

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

| | | | | | |
|---|---|-------------------------------------|---|---|--|
| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| | | | Rule | | |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| | | | <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input checked="" type="checkbox"/> 19b-4(f)(6) | |

| | |
|---|--|
| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
| Section 3C(b)(2) * <input type="checkbox"/> | |

| | |
|---|---|
| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
|---|---|

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to amend Rule 4702 and Rule 4703 to add a Trade Now instruction to certain order types.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

| | |
|--|--------------------------|
| First Name * Andrew | Last Name * Madar |
| Title * Senior Associate General Counsel | |
| E-mail * andrew.madar@nasdaq.com | |
| Telephone * (301) 978-8420 | Fax <input type="text"/> |

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

| | |
|---------------------|---|
| Date 11/08/2016 | Executive Vice President and General Counsel |
| By Edward S. Knight | <div style="border: 1px solid black; width: 100%; height: 20px;"></div> |
| (Name *) | <div style="border: 1px solid black; width: 100%; height: 20px; background-color: #ccc;"></div> |

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

edward.knight@nasdaq.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to add a “Trade Now” instruction to certain order types.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Andrew Madar
Senior Associate General Counsel
Nasdaq, Inc.
301-978-8420

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

Nasdaq proposes to amend Rules 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 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

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).

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.

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

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.

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

b. 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

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).

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.

4. 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. 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

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.

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.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹² of the Act and Rule 19b-4(f)(6) thereunder¹³ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

The Exchange believes that, while the proposal will offer participants an additional functionality that will facilitate the execution of locked orders, thereby increasing the efficient functioning of the Nasdaq market, the overall impact of this functionality will not significantly affect the protection of investors or the public interest. For the reasons described above in Item 4, Nasdaq does not believe that the proposed change will impose a significant burden on competition.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii). The Trade Now functionality is complementary to the Post Only vs. Non-Display change that was recently filed and is referenced above. The Exchange believes that releasing both

complimentary functional enhancements at the same time will be easier for market participants to manage and implement. In addition, the proposed Trade Now functionality will facilitate the execution of locked orders, thereby increasing the efficient functioning of the Nasdaq market, and waiving the operative delay will allow this functionality and its attendant benefits to be made available at an earlier date. As discussed above, NYSE Arca currently utilizes a similar functionality in the form of its Non-Display Remove Modifier.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2016-156)

November __, 2016

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

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 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, 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

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 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

Nasdaq proposes to amend Rules 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 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

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).

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

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.

will be Reactive Trade Now, and those orders shall execute against locking interest automatically.

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

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.

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 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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

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.

to Section 19(b)(3)(A)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 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-2016-156 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-156. 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 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 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-2016-156 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The NASDAQ Stock Market Rules

* * * * *

4702. Order Types.

(a) No change.

(b) Except where stated otherwise, the following Order Types are available to all Participants:

(1) (A) – (B) No change.

(C) The following Order Attributes may be assigned to a Price to Comply Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation, and may include a displayed price as well as a non-displayed price.
- Size.
- Reserve Size (available through RASH, FIX and QIX only).
- A Time-in-Force other than IOC. (A Price to Comply Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC).
- Designation as an ISO. In accordance with Regulation NMS, a Price to Comply Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Comply Order would lock or cross.
- Routing (available through RASH, FIX and QIX only).
- Primary Pegging and Market Pegging (available through RASH, FIX, and QIX only).
- Discretion (available through RASH, FIX and QIX only).
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.

- Display. A Price to Comply Order is always displayed, although, as provided above, it may also have a non-displayed price and/or Reserve Size.

• Trade Now (available through OUCH, RASH, FLITE and FIX).

(2) (A) – (B) No change.

(C) The following Order Attributes may be assigned to a Price to Display Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation.
- Size.
- Reserve Size (available through RASH, FIX and QIX only).
- A Time-in-Force other than IOC. (A Price to Display Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC).
- Designation as an ISO. In accordance with Regulation NMS, a Price to Display Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Display Order would lock or cross.
- Routing (available through RASH, FIX and QIX only).
- Primary Pegging and Market Pegging (available through RASH, FIX, and QIX only).
- Discretion (available through RASH, FIX and QIX only).
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.
- Attribution. All Price to Display Orders are Attributable Orders.
- Display. A Price to Display Order is always displayed (but may also have Reserve Size).
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(3) (A) – (B) No change.

(C) The following Order Attributes may be assigned to a Non-Displayed Order:

- Price. As described above, the price of the Order may be adjusted to avoid crossing a Protected Quotation.
- Size.
- Minimum Quantity.
- Time-in-Force.
- Designation as an ISO. In accordance with Regulation NMS, a Non-Displayed Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Non-Displayed Order would cross. As discussed above, a Non-Displayed Order would be accepted at a price that locked a Protected Quotation, even if the Order was not designated as an ISO, because the non-displayed nature of the Order allows it to lock a Protected Quotation under Regulation NMS. Accordingly, the System would not interpret receipt of a Non-Displayed Order marked ISO that locked a Protected Quotation as the basis for determining that the Protected Quotation had been executed for purposes of accepting additional Orders at that price level.
- Routing (available through RASH, FIX and QIX only).
- Primary Pegging and Market Pegging (available through RASH, FIX, and QIX only).
- Pegging to the Midpoint (see Rule 4703(d) with respect to differences between OUCH and FLITE and RASH, FIX, and QIX).
- Discretion (available through RASH, FIX and QIX only).
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(4) (A) – (B) No change.

(C) The following Order Attributes may be assigned to a Post-Only Order:

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation, and may include a displayed price as well as a non-displayed price.
- Size.

- Time-in-Force; provided, however, that a Post-Only Order with a Time-in-Force of IOC may not be entered through RASH, QIX, or FIX.
- Designation as an ISO. In accordance with Regulation NMS, a Post-Only Order designated as an ISO that locked or crossed a Protected Quotation would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, as described above, a Post-Only Order designated as an ISO that locked or crossed an Order on the Nasdaq Book would either execute at time of entry or would have its price adjusted prior to posting. Accordingly, the System would not interpret receipt of a Post-Only Order marked ISO that had its price adjusted prior to posting as the basis for determining that any Protected Quotation at the Order's original entered limit price level had been executed for purposes of accepting additional Orders at that price level. However, if the Post-Only Order is ranked and displayed at its adjusted price, the System would consider the adjusted price level to be open for purposes of accepting additional Orders at that price level. For example, assume that there is a Protected Offer at \$11 and a Participant enters a Post-Only Order marked ISO to buy at \$11. If there are no Orders to sell at \$11 on the Nasdaq Book, the Order to buy will be displayed and ranked at \$11, since the designation of the Order as an ISO reflects the Participant's representation that it has routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, if there was also an Order to sell at \$11 on the Nasdaq Book, the Post-Only Order will be repriced, ranked, and displayed at \$10.99. In that case, the mere fact that the Post-Only Order was designated as an ISO would not allow Nasdaq to conclude that the \$11 price level was "open" for receiving orders to buy at that price; the \$11 price level would be considered open only if market data received by the System demonstrated that the Protected Offer at \$11 had been removed or if a subsequent Displayed Order marked ISO was received and ranked at that price.
- Attribution.
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross (available through OUCH and FLITE only).
- Display. A Post-Only Order is always displayed, although as provided above, may also have a non-displayed price.
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(5) (A) – (B) No change.

(C) The following Order Attributes may be assigned to a Midpoint Peg Post-Only Order:

- Price of more than \$1 per share.
- Size.
- Time-in-Force; provided, however, that a Midpoint Peg Post-Only Order with a Time-in-Force of IOC may not be entered through RASH, QIX or FIX, and provided further that regardless of the Time-in-Force entered, a Midpoint Post-Only Order may not be active outside of Market Hours. A Midpoint Peg Post-Only Order entered prior to the beginning of Market Hours will be rejected. A Midpoint Peg Post-Only Order remaining on the Nasdaq Book at 4:00 p.m. ET will be cancelled by the System; provided, however, that if the Nasdaq Closing Cross for the security that is the subject of the Order occurs prior to the cancellation message being fully processed, a Midpoint Peg Post-Only Order may participate in the Nasdaq Closing Cross.
- Pegging to the midpoint is required for Midpoint Peg Post-Only Orders entered through RASH, QIX or FIX. As discussed above, the price of a Midpoint Peg Post-Only Order entered through OUCH or FLITE will be pegged to the midpoint upon entry and not adjusted thereafter.
- Minimum Quantity.
- Non-Display. All Midpoint Peg Post-Only Orders are Non-Displayed.
- Trade Now (available through OUCH, RASH, FLITE and FIX).

(6) (A) – (B) No change.

(7) (A) No change.

(B) The following Order Attributes may be assigned to a Market Maker Peg Order:

- Price. As discussed above, the displayed price of Market Maker Peg Order is established by the Nasdaq Market Center based on the Reference Price, the Designated Percentage (or a narrower offset established by the Market Maker), the Defined Limit, and the 4% minimum difference from the Reference Price.
- Size.
- A Time-in-Force other than IOC or GTC.
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.

- If the Market Maker designates a more aggressive offset than the Designated Percentage, Primary Pegging is required.
- Attribution. All Market Maker Peg Orders are Attributable.
- Display. Market Marker Peg Orders are always Displayed.
- Trade Now (available through RASH and FIX).

(8) – (13) No change.

* * * * *

4703. Order Attributes

As described in Rule 4702, the following Order Attributes may be assigned to those Order Types for which they are available.

(a) – (l) No change.

(m) Trade Now. Trade Now is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking Order as a liquidity taker, and any remaining shares of the resting Order will remain posted on the Nasdaq Book with the same priority.

• An Order entered through RASH or FIX protocol with a Trade Now Order Attribute will execute against locking interest automatically. When entered through RASH or FIX protocol, the Trade Now Order Attribute may be enabled on an order-by-order or a port-level basis.

• An Order entered through OUCH or FLITE may not be assigned a Trade Now attribute upon entry, but rather the Participant that entered the Order must send a Trade Now instruction after the Order becomes locked. If a Trade Now instruction is given 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. When entered through OUCH or FLITE protocol, the Trade Now instruction must be sent on an order-by-order basis.

* * * * *