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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84621; File No. SR-NASDAQ-2018-090]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Introduce a New Midpoint Trade Now Functionality

November 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 November 9, 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 amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to introduce a new Midpoint Trade Now functionality.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to introduce a new Midpoint Trade Now functionality.³ Midpoint Trade Now will be an Order Attribute⁴ that allows a resting Order that becomes locked at its non-displayed price by an incoming Midpoint Peg Post-Only Order⁵ to automatically execute against that Midpoint Peg Post-Only Order as a liquidity taker. Any remaining shares of the resting Order will remain posted on the Nasdaq Book with the same priority. The Midpoint Trade Now Order Attribute may be enabled on a port level basis for all Order Types that support it and, for the Non-

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).

⁴ Id.

⁵ A Midpoint Peg Post-Only Order is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will execute upon entry only in circumstances where economically beneficial to the party entering the Order. See Rule 4702(b)(5).

Displayed Order Type, also on an order-by-order basis. Midpoint Trade Now will be available for all Order entry protocols except for QIX.⁶

The Exchange is proposing to offer the Midpoint Trade Now instruction for all Orders that have the Non-Displayed Order Attribute⁷ and are not otherwise subject to restrictions on execution. Accordingly, the Midpoint Trade Now instruction shall not be available for Price to Display Orders (Rule 4702(b)(2)), Market Maker Peg Orders (Rule 4702(b)(7)), Supplemental Orders (Rule 4702(b)(6)), Market On Open Orders (Rule 4702(b)(8)), Limit On Open Orders (Rule 4702(b)(9)), Opening Imbalance Only Orders (Rule 4702(b)(10)), Market On Close Orders (Rule 4702(b)(11)), Limit on Close Orders (Rule 4702(b)(12)), Imbalance Only Orders (Rule 4702(b)(13)), and Midpoint Extended Life Orders (Rule 4702(b)(14)). These order types are either: a) incapable of having a non-displayed price, hence the use of the Midpoint Trade Now instruction is not applicable, or b) subject to other Nasdaq rules regarding the display and execution of those orders, thus the use of the Midpoint Trade Now instruction would be inconsistent with those other Nasdaq rules.⁸ The Midpoint Trade-Now instruction will be

⁶ Nasdaq notes that, although the QIX protocol can support the removing of liquidity, QIX is designed to provide two-sided quote messages to the trading system, unlike the OUCH, RASH, FLITE and FIX protocols, which are designed to facilitate Order submission. See Item II.B. discussion, infra.

⁷ There is both a Non-Display Order Attribute (Rule 4703(k)) and a Non-Display Order (Rule 4702(b)(3)).

⁸ For example, a Supplemental Order is an order type with a Non-Display Order attribute that is held on the Nasdaq Book in order to provide liquidity at the NBBO through a special execution process described in Rule 4757(a)(1)(D). Rule 4757(a)(1)(D) provides that a Supplemental Order will be matched against an order only at the National Best Bid or Offer, and only if the size of the order is less than or equal to the aggregate size of Supplemental Order interest available at the price of the order. In addition, a Supplemental Order will not execute if the NBBO is locked or crossed. See Rule 4757(a)(1)(D). To the extent that a Supplemental Order will only be matched at the National Best Bid or Offer, and the Midpoint Trade-Now instruction allows a locked resting order to execute at a price that is potentially better than the NBBO, the function of

available as a port-setting for all other Order Types, namely Price to Comply Orders (Rule 4702(b)(1)), Non-Displayed Orders (Rule 4702(b)(3)), Post Only Orders (Rule 4702(b)(4)) and Midpoint Peg Post-Only Orders (Rule 4702(b)(5)). In addition, Midpoint Trade Now will be available on an Order-by-Order basis⁹ for Non-Displayed Orders.¹⁰

A resting Order that is entered with the Midpoint Trade Now Order Attribute will execute against locking interest automatically. As such, the availability of Midpoint Trade Now obviates the need for execution restrictions on incoming Orders because when a resting Order without the Midpoint Trade Now Order Attribute is being locked at its non-displayed price by a Midpoint Peg Post-Only Order, new incoming Orders (with or without the Midpoint Trade Now Attribute, as applicable) will be able to execute against the Midpoint Peg Post-Only Order at the locking price. Nasdaq also proposes to amend Rule 4702(b)(5)(A) to reflect this new functionality. Currently, if a Midpoint Peg Post-Only Order that posts to the Nasdaq Book is locking a preexisting Order, the Midpoint Peg Post-Only Order will execute against an incoming Order only if the price of the incoming sell (buy) Order is lower (higher) than the price of the preexisting Order. As an example, if the midpoint is at \$11.03 and there is a Non-Displayed Order (or another Order with a Non-Display Order Attribute) on the Nasdaq Book to sell at \$11.03, and if the incoming buy Midpoint Peg Post-Only Order locks the preexisting Non-

the Trade-Now [sic] instruction is inconsistent with the function of the Supplemental Order.

⁹ If a port is set to not use Midpoint Trade Now and a Non-Displayed Order is sent with a Midpoint Trade Now specification through the port, the Order's instructions will override the port setting.

¹⁰ While the port-level setting applies to Orders with a Non-Displayed Order Attribute, order-by-order specification is available only for the Orders with the specific Non-Displayed Order Type.

Displayed Order at \$11.03, the Midpoint Peg Post-Only Order could execute only against an incoming Order to sell priced at less than \$11.03.

However, under the proposed functionality, if there is a resting sell (buy) Order on the Nasdaq Book without the Midpoint Trade Now Attribute that is locked at its non-displayed price by a buy (sell) Midpoint Peg Post-Only Order, new incoming Orders (with or without the Midpoint Trade Now Order Attribute), entered at a price equal to or lower (higher) than the non-displayed price of the locked sell (buy) Order, will be able to execute against the Midpoint Peg Post-Only Order at the locking price. The resting Order will remain on the Nasdaq Book and will retain its priority after the subsequent Order has executed against the Midpoint Peg Post-Only Order. For example, the Best Bid is \$11 and the Best Offer is \$11.06, and a buy Midpoint Peg Post-Only Order is locking a preexisting sell Non-Displayed Order without the Midpoint Trade Now Attribute at \$11.03. The Midpoint Peg Post-Only Order could execute against incoming Orders, with or without the Midpoint Trade Now Attribute, to sell priced equal to or less than \$11.03.

The proposed functionality relating to Midpoint Peg Post-Only Orders that lock a pre-existing Order, is set forth in Rule 4703(n). This new text makes the current functionality described in Rule 4702(b)(5)(A) obsolete with respect to non-display orders. Accordingly, Nasdaq is revising language in Rule 4702(b)(5)(A) that once applied to both displayed and non-displayed orders to now only apply to displayed orders.¹¹

Implementation

¹¹ As part of this proposal, Nasdaq also proposes to include references in Rule 4702(b)(5)(A) “to buy,” where appropriate, to further clarify this rule language.

The Exchange will implement Midpoint Trade Now in the first quarter of 2019, and will announce the implementation date via an Equity Trader Alert. The Exchange will implement the proposed clarifying change to Rule 4702(b)(5)(A) at the earliest permissible time.¹²

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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.

The proposed Midpoint Trade Now functionality will allow market participants to have their Orders executed as a taker of liquidity should that Order become locked at its non-displayed price by a contra-side Midpoint Peg Post-Only Order. This functionality will therefore promote an efficient and orderly market by allowing Orders in this scenario to execute and resolve a locked market. Similarly, allowing a subsequent Order to execute against a locking Midpoint Peg Post-Only Order if the Order that is locked by the Midpoint Peg Post-Only Order has not enabled the Midpoint Trade-Now functionality will also promote an efficient and orderly market by allowing the incoming Order in that scenario to execute and resolve an instance where Orders with a non-displayed price on both the buy and sell side of the market are priced equally but not executing against each other. The Midpoint Trade Now functionality is an optional feature that is being offered at no additional charge, and is designed to reflect both the objectives of the Nasdaq market, and the order flow management practices of various market participants.

¹² Id.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

The Exchange believes that the decision to offer the new functionality on an order-by-order basis only for one Order Type—and as a port setting for others—is consistent with the Act because it reflects the varying use cases of Nasdaq’s Order Types and the flexibility required by different market participants. Users of the Non-Displayed Order Type may be more or less sensitive to removing liquidity depending on market conditions and thus would prefer to decide on a case-by-case basis whether that order will trade with any available liquidity on the book. In contrast, Price to Comply Orders, Post Only Orders, and Midpoint Peg-Post Only Orders are generally entered with the expectation of joining a certain price level, executing only as an adder of liquidity.¹⁵ Therefore, Nasdaq does not believe users of these Order Types would want or need flexibility on an order-by-order basis as it is generally inconsistent with the purpose of the Order Type. Nevertheless, Nasdaq recognizes that some market participants may prefer to execute whenever possible and thus will make Midpoint Trade Now available for these Order Types as a port setting to provide blanket coverage.

Nasdaq believes that the proposed clarifying changes and revised rule text under Rule 4702(b)(5)(A) are consistent with the Act because they will help avoid investor confusion that may be caused by not making it clear that a Midpoint Peg Post-Only Order in the Rule’s example is an Order to buy, and by having text that refers to functionality that will no longer apply. As noted above, Nasdaq is revising language in Rule 4702(b)(5)(A) that once applied to both displayed and non-displayed orders to now only apply to displayed orders.

¹⁵ Price to Comply Orders and Post Only Orders are generally Orders with a Display Attribute, but may in certain circumstances also have a non-displayed price. For example, if the NBBO is 10.99 x 11.00, a Price to Comply Order to buy at 11.00 would be ranked at 11.00 but displayed at 10.99. If the National Best Offer subsequently moved to 11.01, and the Participant did not elect to have their order canceled back or otherwise adjusted in such circumstances, the Order would then be ranked at the new midpoint. In this case, an incoming Midpoint Peg-Post Only Order could lock the resting Price to Comply Order at its non-displayed price.

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. This is an optional functionality that is being offered at no charge, and which may be used equally by similarly-situated participants. Moreover, the functionality may be replicated by other markets if deemed to be appropriate for their markets.

As noted above, Nasdaq will offer the Midpoint Trade Now functionality through the OUCH, RASH, FLITE, and FIX protocols. Nasdaq will not offer the Midpoint Trade Now functionality through the QIX protocol.¹⁶ Nasdaq notes that, although the QIX protocol can support the removing of liquidity, QIX is designed to provide two-sided quote messages to the trading system, unlike the OUCH, RASH, FLITE and FIX protocols, which are designed to facilitate Order submission. Nasdaq also notes that QIX is an infrequently-used protocol,¹⁷ and that this protocol cannot support the expansion of fields that adopting the Midpoint Trade Now instruction would require. Nasdaq therefore believes that its decision to offer the Midpoint Trade Now instruction through the OUCH, RASH, FLITE, and FIX protocols will not impose any burden on competition that is not necessary or appropriate.

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.

¹⁶ Although participants may use other protocols, such as DROP, those protocols are not related to Order entry, and so the Midpoint Trade Now functionality is not being offered for those protocols.

¹⁷ As of September 12, 2018, of the 4,855 customer ports for the various Nasdaq protocols, only 134 of those ports are QIX protocol.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-2018-090 on the subject line.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2018-090. 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-2018-090 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.²⁰

Eduardo A. Aleman,
Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).

