III. Description of the Proposal

The Exchange proposes to adopt MIDP, a new order routing option under Nasdaq Rule 4758(a)(1)(A).7 The MIDP routing option would allow Nasdaq members to seek midpoint liquidity on Nasdaq and other markets on the Nasdaq system routing table.8 The MIDP routing option would be available only for a non-displayed order9 with a midpoint pegging order attribute.10 The Exchange would accept an order with the MIDP routing option (“MIDP order”) only with a time-in-force of Market Hours Day or IOC, and a MIDP order could not be flagged to participate in any of the Nasdaq crosses.11

As proposed, a MIDP order would check the Nasdaq system for available shares and any remaining shares would then be routed to destinations on the system routing table that support midpoint eligible orders.12 A MIDP order to buy (sell) would be routed with a limit price that is at the lesser (greater) of: (1) The current NBBO (NBB); or (2) the order’s entered limit price (if applicable).13 If shares remain unexecuted after routing, the order would return to Nasdaq and check the Nasdaq system for available shares, with remaining shares posted on the Nasdaq book as a non-displayed order with a midpoint pegging order attribute (unless

7 See proposed Nasdaq Rule 4758(a)(1)(A)(xvi).
8 See id.; see also Amendment No. 1, supra note 6, at 4.
9 See Nasdaq Rule 4702(b)(3) (defining Nasdaq’s non-displayed order type).
10 See proposed Nasdaq Rule 4758(a)(1)(A)(xvi). See also Nasdaq Rule 4703(d) (defining Nasdaq’s midpoint pegging order attribute).
11 See proposed Nasdaq Rule 4703(e)(i). The Exchange proposes a conforming change to Nasdaq Rule 4758(a)(1), which currently provides that order routing is available during Nasdaq System Hours, to allow for the times-in-force applicable to the MIDP routing option (i.e., Market Hours Day or IOC).
12 See proposed Nasdaq Rule 4758(a)(1)(A)(xvi). MIDP orders (including those that have a minimum quantity order attribute) would route sequentially and in their full amount to the various venues on the Nasdaq system routing table. See Amendment No. 1, supra note 6, at 5 n.7.
13 See proposed Nasdaq Rule 4758(a)(1)(A)(xvi). If the entered limit price of a buy (sell) MIDP order is less (greater) than the current midpoint price, the order would not be routed but would instead be posted on the Nasdaq book as a non-displayed order with a midpoint pegging order attribute, unless the order has a time-in-force of IOC, in which case the order would be cancelled. See supra note 6. If the NBBO moves and the order’s limit price is equal to the midpoint of the NBBO (i.e., the price of the resting order is not being updated to a new midpoint price), the order would not subsequently route. See Amendment No. 1, supra note 6, at 5 n.8. If the NBBO updates so that the resting MIDP order would be updated to a new midpoint price, it would be routed again and if shares remain unexecuted after routing, the order would check the Nasdaq system for available shares with any remaining shares reposted to the Nasdaq book. See proposed Nasdaq Rule 4758(a)(1)(A)(xvi).
an IOC.14 If a MIDP order has a time-
in-force of IOC and there are unexecuted
shares remaining after routing, the order
would first check the Nasdaq system for
available shares, and then any
remaining shares would be cancelled.15

The Exchange also proposes to allow
a member to use the minimum quantity
order attribute upon entry of a MIDP
order.17 If, upon entry, the size of a
MIDP order is less than the minimum
quantity designated by the member, the
order would be rejected.18 If, at any
point during the routing process and
prior to the MIDP order returning to
post on the Nasdaq book, the remaining
size of the order becomes less than the
specified minimum quantity, the order
would be cancelled back to the
member.19 If shares of a MIDP order
with a minimum quantity order attribute
remain unexecuted after
routing, the order would return to
Nasdaq and check the Nasdaq system
for available shares with any remaining
shares posted on the Nasdaq book
(unless an IOC) as a non-displayed order
with a midpoint pegging order attribute
and the minimum quantity condition
specified by the member upon entry of
the order.20 As noted above, if a MIDP
order has a time-in-force of IOC and
there are unexecuted shares remaining
after routing, the order would first check
the Nasdaq system for available shares,
and then any remaining shares would be
cancelled.21

The Exchange proposes to implement
the proposal in the second quarter of
2019, and the Exchange represents that it
will provide notice of the
implementation date at least 30 days
prior to implementation via an Equity
Trader Alert.22

III. Discussion and Commission
Findings
After careful review, the Commission
finds that the proposed rule change, as
modified by Amendment No. 1, is
consistent with the requirements of the
Act and the rules and regulations
thereunder applicable to a national
securities exchange.23 In particular, the
Commission finds that the proposed
rule change is consistent with Section
6(b)(5) of the Act,24 which requires,
among other things, that the rules of a
national securities exchange be
designed to prevent fraudulent and
manipulative acts and practices, to
promote just and equitable principles of
trade, to foster cooperation and
coordination with persons engaged in
facilitating transactions in securities, to
remove impediments to and perfect the
mechanism of a free and open market
and a national market system and,
therefore, to promote the public
interest.

The Commission believes that the
MIDP routing option would provide an
additional mechanism for Nasdaq
members to seek midpoint liquidity on
Nasdaq and other markets.25 The
Commission also believes that allowing
Nasdaq members to use the minimum
quantity order attribute with the MIDP
routing option would enable Nasdaq
members with additional control over the
execution of their MIDP orders. In
particular, the Commission believes that
allowing an order to have both the
minimum quantity order attribute and
the MIDP routing option would enable
Nasdaq members to seek midpoint
executions on Nasdaq and away venues
while controlling the amount of order
information provided through
executions. Moreover, the Commission
believes that cancelling a MIDP order if
the order’s remaining size is less than
the specified minimum quantity (rather
than continuing to route) would allow a
Nasdaq member’s minimum quantity
instruction to be honored every time its
MIDP order is routed to an away venue
as a new order and would further enable
the member to control the
amount of order information provided
while the MIDP order is accessing
liquidity at away venues.27

Based on the foregoing, the
Commission finds that the proposed
rule change, as modified by Amendment
No. 1, is consistent with the Act.

IV. Solicitation of Comments on
Amendment No. 1 to the Proposed Rule
Change
Interested persons are invited to
submit written data, views, and
arguments concerning whether
Amendment No. 1 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 email to rule-comments@
  sec.gov. Please include File Number SR–
  NASDAQ–2019–004 on the subject line.

Paper Comments
● Send paper comments in triplicate
to Secretary, Securities and Exchange
Commission, 100 F Street NE,
Washington, DC 20549–1090.

All submissions should refer to File
Number SR–NASDAQ–2019–004. 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 website (http://www.sec.gov/
  rules/sro.shtml). Copies of the
submission, all subsequent
amendments, 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

20 According to the Exchange, each time a MIDP
order is routed to an away venue it is treated as a
new order. See Amendment No. 1, supra note 6, at
6 n.14.
21 Also, the member may reenter a MIDP order
with updated characteristics (e.g., minimum
quantity).
V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. As discussed above, in Amendment No. 1, the Exchange provided clarification and additional details regarding the operation of the MIDP routing option, provided additional arguments in support of the proposed rule change, and made various technical and conforming changes. The Commission believes that the changes made in Amendment No. 1 do not raise any material or novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,\(^28\) to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,\(^29\) that the proposed rule change (SR–NASDAQ–2019–004), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

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

Eduardo A. Aleman,
Deputy Secretary.

\(^{29}\) Id.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. S7–13–12, OMB Control No. 3235–0698]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:


On December 14, 2012, the Commission found it necessary or appropriate in the public interest and consistent with the protection of investors to grant the conditional exemptions discussed in the Order. Among other things, the Order requires dually-registered broker-dealer and futures commission merchants (‘‘BD/FCMs’’) that elect to offer a program to commingle and portfolio margin customer positions in credit default swaps (‘‘CDS’’) in customer accounts maintained in accordance with Section 4d(f) of the Commodity Exchange Act (‘‘CEA’’) and rules thereunder, to obtain certain agreements and opinions from its customers regarding the applicable regulatory regime, and to make certain disclosures to its customers before receiving any money, securities, or property of a customer to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, under a program to commingle and portfolio margin CDS. The Order also requires BD/FCMs that elect to offer a program to commingle and portfolio margin CDS positions in customer accounts maintained in accordance with Section 4d(f) of the CEA and rules thereunder, to maintain minimum margin levels using a margin methodology approved by the Commission or the Commission staff.

The Commission estimates that 35 firms may seek to avail themselves of the conditional exemptive relief provided by the Order and therefore would be subject to the information collection. The Commission bases this estimate on the total number of entities that are dually registered as broker-dealers and futures commission merchants.

The Commission estimates that the aggregate annual time burden for all of the 35 respondents is approximately 22,517 hours calculated as follows:

(a) Based on information that the Commission receives on a monthly basis, the Commission estimates that each respondent will have, on average, 34 non-affiliate credit default swap customers. The Commission further estimates for each such customer, a respondent will spend approximately 20 hours developing a non-conforming subordination agreement under paragraph IV(b)(1)(ii) of the Order. The Commission therefore estimates that the burden associated with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order will impose an initial, one-time average burden of 680 hours (34 non-affiliate customers times 20 hours per customer) per respondent and an aggregate burden of 23,800 hours for all 35 respondents (680 × 35). This burden is a third-party disclosure burden.

(b) The Commission estimates that each respondent will have, on average, 11 affiliate credit default swap customers and that for each such customer, a respondent will spend approximately 20 hours developing a non-conforming subordination agreement under paragraph IV(b)(2)(ii) of the Order. The Commission therefore estimates that the burden associated with entering into non-conforming subordination agreements with affiliate cleared credit default swap customers under paragraph IV(b)(2)(ii) of the Order will impose an initial, one-time burden of 220 hours per respondent (11 affiliate customers times 20 hours per customer) and an aggregate burden of 7,700 hours for all 35 respondents (220 × 35). This burden is a third-party disclosure burden.

(c) The Commission estimates that for each affiliate cleared credit default swap customer a respondent will spend approximately 2 hours developing and reviewing the required opinion of counsel under paragraph IV(b)(2)(iii) of the Order. The Commission therefore

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Extension:


On December 14, 2012, the Commission found it necessary or appropriate in the public interest and consistent with the protection of investors to grant the conditional exemptions discussed in the Order. Among other things, the Order requires dually-registered broker-dealer and futures commission merchants (‘‘BD/FCMs’’) that elect to offer a program to commingle and portfolio margin customer positions in credit default swaps (‘‘CDS’’) in customer accounts maintained in accordance with Section 4d(f) of the Commodity Exchange Act (‘‘CEA’’) and rules thereunder, to obtain certain agreements and opinions from its customers regarding the applicable regulatory regime, and to make certain disclosures to its customers before receiving any money, securities, or property of a customer to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, under a program to commingle and portfolio margin CDS. The Order also requires BD/FCMs that elect to offer a program to commingle and portfolio margin CDS positions in customer accounts maintained in accordance with Section 4d(f) of the CEA and rules thereunder, to maintain minimum margin levels using a margin methodology approved by the Commission or the Commission staff.

The Commission estimates that 35 firms may seek to avail themselves of the conditional exemptive relief provided by the Order and therefore would be subject to the information collection. The Commission bases this estimate on the total number of entities that are dually registered as broker-dealers and futures commission merchants.

The Commission estimates that the aggregate annual time burden for all of the 35 respondents is approximately 22,517 hours calculated as follows:

(a) Based on information that the Commission receives on a monthly basis, the Commission estimates that each respondent will have, on average, 34 non-affiliate credit default swap customers. The Commission further estimates for each such customer, a respondent will spend approximately 20 hours developing a non-conforming subordination agreement under paragraph IV(b)(1)(ii) of the Order. The Commission therefore estimates that the burden associated with entering into non-conforming subordination agreements with non-affiliate cleared credit default swap customers under paragraph IV(b)(1)(ii) of the Order will impose an initial, one-time average burden of 680 hours (34 non-affiliate customers times 20 hours per customer) per respondent and an aggregate burden of 23,800 hours for all 35 respondents (680 × 35). This burden is a third-party disclosure burden.

(b) The Commission estimates that each respondent will have, on average, 11 affiliate credit default swap customers and that for each such customer, a respondent will spend approximately 20 hours developing a non-conforming subordination agreement under paragraph IV(b)(2)(ii) of the Order. The Commission therefore estimates that the burden associated with entering into non-conforming subordination agreements with affiliate cleared credit default swap customers under paragraph IV(b)(2)(ii) of the Order will impose an initial, one-time burden of 220 hours per respondent (11 affiliate customers times 20 hours per customer) and an aggregate burden of 7,700 hours for all 35 respondents (220 × 35). This burden is a third-party disclosure burden.

(c) The Commission estimates that for each affiliate cleared credit default swap customer a respondent will spend approximately 2 hours developing and reviewing the required opinion of counsel under paragraph IV(b)(2)(iii) of the Order. The Commission therefore