Orders, such as the cutoff time for cancelling or modifying IO Orders. See *supra* note 5. The Exchange believes that Participants should continue to be able to cancel or modify their IO Orders, which are designed to offset Imbalances, until such time as MOC/LOC Orders are locked in at the Closing Cross Cutoff.

Exchange believes that this will reduce risk for market participants that participate in the Nasdaq Closing Cross, and improve price discovery by facilitating additional participation by market participants that may not be willing to lose control over their on close interest for ten minutes. Another equities exchange, BZX, already uses a 3:55 p.m. ET cutoff for regular MOC/LOC entry in its closing auction, and the Exchange believes that this cutoff time reflects the efficiency and more automated nature of trading in today's market.

In addition, the Exchange continues to believe that it is appropriate to offer a later cutoff time for certain LOC Orders, as well as for the correction of legitimate errors. The Exchange launched the functionality described in SR-Nasdaq-2017-061 last year, and believes that it provides a helpful means for promoting price discovery in the Nasdaq Closing Cross. Since the Exchange is extending the Closing Cross Cutoff to the time that these LOC Orders are accepted until today, the Exchange is proposing to extend the Late Cutoff as well. The Exchange believes that the market will continue to benefit from permitting LOC Orders to be submitted until 3:58 p.m. ET, subject to the conditions described in the current rule with respect to rejection or re-pricing and orders being accepted only when there is matched buy and sell interest that is eligible to participate in the Nasdaq Closing Cross, as evidenced by a First Reference Price being disseminated to market participants. BZX, which offers a similar "Late-Limit-On-Close Order" accepts those orders until 4:00 p.m. ET, when that exchange runs its closing auction, and Arca initiates its "Closing Auction Imbalance Freeze" for all MOC and LOC Orders at 3:59 p.m. ET. The Exchange therefore believes that there is ample precedent in the industry for continuing to accept these orders until 3:58 p.m. ET, as proposed.

Furthermore, the Exchange believes that it is appropriate to clarify in its rules that a Closing Cross/Extended Hours Order will be rejected if it has been assigned a Pegging Attribute

(i.e., regardless of the time the Order is entered). Although the current rule references Closing Cross/Extended Hours Order entered between 3:50 p.m. ET and the time of the Nasdaq Closing Cross, Pegging Attributes are available during Market Hours only, and therefore Closing Cross/Extended Hours Orders are rejected if entered with a Pegging Attribute at other times as well. Thus, the Exchange believes the proposed change will increase transparency around the operation of the Exchange.

Order Imbalance Indicator

The Exchange also believes that it is appropriate to continue to disseminate the Order Imbalance Indicator starting at the Closing Cross Cutoff. As explained in the purpose section of this proposed rule change, the Exchange has always disseminated the Order Imbalance Indicator beginning at the Closing Cross Cutoff, which is when the Exchange believes it is possible to disseminate meaningful information about the Nasdaq Closing Cross. Prior to this time, Participants are generally free to submit additional on close interest and/or cancel or modify on close interest already submitted. Furthermore, many Participants may wait until immediately prior to the Closing Cross Cutoff to enter their on close interest. Thus, the Exchange believes that any information disseminated before the Closing Cross Cutoff has the potential to be misleading to some market participants. As a result, the Exchange believes that it is consistent with the protection of investors and the public interest to continue to disseminate this information at the Closing Cross Cutoff, which will be moved to 3:55 p.m. ET, as proposed.

Finally, the Exchange believes that market participants will benefit from a more frequent dissemination of the Order Imbalance Indicator for the Nasdaq Closing Cross, LULD Closing Cross, Nasdaq Opening Cross, and Nasdaq Halt Cross. While the Exchange initially chose to disseminate this information once every five seconds, the Exchange believes that the increased

automation and efficiency in the equities markets that spurred the changed cutoff times described above also justify increasing the frequency for disseminating information to the market. Arca similarly updates Auction Imbalance Information at least every second, unless there is no change to the information.²⁹ The Exchange believes that an increased frequency of data dissemination for each of the auctions described above will be helpful to Participants that will benefit from a more timely view of the market.

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 intermarket or intramarket competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change is evidence of the competitive forces in the equities markets. The Exchange originally launched the Nasdaq Closing Cross in 2004 with a ten minute cutoff period where Participants would no longer have the ability to enter additional MOC/LOC Orders, and would have limited ability to interact with their already entered orders. While the Exchange launched functionality last year to accept LOC Orders up to five minutes before the execution of the Nasdaq Closing Cross, these orders are subject to conditions that may not appeal to all market participants. Meanwhile, exchanges that have launched closing auctions more recently have typically adopted them with shorter cutoff periods. The Exchange believes that the market participants that trade in the Nasdaq Closing Cross, which determines the Nasdaq Official Closing Price for all Nasdaq listed stocks, would similarly benefit from a shorter cutoff period. The proposed cutoff times would apply equally to all Participants and reflects the current market environment where trading is increasingly more automated and efficient, and where competing exchanges already offer later cutoff times than

²⁹ See Arca Rule 7.35-E(a)(4)(A).

those currently in place on Nasdaq. The Exchange believes that the proposed changes to the Order Imbalance Indicator similarly reflect the current competitive environment as the Exchange's changes are designed to continue to provide complete and timely information to the market, to the benefit of Participants that trade on Nasdaq. The proposed changes to the Order Imbalance Indicator, like the changes being made to the cutoff times, will apply equally to all Participants

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 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-2018-068 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-2018-068. 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. 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-2018-068 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Eduardo A. Aleman,

Assistant Secretary.

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³⁰ 17 CFR 200.30-3(a)(12).

