

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 44	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 065	Amendment No. (req. for Amendments *)
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Filing by The Nasdaq Stock Market LLC
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"/>
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Description

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

Proposal to correct and clarify Rules 4702(b)(3)(B), 4702(b)(5)(B), and 4703(d)

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 * Brett Last Name * Kitt

Title * Senior Associate General Counsel

E-mail * brett.kitt@nasdaq.com

Telephone * (301) 978-8132 Fax

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 08/15/2019 Global Chief Legal and Policy Officer

By Edward S. Knight

(Name *)

edward.knight@nasdaq.com

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 *

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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

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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

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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

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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

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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

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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 correct and clarify Rules 4702(b)(3)(B), 4702(b)(5)(B), and 4703(d).

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 September 26, 2018. Exchange staff will advise the Board of any action taken pursuant to delegated authority.

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

Brett Kitt
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

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

The Exchange proposes to amend Rules 4702 and 4703 to correct and clarify its various descriptions of the circumstances in which the Exchange will cancel certain types of midpoint pegged Orders³ after they post to the Nasdaq Book⁴ and the National Best Bid and National Best Offer (“NBBO”) or the Inside Bid and Inside Offer subsequently shifts.⁵ The Exchange intended for these descriptions to be consistent and comprehensive, but upon review, they are somewhat discordant and confusing.

In 2015, the Exchange restated its Rules that describe its Order Types (Rule 4702) and Attributes (Rule 4703).⁶ Among the topics that the restated Rules described were the circumstances in which the Exchange cancels orders priced at the Midpoint of the NBBO

³ Pursuant to Rule 4701(e), 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.

⁴ Pursuant to Rule 4701(a)(1), the “Nasdaq Book” refers to a montage for Quotes and Orders that collects and ranks all Quotes and Orders submitted by Participants. The term “Quote” means a single bid or offer quotation submitted to the System by a Market Maker or Nasdaq ECN and designated for display (price and size) next to the Participant’s MPID in the Nasdaq Book. See Rule 4701(d).

⁵ Pursuant to Rule 4703(d), the terms “Inside Bid” and “Inside Offer” mean the price to which an Order is pegged for purposes of Rule 4703. The term “Midpoint” means the midpoint of the NBBO or the Inside Bid and Inside Offer.

⁶ See Securities Exchange Act Release No. 34-74558 (Mar. 20, 2015), 80 FR 16050 (Mar. 26, 2015) (SR-NASDAQ-2015-024).

(the Inside Bid and the Inside Offer) or priced at their limit price when the NBBO (the Inside bid and the Inside Offer) changes after the order posts to the Nasdaq Book. The Exchange described these circumstances in three different provisions of its Rules pertaining to Orders with Midpoint pegging (“Midpoint-Pegged Orders”).

First, in Rule 4702(b)(3)(B), the Exchange states as follows in describing the cancellation of a Non-Displayed Order with a Midpoint Pegging Order Attribute assigned to it:

If a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Order Attribute, and if, after being posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order is no longer at the Midpoint between the NBBO, the Non-Displayed Order will be cancelled back to the Participant. In addition, if a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Attribute and also has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), the Order will nevertheless be accepted at its limit price and will be cancelled if the midpoint between the NBBO moves lower than (higher than) the price of an Order to buy (sell).

Second, in Rule 4702(b)(5)(B), which describes the Midpoint Peg Post-Only Order, the Exchange states when it will cancel such an Order due to a shift in the NBBO after initial entry and posting of the Order to the Nasdaq Book:

The price at which the Midpoint Peg Post-Only Order is ranked on the Nasdaq Book is the midpoint between the NBBO, unless the Order has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the

midpoint between the NBBO for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the NBBO. If, after being posted to the Nasdaq Book, the NBBO changes so that midpoint between the NBBO is lower than (higher than) the price of a Midpoint Peg Post-Only Order to buy (sell), or the NBBO is crossed, or there is no NBBO, the Midpoint Peg Post-Only Order will be cancelled back to the Participant. For example, if the Best Bid is \$11 and the Best Offer is \$11.06, a Midpoint Peg Post- Only Order to buy would post at \$11.03. If, thereafter, the Best Offer is reduced to \$11.05, the Midpoint Peg Post-Only Order will be cancelled back to the Participant.

Third and finally, in describing the Midpoint Pegging Attribute, Rule 4703(d) explains when the Exchange will cancel an Order with this Attribute enabled:

An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price that is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. Thereafter, if the Inside Bid and Inside Offer changes so that: the Midpoint is lower than (higher than) the price of an Order to buy (sell), the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Pegged Order will be cancelled back to the Participant.

The Exchange intended for these three Rules to be substantively identical. That is, the Rules should have provided for the Exchange to cancel Midpoint-Pegged Orders in the same circumstances when entered through OUCH or FLITE. Upon review, however, the

Exchange has determined that the Rules are inadvertently inconsistent in one respect. In particular, Rule 4702(b)(3)(B) does not state, as do the other two Rules, that a Non-Displayed Order with Midpoint Pegging will be cancelled back to the Participant if there is no NBBO or where the NBBO is crossed.⁷

Additionally, the three Rules provide somewhat opaque descriptions of the circumstances in which a change in the NBBO/Inside Bid and Inside Offer will and will not result in the cancellation of a Midpoint-Pegged Order. Each Rule states that the Exchange will cancel an Order to buy (sell) if, after entry, the NBBO/Inside Bid and Inside Offer shifts so that the Midpoint is lower (higher) than the price of the buy (sell) Order. However, these descriptions in the Rules do not clearly distinguish between Midpoint-Pegged Orders that post to the Nasdaq Book at the Midpoint of the NBBO/Inside Bid and Inside Offer (i.e., orders with limit prices more aggressive than the Midpoint) from those Orders that post to the Book at their limit prices (i.e., orders with limit prices at or less aggressive than the Midpoint). In the former case, any post-entry shift in the Midpoint of the NBBO/Inside Bid and Inside Offer will result in cancellation of the Order. In the latter case, however, a post-entry shift in the Midpoint of the NBBO/Inside Bid and Inside Offer will result in cancellation only if the Midpoint shifts lower than (higher than) the limit price of an Order to buy (sell). If the Midpoint is higher than (lower than) the limit price of an Order to buy (sell) upon Order entry, and it remains so after shifting, then the Order will remain on the Book at its limit price. The Exchange believes that this result is implicit in the notion that these Order Types may post to the Nasdaq Book at their limit prices when the Midpoints are higher (lower) than

⁷ In practice, the Exchange presently cancels Non-Displayed Orders with Midpoint Pegging in these two circumstances, consistent with Rule 4703(d).

the limit prices of Orders to buy (sell). Nevertheless, the Rules do not describe this scenario expressly.

Similarly, the Rules do not distinguish the particular circumstances in which a crossed NBBO/Inside Bid and Inside Offer will and will not result in a cancellation of an Order. The Midpoint Pegged Post-Only Order rule and the Midpoint Pegging Attribute rule simply state that the Exchange will cancel Orders when the NBBO/Inside Bid and Inside Offer becomes crossed after these Orders are posted to the Nasdaq Book. However, the Exchange will only cancel a Midpoint-Pegged Order that is ranked at its limit price where the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed quotation remains equal to or higher (lower) than the limit price of the Order to buy (sell), and a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint-Pegged Order. If an Order to buy (sell) posts to the Nasdaq Book at its limit price, and the NBBO/Inside Bid and Inside Offer subsequently become crossed but the Midpoint remains equal to or higher than (lower than) the limit price of the Order (and there are no contra-side orders that lock or cross the Order), then the Exchange will not cancel the Order. Likewise, if a Midpoint-Pegged Order is ranked at the Midpoint of the NBBO/Inside Bid and Inside Offer and the NBBO becomes crossed but the Midpoint does not change, then the Exchange will not cancel the order unless a new Order is received at a price that locks or crosses the Midpoint of the NBBO/Inside Bid and Inside Offer.

To address the foregoing issues and to increase clarity, the Exchange proposes to amend and restate Rules 4702(b)(3)(B), 4702(b)(5)(B), and 4703(d), as follows.

First, the Exchange proposes to delete entirely the excerpted language of Rule 4702(b)(3)(B). This language, which again describes the behavior of a Non-Displayed Order with a Midpoint Pegging Attribute enabled, is duplicative of the general description of the behavior of a Midpoint Pegging Attribute in Rule 4703(d). The Exchange believes that the concept described in these two Rules is best stated only once to avoid unintended discrepancies. In this instance, the Exchange believes that the language is most appropriate for inclusion in Rule 4703(d).

Second, the Exchange proposes to restate Rule 4702(b)(5)(B), which again describes Midpoint Peg Post-Only Orders, by eliminating the existing language concerning cancellation of such Orders and replacing it with the following:

The price at which the Midpoint Peg Post-Only Order is ranked on the Nasdaq Book is the midpoint between the NBBO, unless the Order has a limit price, and that limit price is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the NBBO. However, a Midpoint Peg Post-Only Order entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Nasdaq Book if any of the following conditions are met:

- There is no National Best Bid and/or National Best Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint of the NBBO and is ranked at the Midpoint of the NBBO;

thereafter, the NBBO changes so that the Midpoint changes and the Order is no longer at the NBBO Midpoint;

- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the midpoint of the NBBO and is ranked at its limit price and thereafter, the NBBO changes so that the Midpoint of the NBBO is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint of the NBBO and is ranked at its limit price, then the NBBO becomes crossed, such that the Midpoint of the crossed NBBO remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint Peg Post-Only Order; or
- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint of the NBBO and is therefore ranked at the Midpoint of the NBBO, then the NBBO becomes crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the NBBO.

The Exchange believes that the restated language is more precise than the existing language because it specifies that the Exchange will cancel a Midpoint Peg Post-Only Order that posts to the Nasdaq Book at its limit price, when the NBBO later shifts, only when the NBBO shifts so that the Midpoint of the NBBO becomes lower (higher) than the limit price of an Order to buy (sell). Again, where the NBBO shifts after the Order

posts such that the Midpoint of the NBBO remains or becomes higher (lower) than the limit price of an Order to buy (sell), cancellation of the Order is unnecessary because the Order can simply remain on the Nasdaq Book at its limit price. The restated language is also more precise because it specifies that for a Midpoint Peg Post-Only Order with a limit price that is more aggressive than the NBBO Midpoint, any change to the NBBO Midpoint will result in cancellation of the Order.

Likewise, the restated language is more precise than the existing language in that the restated language specifies that the Exchange will cancel a Midpoint Peg Post-Only Order to buy (sell) that posts at its limit price, when the NBBO subsequently becomes crossed and the Midpoint of the crossed NBBO remains equal to or higher (lower) than the limit price of the Order to buy (sell), only when a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order. The restated language also specifies that the Exchange will cancel a Midpoint Peg Post-Only Order to buy (sell) that posts at the Midpoint of the NBBO, when the NBBO subsequently becomes crossed and the Midpoint of the crossed NBBO remains the same, only when the Exchange receives a new sell (buy) Order at a price that locks or crosses the Midpoint of the NBBO. Other than in these two circumstances, cancellation of an Order simply because the NBBO crosses is unnecessary because the Order need not be re-priced. When an Order to buy (sell) is ranked at its limit price, and the NBBO becomes crossed while the Midpoint remains at or above (below) the limit price, the crossed market does not impact the Order, which can still rest on the Nasdaq Book at its limit price because the NBBO could uncross prior to the Order executing. Likewise, when an Order to buy (sell) is ranked at the Midpoint of the NBBO, and the NBBO becomes crossed but the Midpoint does not

change, the crossed market also does not impact the Order, which can continue to rest on the Nasdaq book at the Midpoint because the NBBO could uncross (with the Midpoint still remaining unchanged) prior to the Order executing.

Third, the Exchange proposes to restate the relevant language of Rule 4703(d) so that it is substantively identical to the language that the Exchange proposes for Rule 4702(b)(5)(B) (other than that Rule 4703(d) refers to the “Inside Bid and the Inside Offer” rather than the “NBBO”). The proposed language is as follows:

An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the Inside Bid or Offer. However, an Order with Midpoint Pegging entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Nasdaq Book if any of the following conditions are met:

- There is no Inside Bid and/or Inside Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint and is ranked at the Midpoint; thereafter the Inside Bid and/or Inside Offer change so that the Midpoint changes and the Order is no longer at the Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter,

the Inside Bid and/or Inside Offer change so that the Midpoint is lower (higher) than the limit price of the Order;

- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed Quotation remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order marked for Midpoint Pegging; or
- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint and is therefore ranked at the Midpoint; thereafter, the Inside Bid and Inside Offer become crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

Again, the Exchange intends for this proposed restatement to ensure consistency in the language of these two Rules as well as additional specificity, as described above.

Examples

Below are examples of the operation of the proposed rule changes.

1. There is no National Best Bid and/or National Best Offer

The National Best Bid (“NBB”) is \$11.00 and the National Best Offer (“NBO”) is \$11.06. A Midpoint Peg Post-Only Order to buy is posted at the Midpoint between the NBBO, at \$11.03. At this point, all displayed liquidity on the sell side is reported to be

removed by all Market Centers, such that an NBO no longer exists. In this circumstance, the Midpoint Peg Post-Only Order will be cancelled back to the Participant.

- 2. The Order to buy (sell) is entered with a limit price above (below) the Midpoint of the NBBO and is ranked at the Midpoint of the NBBO; thereafter, the NBBO changes so that the Order is no longer at the NBBO Midpoint**

The NBB is \$11.00 and the NBO is \$11.06. A Midpoint Peg Post-Only Order to buy is entered with a limit price of \$11.04 and it posts at the Midpoint between the NBBO, at \$11.03. If the NBO later shifts to \$11.08, such that the Midpoint between the NBBO becomes \$11.04, then the Midpoint Peg Post Only Order will be cancelled back to the Participant.

- 3. The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint of the NBBO and is ranked at its limit price; thereafter, the NBBO changes so that the Midpoint of the NBBO is lower (higher) than the limit price of the Order**

The NBB is \$11.00 and the NBO is \$11.06. A Midpoint Peg Post-Only Order to buy is entered with a limit price of \$11.03 and it posts at the Midpoint between the NBBO, at \$11.03. If the NBO shifts thereafter to \$11.08, such that the Midpoint between the NBBO becomes \$11.04, then the Midpoint Peg Post Only Order will remain on the Nasdaq Book unchanged. If, however, the NBO later shifts to \$11.04, such that the Midpoint between the NBBO becomes \$11.02, then the Midpoint Peg Post Only Order will be cancelled back to the Participant.

- 4. The Order to buy (sell) is ranked at its limit price and the NBBO becomes crossed, such that the Midpoint of the crossed NBBO remains equal to or higher (lower) than the limit price of the Order, and a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint Peg Post-Only Order.**

The NBB is \$11.00 and the NBO is \$11.06. A Midpoint Peg Post-Only Order to buy is entered with a limit price of \$11.03 and it posts at the Midpoint between the NBBO, at \$11.03. Subsequently, if the NBB shifts to \$11.04, such that the Midpoint between the NBBO becomes \$11.05, then the Midpoint Peg Post-Only Order will remain on the Nasdaq Book at its limit price of \$11.03. If the NBO later shifts to cross the market at \$11.02, then the Midpoint between the crossed NBBO will become \$11.03 and the Midpoint Peg Post Only Order will remain on the Nasdaq Book unchanged. If, however, a new sell Order is received at \$11.03 while the market is still crossed, then the Midpoint Peg Post Only Order will be cancelled back to the Participant without execution.

- 5. The Order to buy (sell) is ranked at the Midpoint of the NBBO because the limit price of the Order is greater (less than) the Midpoint and the NBBO becomes crossed but the Midpoint does not change, then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the NBBO.**

The NBB is \$11.00 and the NBO is \$11.06. A Midpoint Peg Post-Only Order to buy is entered with a limit price of \$11.04 and it posts at the Midpoint between the NBBO, at \$11.03. Subsequently, if the NBB shifts to \$11.04 and the NBO simultaneously shifts to \$11.02, thus instantaneously crossing the market, then the

Midpoint between the crossed NBBO will remain at \$11.03 and the Midpoint Peg Post Only Order will remain on the Nasdaq Book unchanged. If, however, a new sell Order is received at \$11.03 while the market is still crossed, then the Midpoint Peg Post Only Order will be cancelled back to the Participant without execution.

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 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 proposal will protect investors by eliminating an unintended discrepancy among what should be three substantively identical Rules that describe the circumstances in which the Exchange will cancel Midpoint-Pegged Orders.

The proposal will also protect investors by amending these Rules so that they will describe more clearly what the Rules currently imply with respect to the circumstances in which the Exchange will not cancel Midpoint-Pegged Orders. That is, the Exchange believes that concept of a limit price fairly implies that the Exchange has no need to and thus, it does not presently, cancel a Midpoint-Pegged Order to buy (sell) when such an Order is posted at its limit price and the NBBO (or Inside Bid and Inside Offer) shifts thereafter but the Midpoint remains above (below) the limit price; however, Rule 4702(a)(3)(B) merely states that any post-entry shift in the Midpoint will result in the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

cancellation of a Midpoint-Pegged Order. To avoid confusion, the proposal clarifies that the Exchange will cancel a Midpoint-Pegged Order posted at its limit price if the NBBO (or Inside Bid and Inside Offer) shifts after entry such that the Midpoint becomes lower (higher) than the limit price. In this circumstance, cancellation is warranted because the Order would need to be re-priced, and a Midpoint-Pegged Order entered using OUCH or FLITE cannot be re-priced. Similarly, if a Midpoint Pegged Order posts to the Nasdaq Book at the NBBO Midpoint and then the Midpoint shifts in either direction, the Order will be cancelled because it would need to be re-priced, and again, OUCH or FLITE do not allow for re-pricing to occur.

Similarly, the Exchange believes that it is helpful to investors to clarify the circumstances in which the Exchange does and does not cancel Midpoint-Pegged Orders in a crossed market. The existing Rules (other than Rule 4702(b)(3)(B), which mistakenly omitted discussion of crossed markets) state generally that the Exchange will cancel Midpoint-Pegged Orders if the NBBO (Inside Bid or Inside Offer) become crossed. However, as discussed above, the Exchange does not need to, and thus it does not presently, cancel Midpoint-Pegged Orders in all such instances. Although cancellation is warranted to prevent Orders from actually executing in a crossed market,¹⁰ the Exchange does not believe that cancellation is warranted simply because the markets cross if there remains a possibility that the markets will uncross prior to an execution occurring. Thus, the Exchange proposes that it will not cancel a Midpoint-Pegged Order to buy (sell) when the Order is ranked at its limit price and the NBBO (or Inside Bid and

¹⁰ See Securities Exchange Act Release No. 34-79290 (Nov. 10, 2016), 81 FR 81184, 81186 (Nov. 17, 2016) (stating that the “midpoint of a crossed market is not a clear and accurate indication of a valid price” and that cancellation in a crossed market “would avoid mispriced executions”).

Inside Offer) become crossed thereafter (and the Midpoint remains equal to or more aggressive than its limit price), but no new sell (buy) Order is received that locks or crosses the limit price of the resting Midpoint-Pegged Order. Unless or until the Exchange receives a new Order that locks or crosses the limit price of the resting Midpoint-Pegged Order while the market remains crossed, cancellation is unnecessary because the Midpoint-Pegged Order can continue to rest at its limit price and the market may uncross before the Midpoint-Pegged Order executes. Likewise, as was also discussed above, the Exchange proposes that it will not cancel a Midpoint-Pegged Order that is ranked at the Midpoint of the NBBO (Inside Bid and Inside Offer) where the market becomes crossed, provided that while the market is crossed, the Midpoint of the crossed NBBO (Inside Bid and Inside Offer) does not change, and the Exchange does not receive a new Order that would lock or cross the Midpoint. Again, cancellation is unnecessary in this scenario because the Midpoint-Pegged Order can continue to rest at the Midpoint while the market is crossed and because the market may uncross (with the Midpoint remaining unchanged) prior to execution of the Order.¹¹

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. The Exchange intends for the proposal to merely eliminate an unintended discrepancy between three related Rules and to improve the precision with which the Rules describe the circumstances in which it will cancel Midpoint-Pegged Orders after

¹¹ If at any point after the Midpoint-Pegged Order posts to the Nasdaq Book at the Midpoint, the NBBO (Inside Bid and Inside Offer) changes so that the price of the Order is no longer at the Midpoint, then the order must be cancelled because orders entered through OUCH or FLITE cannot be re-priced.

entry, as described above. The Exchange does not expect that these changes will have any impact whatsoever on competition.

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.

The proposal does not significantly affect the protection of investors or the public interest because it only corrects an inadvertent discrepancy in the Rules and makes explicit what the Rules presently imply as to the circumstances in which a Midpoint-Pegged Order entered at its limit price will be canceled when the NBBO (or Inside Offer or Inside Bid) thereafter shift or become crossed. It also clarifies the circumstances in which such an Order will be cancelled if, after the Order posts to the Nasdaq Book, the

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

markets become crossed. The proposal does not impose any significant burden on competition for the same reason.

Furthermore, Rule 19b-4(f)(6)(iii)¹⁴ 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 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 should be approved or disapproved.

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.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. _____ ; File No. SR-NASDAQ-2019-065)

August __, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Correct and Clarify Rules 4702(b)(3)(B), 4702(b)(5)(B), and 4703(d)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 15, 2019, 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 correct and clarify Rules 4702(b)(3)(B), 4702(b)(5)(B), and 4703(d).

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Rules 4702 and 4703 to correct and clarify its various descriptions of the circumstances in which the Exchange will cancel certain types of midpoint pegged Orders³ after they post to the Nasdaq Book⁴ and the National Best Bid and National Best Offer ("NBBO") or the Inside Bid and Inside Offer subsequently

³ Pursuant to Rule 4701(e), 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.

⁴ Pursuant to Rule 4701(a)(1), the "Nasdaq Book" refers to a montage for Quotes and Orders that collects and ranks all Quotes and Orders submitted by Participants. The term "Quote" means a single bid or offer quotation submitted to the System by a Market Maker or Nasdaq ECN and designated for display (price and size) next to the Participant's MPID in the Nasdaq Book. See Rule 4701(d).

shifts.⁵ The Exchange intended for these descriptions to be consistent and comprehensive, but upon review, they are somewhat discordant and confusing.

In 2015, the Exchange restated its Rules that describe its Order Types (Rule 4702) and Attributes (Rule 4703).⁶ Among the topics that the restated Rules described were the circumstances in which the Exchange cancels orders priced at the Midpoint of the NBBO (the Inside Bid and the Inside Offer) or priced at their limit price when the NBBO (the Inside bid and the Inside Offer) changes after the order posts to the Nasdaq Book. The Exchange described these circumstances in three different provisions of its Rules pertaining to Orders with Midpoint pegging (“Midpoint-Pegged Orders”).

First, in Rule 4702(b)(3)(B), the Exchange states as follows in describing the cancellation of a Non-Displayed Order with a Midpoint Pegging Order Attribute assigned to it:

If a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Order Attribute, and if, after being posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order is no longer at the Midpoint between the NBBO, the Non-Displayed Order will be cancelled back to the Participant. In addition, if a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Attribute and also has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), the Order will nevertheless be

⁵ Pursuant to Rule 4703(d), the terms “Inside Bid” and “Inside Offer” mean the price to which an Order is pegged for purposes of Rule 4703. The term “Midpoint” means the midpoint of the NBBO or the Inside Bid and Inside Offer.

⁶ See Securities Exchange Act Release No. 34-74558 (Mar. 20, 2015), 80 FR 16050 (Mar. 26, 2015) (SR-NASDAQ-2015-024).

accepted at its limit price and will be cancelled if the midpoint between the NBBO moves lower than (higher than) the price of an Order to buy (sell). Second, in Rule 4702(b)(5)(B), which describes the Midpoint Peg Post-Only Order, the Exchange states when it will cancel such an Order due to a shift in the NBBO after initial entry and posting of the Order to the Nasdaq Book:

The price at which the Midpoint Peg Post-Only Order is ranked on the Nasdaq Book is the midpoint between the NBBO, unless the Order has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the NBBO. If, after being posted to the Nasdaq Book, the NBBO changes so that midpoint between the NBBO is lower than (higher than) the price of a Midpoint Peg Post-Only Order to buy (sell), or the NBBO is crossed, or there is no NBBO, the Midpoint Peg Post-Only Order will be cancelled back to the Participant. For example, if the Best Bid is \$11 and the Best Offer is \$11.06, a Midpoint Peg Post-Only Order to buy would post at \$11.03. If, thereafter, the Best Offer is reduced to \$11.05, the Midpoint Peg Post-Only Order will be cancelled back to the Participant.

Third and finally, in describing the Midpoint Pegging Attribute, Rule 4703(d) explains when the Exchange will cancel an Order with this Attribute enabled:

An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price that is lower than the Midpoint for an Order to buy (higher than the Midpoint for an

Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. Thereafter, if the Inside Bid and Inside Offer changes so that: the Midpoint is lower than (higher than) the price of an Order to buy (sell), the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Pegged Order will be cancelled back to the Participant.

The Exchange intended for these three Rules to be substantively identical. That is, the Rules should have provided for the Exchange to cancel Midpoint-Pegged Orders in the same circumstances when entered through OUCH or FLITE. Upon review, however, the Exchange has determined that the Rules are inadvertently inconsistent in one respect. In particular, Rule 4702(b)(3)(B) does not state, as do the other two Rules, that a Non-Displayed Order with Midpoint Pegging will be cancelled back to the Participant if there is no NBBO or where the NBBO is crossed.⁷

Additionally, the three Rules provide somewhat opaque descriptions of the circumstances in which a change in the NBBO/Inside Bid and Inside Offer will and will not result in the cancellation of a Midpoint-Pegged Order. Each Rule states that the Exchange will cancel an Order to buy (sell) if, after entry, the NBBO/Inside Bid and Inside Offer shifts so that the Midpoint is lower (higher) than the price of the buy (sell) Order. However, these descriptions in the Rules do not clearly distinguish between Midpoint-Pegged Orders that post to the Nasdaq Book at the Midpoint of the NBBO/Inside Bid and Inside Offer (i.e., orders with limit prices more aggressive than the Midpoint) from those Orders that post to the Book at their limit prices (i.e., orders with limit prices at or less aggressive than the Midpoint). In the former case, any post-entry

⁷ In practice, the Exchange presently cancels Non-Displayed Orders with Midpoint Pegging in these two circumstances, consistent with Rule 4703(d).

shift in the Midpoint of the NBBO/Inside Bid and Inside Offer will result in cancellation of the Order. In the latter case, however, a post-entry shift in the Midpoint of the NBBO/Inside Bid and Inside Offer will result in cancellation only if the Midpoint shifts lower than (higher than) the limit price of an Order to buy (sell). If the Midpoint is higher than (lower than) the limit price of an Order to buy (sell) upon Order entry, and it remains so after shifting, then the Order will remain on the Book at its limit price. The Exchange believes that this result is implicit in the notion that these Order Types may post to the Nasdaq Book at their limit prices when the Midpoints are higher (lower) than the limit prices of Orders to buy (sell). Nevertheless, the Rules do not describe this scenario expressly.

Similarly, the Rules do not distinguish the particular circumstances in which a crossed NBBO/Inside Bid and Inside Offer will and will not result in a cancellation of an Order. The Midpoint Pegged Post-Only Order rule and the Midpoint Pegging Attribute rule simply state that the Exchange will cancel Orders when the NBBO/Inside Bid and Inside Offer becomes crossed after these Orders are posted to the Nasdaq Book. However, the Exchange will only cancel a Midpoint-Pegged Order that is ranked at its limit price where the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed quotation remains equal to or higher (lower) than the limit price of the Order to buy (sell), and a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint-Pegged Order. If an Order to buy (sell) posts to the Nasdaq Book at its limit price, and the NBBO/Inside Bid and Inside Offer subsequently become crossed but the Midpoint remains equal to or higher than (lower than) the limit price of the Order (and there are no contra-side orders that lock or cross the Order), then

the Exchange will not cancel the Order. Likewise, if a Midpoint-Pegged Order is ranked at the Midpoint of the NBBO/Inside Bid and Inside Offer and the NBBO becomes crossed but the Midpoint does not change, then the Exchange will not cancel the order unless a new Order is received at a price that locks or crosses the Midpoint of the NBBO/Inside Bid and Inside Offer.

To address the foregoing issues and to increase clarity, the Exchange proposes to amend and restate Rules 4702(b)(3)(B), 4702(b)(5)(B), and 4703(d), as follows.

First, the Exchange proposes to delete entirely the excerpted language of Rule 4702(b)(3)(B). This language, which again describes the behavior of a Non-Displayed Order with a Midpoint Pegging Attribute enabled, is duplicative of the general description of the behavior of a Midpoint Pegging Attribute in Rule 4703(d). The Exchange believes that the concept described in these two Rules is best stated only once to avoid unintended discrepancies. In this instance, the Exchange believes that the language is most appropriate for inclusion in Rule 4703(d).

Second, the Exchange proposes to restate Rule 4702(b)(5)(B), which again describes Midpoint Peg Post-Only Orders, by eliminating the existing language concerning cancellation of such Orders and replacing it with the following:

The price at which the Midpoint Peg Post-Only Order is ranked on the Nasdaq Book is the midpoint between the NBBO, unless the Order has a limit price, and that limit price is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the NBBO. However, a

Midpoint Peg Post-Only Order entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Nasdaq Book if any of the following conditions are met:

- There is no National Best Bid and/or National Best Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint of the NBBO and is ranked at the Midpoint of the NBBO; thereafter, the NBBO changes so that the Midpoint changes and the Order is no longer at the NBBO Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the midpoint of the NBBO and is ranked at its limit price and thereafter, the NBBO changes so that the Midpoint of the NBBO is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint of the NBBO and is ranked at its limit price, then the NBBO becomes crossed, such that the Midpoint of the crossed NBBO remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint Peg Post-Only Order; or
- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint of the NBBO and is therefore ranked at the Midpoint of the NBBO, then the NBBO becomes crossed but the

Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the NBBO.

The Exchange believes that the restated language is more precise than the existing language because it specifies that the Exchange will cancel a Midpoint Peg Post-Only Order that posts to the Nasdaq Book at its limit price, when the NBBO later shifts, only when the NBBO shifts so that the Midpoint of the NBBO becomes lower (higher) than the limit price of an Order to buy (sell). Again, where the NBBO shifts after the Order posts such that the Midpoint of the NBBO remains or becomes higher (lower) than the limit price of an Order to buy (sell), cancellation of the Order is unnecessary because the Order can simply remain on the Nasdaq Book at its limit price. The restated language is also more precise because it specifies that for a Midpoint Peg Post-Only Order with a limit price that is more aggressive than the NBBO Midpoint, any change to the NBBO Midpoint will result in cancellation of the Order.

Likewise, the restated language is more precise than the existing language in that the restated language specifies that the Exchange will cancel a Midpoint Peg Post-Only Order to buy (sell) that posts at its limit price, when the NBBO subsequently becomes crossed and the Midpoint of the crossed NBBO remains equal to or higher (lower) than the limit price of the Order to buy (sell), only when a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order. The restated language also specifies that the Exchange will cancel a Midpoint Peg Post-Only Order to buy (sell) that posts at the Midpoint of the NBBO, when the NBBO subsequently becomes crossed and the Midpoint of the crossed NBBO remains the same, only when the Exchange receives a new sell (buy) Order at a price that locks or crosses the Midpoint of the NBBO. Other

than in these two circumstances, cancellation of an Order simply because the NBBO crosses is unnecessary because the Order need not be re-priced. When an Order to buy (sell) is ranked at its limit price, and the NBBO becomes crossed while the Midpoint remains at or above (below) the limit price, the crossed market does not impact the Order, which can still rest on the Nasdaq Book at its limit price because the NBBO could uncross prior to the Order executing. Likewise, when an Order to buy (sell) is ranked at the Midpoint of the NBBO, and the NBBO becomes crossed but the Midpoint does not change, the crossed market also does not impact the Order, which can continue to rest on the Nasdaq book at the Midpoint because the NBBO could uncross (with the Midpoint still remaining unchanged) prior to the Order executing.

Third, the Exchange proposes to restate the relevant language of Rule 4703(d) so that it is substantively identical to the language that the Exchange proposes for Rule 4702(b)(5)(B) (other than that Rule 4703(d) refers to the “Inside Bid and the Inside Offer” rather than the “NBBO”). The proposed language is as follows:

An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the Inside Bid or Offer. However, an Order with Midpoint Pegging entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Nasdaq Book if any of the following conditions are met:

- There is no Inside Bid and/or Inside Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint and is ranked at the Midpoint; thereafter the Inside Bid and/or Inside Offer change so that the Midpoint changes and the Order is no longer at the Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and/or Inside Offer change so that the Midpoint is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed Quotation remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order marked for Midpoint Pegging; or
- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint and is therefore ranked at the Midpoint; thereafter, the Inside Bid and Inside Offer become crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

Again, the Exchange intends for this proposed restatement to ensure consistency in the language of these two Rules as well as additional specificity, as described above.

Examples

Below are examples of the operation of the proposed rule changes.

1. There is no National Best Bid and/or National Best Offer

The National Best Bid (“NBB”) is \$11.00 and the National Best Offer (“NBO”) is \$11.06. A Midpoint Peg Post-Only Order to buy is posted at the Midpoint between the NBBO, at \$11.03. At this point, all displayed liquidity on the sell side is reported to be removed by all Market Centers, such that an NBO no longer exists. In this circumstance, the Midpoint Peg Post-Only Order will be cancelled back to the Participant.

2. The Order to buy (sell) is entered with a limit price above (below) the Midpoint of the NBBO and is ranked at the Midpoint of the NBBO; thereafter, the NBBO changes so that the Order is no longer at the NBBO Midpoint

The NBB is \$11.00 and the NBO is \$11.06. A Midpoint Peg Post-Only Order to buy is entered with a limit price of \$11.04 and it posts at the Midpoint between the NBBO, at \$11.03. If the NBO later shifts to \$11.08, such that the Midpoint between the NBBO becomes \$11.04, then the Midpoint Peg Post Only Order will be cancelled back to the Participant.

3. The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint of the NBBO and is ranked at its limit price; thereafter, the NBBO changes so that the Midpoint of the NBBO is lower (higher) than the limit price of the Order

The NBB is \$11.00 and the NBO is \$11.06. A Midpoint Peg Post-Only Order to buy is entered with a limit price of \$11.03 and it posts at the Midpoint between the

NBBO, at \$11.03. If the NBO shifts thereafter to \$11.08, such that the Midpoint between the NBBO becomes \$11.04, then the Midpoint Peg Post Only Order will remain on the Nasdaq Book unchanged. If, however, the NBO later shifts to \$11.04, such that the Midpoint between the NBBO becomes \$11.02, then the Midpoint Peg Post Only Order will be cancelled back to the Participant.

- 4. The Order to buy (sell) is ranked at its limit price and the NBBO becomes crossed, such that the Midpoint of the crossed NBBO remains equal to or higher (lower) than the limit price of the Order, and a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint Peg Post-Only Order.**

The NBB is \$11.00 and the NBO is \$11.06. A Midpoint Peg Post-Only Order to buy is entered with a limit price of \$11.03 and it posts at the Midpoint between the NBBO, at \$11.03. Subsequently, if the NBB shifts to \$11.04, such that the Midpoint between the NBBO becomes \$11.05, then the Midpoint Peg Post-Only Order will remain on the Nasdaq Book at its limit price of \$11.03. If the NBO later shifts to cross the market at \$11.02, then the Midpoint between the crossed NBBO will become \$11.03 and the Midpoint Peg Post Only Order will remain on the Nasdaq Book unchanged. If, however, a new sell Order is received at \$11.03 while the market is still crossed, then the Midpoint Peg Post Only Order will be cancelled back to the Participant without execution.

- 5. The Order to buy (sell) is ranked at the Midpoint of the NBBO because the limit price of the Order is greater (less than) the Midpoint and the NBBO**

**becomes crossed but the Midpoint does not change, then a new sell (buy)
Order is received at a price that locks or crosses the Midpoint of the NBBO.**

The NBB is \$11.00 and the NBO is \$11.06. A Midpoint Peg Post-Only Order to buy is entered with a limit price of \$11.04 and it posts at the Midpoint between the NBBO, at \$11.03. Subsequently, if the NBB shifts to \$11.04 and the NBO simultaneously shifts to \$11.02, thus instantaneously crossing the market, then the Midpoint between the crossed NBBO will remain at \$11.03 and the Midpoint Peg Post Only Order will remain on the Nasdaq Book unchanged. If, however, a new sell Order is received at \$11.03 while the market is still crossed, then the Midpoint Peg Post Only Order will be cancelled back to the Participant without execution.

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.

The proposal will protect investors by eliminating an unintended discrepancy among what should be three substantively identical Rules that describe the circumstances in which the Exchange will cancel Midpoint-Pegged Orders.

The proposal will also protect investors by amending these Rules so that they will describe more clearly what the Rules currently imply with respect to the circumstances in

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

which the Exchange will not cancel Midpoint-Pegged Orders. That is, the Exchange believes that concept of a limit price fairly implies that the Exchange has no need to and thus, it does not presently, cancel a Midpoint-Pegged Order to buy (sell) when such an Order is posted at its limit price and the NBBO (or Inside Bid and Inside Offer) shifts thereafter but the Midpoint remains above (below) the limit price; however, Rule 4702(a)(3)(B) merely states that any post-entry shift in the Midpoint will result in the cancellation of a Midpoint-Pegged Order. To avoid confusion, the proposal clarifies that the Exchange will cancel a Midpoint-Pegged Order posted at its limit price if the NBBO (or Inside Bid and Inside Offer) shifts after entry such that the Midpoint becomes lower (higher) than the limit price. In this circumstance, cancellation is warranted because the Order would need to be re-priced, and a Midpoint-Pegged Order entered using OUCH or FLITE cannot be re-priced. Similarly, if a Midpoint Pegged Order posts to the Nasdaq Book at the NBBO Midpoint and then the Midpoint shifts in either direction, the Order will be cancelled because it would need to be re-priced, and again, OUCH or FLITE do not allow for re-pricing to occur.

Similarly, the Exchange believes that it is helpful to investors to clarify the circumstances in which the Exchange does and does not cancel Midpoint-Pegged Orders in a crossed market. The existing Rules (other than Rule 4702(b)(3)(B), which mistakenly omitted discussion of crossed markets) state generally that the Exchange will cancel Midpoint-Pegged Orders if the NBBO (Inside Bid or Inside Offer) become crossed. However, as discussed above, the Exchange does not need to, and thus it does not presently, cancel Midpoint-Pegged Orders in all such instances. Although

cancellation is warranted to prevent Orders from actually executing in a crossed market,¹⁰ the Exchange does not believe that cancellation is warranted simply because the markets cross if there remains a possibility that the markets will uncross prior to an execution occurring. Thus, the Exchange proposes that it will not cancel a Midpoint-Pegged Order to buy (sell) when the Order is ranked at its limit price and the NBBO (or Inside Bid and Inside Offer) become crossed thereafter (and the Midpoint remains equal to or more aggressive than its limit price), but no new sell (buy) Order is received that locks or crosses the limit price of the resting Midpoint-Pegged Order. Unless or until the Exchange receives a new Order that locks or crosses the limit price of the resting Midpoint-Pegged Order while the market remains crossed, cancellation is unnecessary because the Midpoint-Pegged Order can continue to rest at its limit price and the market may uncross before the Midpoint-Pegged Order executes. Likewise, as was also discussed above, the Exchange proposes that it will not cancel a Midpoint-Pegged Order that is ranked at the Midpoint of the NBBO (Inside Bid and Inside Offer) where the market becomes crossed, provided that while the market is crossed, the Midpoint of the crossed NBBO (Inside Bid and Inside Offer) does not change, and the Exchange does not receive a new Order that would lock or cross the Midpoint. Again, cancellation is unnecessary in this scenario because the Midpoint-Pegged Order can continue to rest at

¹⁰ See Securities Exchange Act Release No. 34-79290 (Nov. 10, 2016), 81 FR 81184, 81186 (Nov. 17, 2016) (stating that the “midpoint of a crossed market is not a clear and accurate indication of a valid price” and that cancellation in a crossed market “would avoid mispriced executions”).

the Midpoint while the market is crossed and because the market may uncross (with the Midpoint remaining unchanged) prior to execution of the Order.¹¹

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. The Exchange intends for the proposal to merely eliminate an unintended discrepancy between three related Rules and to improve the precision with which the Rules describe the circumstances in which it will cancel Midpoint-Pegged Orders after entry, as described above. The Exchange does not expect that these changes will have any impact whatsoever on competition.

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

¹¹ If at any point after the Midpoint-Pegged Order posts to the Nasdaq Book at the Midpoint, the NBBO (Inside Bid and Inside Offer) changes so that the price of the Order is no longer at the Midpoint, then the order must be cancelled because orders entered through OUCH or FLITE cannot be re-priced.

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 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 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-2019-065 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 Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2019-065. 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-2019-065 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

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules**Equity Rules**

* * * * *

4702. Order Types

(a) No change.

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

(1) – (2) No change.

(3)(A) No change.

(B) If a Non-Displayed Order is entered through RASH, QIX, or FIX, during Market Hours the Non-Displayed Order may be adjusted in the following manner after initial entry and posting to the Nasdaq Book (unless the Order is assigned a Routing Order Attribute that would cause it to be routed to another market center rather than remaining on the Nasdaq Book):

...

If a Non-Displayed Order is entered through OUCH or FLITE, during Market Hours the Non-Displayed Order may be adjusted in the following manner after initial entry and posting to the Nasdaq Book:

...

[• If a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Order Attribute, and if, after being posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order is no longer at the Midpoint between the NBBO, the Non-Displayed Order will be cancelled back to the Participant. In addition, if a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Attribute and also has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), the Order will nevertheless be accepted at its limit price and will be cancelled if the midpoint between the NBBO moves lower than (higher than) the price of an Order to buy (sell).]

(C) No change.

(4) No change.

(5) (A) No change.

(B) If a Midpoint Peg Post-Only Order is entered through RASH, QIX, or FIX, the Midpoint Peg Post-Only Order may be adjusted in the following manner after initial entry and posting to the Nasdaq Book:

...

If a Midpoint Peg Post-Only Order is entered through OUCH or FLITE, the Midpoint Peg Post-Only Order may be adjusted in the following manner after initial entry and posting to the Nasdaq Book:

• The price at which the Midpoint Peg Post-Only Order is ranked on the Nasdaq Book is the midpoint between the NBBO, unless the Order has a limit price that is lower than the midpoint between the NBBO for an Order to buy (higher than the midpoint between the NBBO for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. The price of the Order will not thereafter be adjusted based on changes to the NBBO. [If, after being posted to the Nasdaq Book, the NBBO changes so that midpoint between the NBBO is lower than (higher than) the price of a Midpoint Peg Post-Only Order to buy (sell), or the NBBO is crossed, or there is no NBBO, the Midpoint Peg Post-Only Order will be cancelled back to the Participant. For example, if the Best Bid is \$11 and the Best Offer is \$11.06, a Midpoint Peg Post-Only Order to buy would post at \$11.03. If, thereafter, the Best Offer is reduced to \$11.05, the Midpoint Peg Post-Only Order will be cancelled back to the Participant.] However, a Midpoint Peg Post-Only Order entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Nasdaq Book if any of the following conditions are met:

- There is no National Best Bid and/or National Best Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint of the NBBO and is ranked at the Midpoint of the NBBO; thereafter, the NBBO changes so that the Midpoint changes and the Order is no longer at the NBBO Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint of the NBBO and is ranked at its limit price; thereafter, the NBBO changes so that the Midpoint of the NBBO is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint of the NBBO and is ranked at its limit price, thereafter the NBBO becomes crossed, such that the Midpoint of the crossed NBBO remains equal to or higher (lower) than the limit price of the Order,

and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Midpoint Peg Post-Only Order; or

- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint of the NBBO and is therefore ranked at the Midpoint of the NBBO, thereafter the NBBO becomes crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the NBBO.

* * * * *

4703. Order Attributes

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

...

(d) Pegging. Pegging is an Order Attribute that allows an Order to have its price automatically set with reference to the NBBO; provided, however, that if Nasdaq is the sole market center at the Best Bid or Best Offer (as applicable), then the price of any Displayed Order with Primary Pegging (as defined below) will be set with reference to the highest bid or lowest offer disseminated by a market center other than Nasdaq. An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." For purposes of this rule, the price to which an Order is pegged will be referred to as the Inside Quotation, the Inside Bid, or the Inside Offer, as appropriate. There are three varieties of Pegging:

- Primary Pegging means Pegging with reference to the Inside Quotation on the same side of the market. For example, if the Inside Bid was \$11, an Order to buy with Primary Pegging would be priced at \$11.
- Market Pegging means Pegging with reference to the Inside Quotation on the opposite side of the market. For example, if the Inside Offer was \$11.06, an Order to buy with Market Pegging would be priced at \$11.06.
- Midpoint Pegging means Pegging with reference to the midpoint between the Inside Bid and the Inside Offer (the "Midpoint"). Thus, if the Inside Bid was \$11 and the Inside Offer was \$11.06, an Order with Midpoint Pegging would be priced at \$11.03. An Order with Midpoint Pegging is not displayed. An Order with Midpoint Pegging may be executed in sub-pennies if necessary to obtain a midpoint price.

...

Primary Pegging and Market Pegging are available through RASH, QIX, and FIX only. An Order entered through OUCH or FLITE with Midpoint Pegging will have its price set upon initial entry to the Midpoint, unless the Order has a limit price, and that limit price is lower than the Midpoint for an Order to buy (higher than the Midpoint for an Order to sell), in which case the Order will be ranked on the Nasdaq Book at its limit price. [Thereafter, if the Inside Bid and Inside Offer changes so that: the Midpoint is lower than

(higher than) the price of an Order to buy (sell), the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Pegged Order will be cancelled back to the Participant. The price of the Order will not thereafter be adjusted based on changes to the Inside Bid or Offer. However, an Order with Midpoint Pegging entered through OUCH or FLITE will be cancelled back to the Participant after initial entry and posting to the Nasdaq Book if any of the following conditions are met:

- There is no Inside Bid and/or Inside Offer;
- The Order to buy (sell) is entered with a limit price above (below) the Midpoint and is ranked at the Midpoint; thereafter the Inside Bid and/or Inside Offer change so that the Midpoint changes and the Order is no longer at the Midpoint;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price; thereafter, the Inside Bid and/or Inside Offer change so that the Midpoint is lower (higher) than the limit price of the Order;
- The Order to buy (sell) is entered at a limit price that is equal to or less than (greater than) the Midpoint and is ranked at its limit price.;thereafter the Inside Bid and Inside Offer become crossed, such that the Midpoint of the crossed Quotation remains equal to or higher (lower) than the limit price of the Order, and then a new sell (buy) Order is received at a price that locks or crosses the limit price of the resting Order marked for Midpoint Pegging; or
- The Order to buy (sell) is entered at a limit price that is greater than (less than) the Midpoint and is therefore ranked at the Midpoint; thereafter the Inside Bid and Inside Offer become crossed but the Midpoint does not change, and then a new sell (buy) Order is received at a price that locks or crosses the Midpoint of the Inside Bid and Inside Offer.

* * * * *