

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2016-100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2016-100. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 such 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-NYSEMKT-2016-100, and should be submitted on or before December 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79282; File No. SR-NASDAQ-2016-156]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4702 and Rule 4703 To Add a "Trade Now" Instruction to Certain Order Types

November 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 8, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to add a "Trade Now" instruction to certain order types.

The text of the proposed rule change is available on the Exchange's Web site 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 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

Nasdaq proposes to amend Rules [sic] 4702 (Order Types) and Rule 4703 (Order Attributes) to add a "Trade Now" instruction to certain order types. Nasdaq will offer this functionality through its OUCH, RASH, FLITE, and FIX protocols. This instruction will provide resting orders with a greater ability to receive an execution when that resting order is locked, e.g., the price of a resting non-display buy order equals the price of a resting displayed sell order on the Nasdaq book. The Trade Now instruction will allow participants to enter an instruction to have a locked resting buy (sell) order execute against the locking sell (buy) order. Depending on the protocol used by the participant to access the Nasdaq system, the participant may either specify that the order execute against locking interest automatically, or the participant may be required to send a Trade Now instruction to the Exchange once the order has become locked. As discussed in greater detail below, Nasdaq is offering the Trade Now instruction for all orders that may be sent to the continuous Nasdaq book, and will not offer the instruction for orders that do not execute on the continuous book.

When a Trade Now instruction is applied to a resting buy (sell) order, the order will execute against the available size of the locking sell (buy) order at the locked price. The following example illustrates this scenario:

- Participant A enters a Non-Display buy order for 200 shares at \$10, and specifies the Trade Now instruction;
- Participant B enters a Post Only sell order for 100 shares at \$10;³
- The Post Only order is posted at \$10 and locks the Non-Display order;
- The buy order will execute for 100 shares at \$10 as the remover of liquidity.

If a buy (sell) order with the Trade Now instruction is only partially executed, the unexecuted portion of that order remains on the Nasdaq book and maintains its priority. When a Trade Now instruction is entered through the OUCH or FLITE protocol for a resting buy (sell) order and there is no locking

³ The Exchange recently submitted a proposal to amend Nasdaq Rules 4702 and 4703 to change the way in which Post Only Orders interact with resting Non-Display orders and preventing the execution of midpoint pegged orders during a crossed market. See Securities Exchange Act Release No. 78908 (September 22, 2016), 81 FR 66702 (September 28, 2016) (SR-NASDAQ-2016-111).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).

order on the opposite side of the market, the Trade Now instruction will be ignored and the buy (sell) order will remain on the Nasdaq book, retaining its priority.

As noted above, Nasdaq is proposing to offer the Trade Now instruction for all orders that may be sent to the continuous Nasdaq book (as opposed to the opening and closing book), and will not offer the instruction for orders that do not execute on the continuous book. Accordingly, the Trade Now instruction shall not be available for 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)), and Imbalance Only Orders (Rule 4702(b)(13)). These order types are subject to other Nasdaq rules regarding the display and execution of those orders, and the use of the Trade Now instruction would be inconsistent with those other Nasdaq rules.⁴ Accordingly, Nasdaq is not offering the Trade Now instruction for those order types.

Depending on the interface being used by the participant, the Trade Now attribute may either allow the order to execute against locking interest automatically (“Reactive Trade Now”), or the participant may be required to send a Trade Now instruction to the Exchange once the order has become locked (“Non-Reactive Trade Now”). All orders that are entered through the RASH and FIX protocols with a Trade Now order attribute will be Reactive Trade Now, and those orders shall execute against locking interest automatically.

⁴ 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 Trade-Now instruction allows a locked resting order to execute at a price that is potentially better than the NBBO, the function of the Trade-Now instruction is inconsistent with the function of the Supplemental Order. Similarly, the purpose of the various Cross mechanisms is to establish a price that maximizes the number of applicable quotes and orders that may be executed. See, e.g., Rule 4752(d)(2). Allowing an order to automatically execute against locking interest without regard to the price of other same-side interest is inconsistent with a process that establishes a price at which the maximum number of shares may be paired.

The Reactive Trade Now instruction will be available on an order-by-order basis, and will also be available as an optional port level setting. If the Reactive Trade Now setting is enabled on a specific port, all orders entered via the specific port will, by default, be designated with the Reactive Trade Now instruction. If the Reactive Trade Now setting is enabled on a specific port, participants will have the ability to designate on an order-by-order basis that a particular order entered via the specific port will not be designated with the Reactive Trade Now instruction, thereby overriding the port level setting for the order. If the Reactive Trade Now instruction is specified for an order for which the Trade Now instruction does not apply, e.g., a Supplemental Order or a Market On Open Order, the system will not invoke the Trade Now instruction for that order.

In contrast, orders entered through the OUCH and FLITE protocols will use the Non-Reactive Trade Now functionality, and participants must send the Trade Now instruction after the order becomes locked. If a participant enters a Non-Reactive Trade Now instruction when there is no locking interest, the instruction will be ignored by the system and the order will remain on the Nasdaq Book with the same priority.

The Non-Reactive Trade Now instruction will be available to participants on order-by-order basis. If the Non-Reactive Trade Now instruction is entered for an order for which the Trade Now instruction does not apply, the system will not invoke the Trade Now instruction for that order.

Nasdaq is offering two different variations of the Trade Now instruction to reflect the differences in behavior among participants who use the different Nasdaq protocols. For example, Nasdaq typically assumes a more active role in managing the order flow submitted by users of the RASH and FIX protocols. Allowing these participants to use the Reactive Trade Now instruction at the time of order entry will allow for the automatic execution of orders, and reflects the order flow management practices of these participants. In contrast, users of the OUCH and FLITE protocols generally assume a more active role in managing their order flow. Offering the Non-Reactive Trade Now instruction for these protocols, and its requirement that the instruction must be sent after the order becomes locked, reflects the order flow management practices of these participants.

Nasdaq notes that a similar functionality currently exists on NYSE Arca, Inc. (“NYSE Arca”), which NYSE

Arca refers to as a “Non-Display Remove Modifier.” As set forth in NYSE Arca Rule 7.31, a Limit Non-Displayed Order may be designated with a Non-Display Remove Modifier. If so designated, a Limit Non-Displayed Order to buy (sell) will trade as the liquidity-taking order with an incoming Adding Liquidity Only Order (“ALO Order”) to sell (buy) that has a working price equal to the working price of the Limit Non-Displayed Order.⁵ NYSE Arca also provides this functionality for other orders, such as Mid-Point Passive Liquidity Orders (“MPL Orders”) designated Day and MPL–ALO Orders⁶ and Arca Only Orders.⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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, by offering participants an additional functionality that will facilitate the execution of locked orders, thereby increasing the efficient functioning of the Nasdaq market. The 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. For these reasons, the Trade Now functionality will only be made available for orders that are entered in the continuous Nasdaq book, and, depending on the protocol, will be offered as either the Reactive Trade Now or Non-Reactive Trade Now functionality.

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

⁵ See NYSE Arca Rule 7.31(d)(2)(B).

⁶ See NYSE Arca Rule 7.31(d)(3)(G).

⁷ See NYSE Arca Rule 7.31(e)(1)(C). To the extent that the Trade-Now functionality will be made available for Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, Post-Only Orders, Midpoint Peg Post-Only Orders, and Market Maker Peg Orders, Nasdaq notes that the Trade-Now functionality will apply to different order types than the NYSE Arca Non-Display Remove Modifier functionality.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

offered at no charge, and which may be used equally by similarly-situated participants. Although the functionality of the Trade Now instruction will differ depending upon the protocol that is being used to access Nasdaq, Nasdaq believes that the difference in functionality reflects the different ways in which participants enter and manage their order flow.

As noted above, Nasdaq will offer the Trade Now functionality through the OUCH, RASH, FLITE, and FIX protocols. Nasdaq will not offer the Trade Now functionality through the QIX protocol.¹⁰ 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,¹¹ and that this protocol cannot support the expansion of fields that adopting the Trade Now instruction would require. Nasdaq therefore believes that its decision to offer the 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.

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 Act and Rule 19b-4(f)(6) thereunder.¹²

¹⁰ Although participants may use other protocols, such as DROP, those protocols are not related to order entry, and so the Trade Now functionality is not being offered for those protocols.

¹¹ As of September 15, 2016, of the 5,090 customer ports for the various Nasdaq protocols, only 124 of those ports are QIX protocol.

¹² 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Trade Now functionality is complementary to its recent proposal to change the way in which Post Only Orders interact with resting Non-Display orders.¹⁵ The Exchange believes that releasing both complementary functionalities at the same time will be easier for market participants to manage and implement. The Exchange further believes that the Trade Now functionality will facilitate the execution of locked orders, thereby increasing the efficient functioning of the Nasdaq market, and that waiver of the operative delay will allow this functionality to be made available at an earlier date. Finally, the Exchange notes that NYSE Arca currently utilizes a similar functionality in the form of its Non-Display Remove Modifier. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁶

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.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See *supra* note 3.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Brent J. Fields,

Secretary.

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¹⁷ 17 CFR 200.30-3(a)(12).