

SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Proposed Rule Change To Amend and Restate Certain Nasdaq Rules That Govern the Nasdaq Market Center

March 20, 2015.

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 March 16, 2015, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend and restate certain Nasdaq rules that govern the Nasdaq Market Center in order to provide a clearer and more detailed description of certain aspects of its functionality. The text of the proposed rule change is available at nasdaq.cchwallstreet.com, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq proposes to amend and restate certain Nasdaq rules that govern the Nasdaq Market Center in order to

provide a clearer and more detailed description of certain aspects of its functionality. The proposed rule change is responsive to the request of Commission Chair White that each self-regulatory organization (“SRO”) conduct a comprehensive review of each order type offered to members, and how it operates in practice.³ Nasdaq believes that its current rules and other public disclosures provide a comprehensive description of the operation of the Nasdaq Market Center, so that members and the investing public have an accurate understanding of its market structure. Nevertheless, Nasdaq has concluded that a restatement of certain rules will further enhance their clarity. In particular, Nasdaq believes that providing additional examples of order type operation in the rule text will promote greater understanding of Nasdaq’s market structure. In addition, Nasdaq notes that certain functionality added to its market in past years has been described as an “order type” but would be more precisely described as an attribute that may be added to a particular order. Accordingly, the restated rules will distinguish between “Order Types” and “Order Attributes,” while providing a full description of the Order Attributes that may be attached to particular Order Types. Except where specifically stated otherwise, all proposed rules are restatements of existing rules and therefore do not reflect substantive changes in the rule text or in the operation of the Nasdaq Market Center.

General Framework for Rule Restatement

At present, most of the rules governing Nasdaq Order Types and Order Attributes are found in Rule 4751 (Definitions). Nasdaq is proposing to restate Rule 4751 as Rule 4701, which is currently not in use, with certain amended definitions being adopted therein. Nasdaq is also proposing to remove definitions pertaining to Order Types and Order Attributes and adopt them as separate new Rules 4702 (Order Types) and 4703 (Order Attributes). While Nasdaq is also proposing certain conforming changes to other rules, in subsequent proposed rule changes Nasdaq plans to restate the remainder of the rules numbered 4752 through 4780 so that they appear sequentially following Rule 4703.

³ See Mary Jo White, Chair, Commission, Speech at the Sandler O’Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370542004312>.

Definitions

New Rule 4701 will adopt revised definitions applicable to the Rule 4000 Series of the Nasdaq rules:⁴

- The terms “Best Bid”, “Best Offer”, “National Best Bid and National Best Offer”, “Protected Bid”, “Protected Offer”, “Protected Quotation”, and “Intermarket Sweep Order” shall have the meanings assigned to them under Rule 600 under SEC Regulation NMS;⁵ provided, however, that the terms “Best Bid”, “Best Offer”, “Protected Bid”, “Protected Offer”, and “Protected Quotation” shall, unless otherwise stated, refer to the bid, offer, or quotation of a market center other than Nasdaq. The term “NBBO” shall mean the “National Best Bid and National Best Offer”.

- The term “Nasdaq Market Center,” or “System”, which defines the components of the securities execution and trade reporting system owned and operated by The NASDAQ Stock Market LLC, is being modified to state that the System includes a montage for “Quotes” and “Orders”, referred to as the “Nasdaq Book”, that collects and ranks all Quotes and Orders submitted by “Participants”.⁶ The definition is further being modified to make it clear that data feeds made available with respect to the Nasdaq Market Center disseminate depth-of-book data regarding Quotes and “Displayed” Orders⁷ and also such additional information about Quotes, Orders, and transactions within the Nasdaq Market Center as shall be reflected in the Nasdaq Rules.

- The term “Quote” is being modified to make it clear that a Quote is an Order with Attribution (as defined in Rule 4703) entered by a Market Maker or Nasdaq ECN for display (price and size) next to the Participant’s MPID in the

⁴ Other definitions in current Rule 4751 are being superseded by descriptions of Order Types and Order Attributes in Rules 4702 and 4703, or are being eliminated because they are no longer used. The definition of “Directed Order,” which described a routing strategy rather than an Order Type, is being moved to Rule 4758 (Order Routing). In addition, Rule 4755 (Order Entry Parameters) is being deleted because the material contained therein is superseded by proposed Rules 4702 and 4703.

⁵ 17 CFR 242.600.

⁶ The modified definitions of “Quotes” and “Orders” are described below. The term “Participant”, which is being amended only to add a clarifying reference to Regulation NMS, means an entity that fulfills the obligations contained in Rule 4611 regarding participation in the System, and includes Nasdaq ECNs, Nasdaq Market Makers, and Order Entry Firms.

⁷ As provided in proposed Rule 4703, a Displayed Order is an Order with a Display Order Attribute that allows its price and size to be disseminated to Participants.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Nasdaq Book. Accordingly, all Quotes are also Orders.

- The definition of the term “Order” is being amended to mean an instruction to trade a specified number of shares in a specified System Security⁸ submitted to the Nasdaq Market Center by a Participant. An “Order Type” is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. An “Order Attribute” is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703.

- The term “ET” means Eastern Standard Time or Eastern Daylight Time, as applicable.

- The term “Market Hours” is being defined to mean the period of time beginning at 9:30 a.m. ET and ending at 4:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). The term “System Hours” means the period of time beginning at 4:00 a.m. ET and ending at 8:00 p.m. ET (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early). The term “Pre-Market Hours” means the period of time beginning at 4:00 a.m. ET and ending immediately prior to the commencement of Market Hours. The term “Post-Market Hours” means the period of time beginning immediately after the end of Market Hours and ending at 8:00 p.m. ET.⁹

- The term “marketable” with respect to an Order to buy (sell) means that, at the time it is entered into the System, the Order is priced at the current Best

Offer or higher (at the current Best Bid or lower).

- The term “market participant identifier” or “MPID” means a unique four-letter mnemonic assigned to each Participant in the Nasdaq Market Center. A Participant may have one or more than one MPID.

- The term “minimum price increment” means \$0.01 in the case of a System Security priced at \$1 or more per share, and \$0.0001 in the case of a System Security priced at less than \$1 per share.

- The definition of the term “System Book Feed”, which means a data feed for System Securities, is being amended to clarify that it is the data feed generally known as the TotalView ITCH feed.

Order Types

Proposed Rule 4702 provides that Participants may express their trading interest in the Nasdaq Market Center by entering Orders. The Nasdaq Market Center offers a range of Order Types that behave in the manner specified for each particular Order Type. Each Order Type may be assigned certain Order Attributes that further define its behavior. All Order Types and Order Attributes operate in a manner that is reasonably designed to comply with the requirements of Rules 610 and 611 under Regulation NMS. Specifically, Orders are reasonably designed to prevent trade-throughs of Protected Quotations to the extent required by Rule 611 under Regulation NMS, and to prevent the display of quotations that lock or cross Protected Quotations to the extent required by Rule 610 under Regulation NMS.¹⁰ Each Order must designate whether it is to effect a buy, a long sale, a short sale, or an exempt short sale.

Proposed Rule 4702 further provides that Nasdaq maintains several communications protocols for Participants to use in entering Orders and sending other messages to the Nasdaq Market Center:

- OUCH is a Nasdaq proprietary protocol;

¹⁰ It should be noted that Nasdaq Rule 4613(e), Nasdaq’s rule with respect to locked and crossed markets, as adopted pursuant to Rule 610(d) under Regulation NMS and approved by the Commission, applies only during Market Hours (approved in Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001)). Note also that Rule 600 under Regulation NMS defines a “trade-through” as “the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer.” “Regular trading hours” are defined, in pertinent part, as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time.” 17 CFR 242.600.

- RASH is a Nasdaq proprietary protocol;
- QIX is a Nasdaq proprietary protocol;
- FLITE is a Nasdaq proprietary protocol;
- FIX is a non-proprietary protocol.

Except Where Otherwise Stated, All Protocols Are Available for All Order Types and Order Attributes

Upon entry, an Order is processed to determine whether it may execute against any contra-side Orders on the Nasdaq Book in accordance with the parameters applicable to the Order Type and Order Attributes selected by the Participant and in accordance with the priority for Orders on the Nasdaq Book provided in Rule 4757.¹¹ Thus, for example, a “Price to Comply Order” would be evaluated for potential execution in accordance with different criteria than a “Post-Only Order.”¹² In addition, the Order may have its price adjusted in accordance with applicable parameters and may be routed to other market centers for potential execution if designated as “Routable.”¹³ The Order may then be posted to the Nasdaq Book if consistent with the parameters of the Order Type and Order Attributes selected by the Participant. For example, an Order with a “Time-in-Force” of “Immediate or Cancel” would not be posted.¹⁴

Thereafter, as detailed in proposed Rules 4702 and 4703, and current Rule 4758 (Order Routing), there are numerous circumstances in which the

¹¹ Under Rule 4757, the order in which Orders on the Nasdaq Book are presented for execution against incoming Orders is determined first by price (with better priced Orders presented first). As among equally priced Orders, priority is determined by Display characteristics and timestamps. Thus, Displayed Orders at a given price are processed first based on their timestamps, with earlier Orders processed first. Next, Orders with a Non-Display Attribute (including the Non-Displayed portion of an Order with Reserve Size) are processed based on their respective timestamps. Finally, an incoming Order may be presented for potential execution against Supplemental Order (as described in Rule 4757 and proposed Rule 4702(a)(6)). Nasdaq is amending Rule 4757 to remove an obsolete reference to Discretionary Orders. As provided in current Rule 4751(f)(1) and proposed Rule 4703(g), Orders with Discretion Attribute rest on the Nasdaq Book at a single price and generate an Order with a Time-in-Force of Immediate or Cancel under certain circumstances. Thus, an Order with a Discretion Attribute would not execute against an incoming Order with a price within its discretionary range. Nasdaq is amending Rule 4757 to remove this reference and to make wording changes to improve the clarity of the rule.

¹² These Order Types are described below and in proposed Rule 4702.

¹³ The Routing Order Attribute is described below, in proposed Rule 4703, and in current Rule 4758.

¹⁴ Available Times-in-Force are described below and in proposed Rule 4703.

⁸ The definition of a “System Security,” which is not being modified, includes “(1) all securities listed on Nasdaq and (2) all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan except securities specifically excluded from trading via a list of excluded securities posted on www.nasdaqtrader.com.”

⁹ The proposed definition further notes that in certain contexts, times cited in the Nasdaq Rules may be approximate. For example, for a System Security in which the Nasdaq Opening Cross occurs, the first transactions executed during Market Hours will occur in the Nasdaq Opening Cross. However, because Nasdaq Opening Crosses for different System Securities occur sequentially rather than simultaneously, the first Market Hours transactions in a particular System Security are likely to occur during a brief period following 9:30 a.m. ET, not precisely at 9:30 a.m. ET.

Order on the Nasdaq Book may be modified and receive a new timestamp. The sole instances in which the modification of an Order on the Nasdaq Book will not result in a new timestamp are: (i) A decrease in the size of the Order due to execution or modification by the Participant or by the System, and (ii) a redesignation of a sell Order as a long sale, a short sale, or an exempt short sale.¹⁵ Whenever an Order receives a new timestamp for any reason, it is processed by the System as a new Order with respect to potential execution against Orders on the Nasdaq Book, price adjustment, routing, reposting to the Nasdaq Book, and subsequent execution against incoming Orders, except where otherwise stated. Thus, for example, if an Order with a "Pegging" Order Attribute had its price changed due to a change in the NBBO,¹⁶ it would be processed by the System as a new Order with respect to potential execution, price adjustment, routing, reposting to the Nasdaq Book, and subsequent execution against incoming Orders. An exception to the general rule is noted in Rule 4703(h) with respect to Orders with "Reserve Size"¹⁷ that have a Routing Order Attribute; such Orders are not routed if reentered due to a replenishment of the Order's Displayed Size.

In addition, the proposed rule notes that all Orders are also subject to cancellation and/or repricing and reentry onto the Nasdaq Book in the circumstances described in Rule 4120(a)(12) (providing for compliance with Plan to Address Extraordinary Market Volatility) and Rule 4763 (providing for compliance with Regulation SHO). In all circumstances where an Order is repriced pursuant to those provisions, it is processed by the

System as a new Order with respect to potential execution against Orders on the Nasdaq Book, price adjustment, routing, reposting to the Nasdaq Book, and subsequent execution against incoming Orders. If multiple Orders at a given price are repriced, the Order in which they are reentered is random, based on the respective processing time for each such Order;¹⁸ provided, however, that in the case of Price to Comply Orders and Post-Only Orders that have their prices adjusted upon entry because they lock a Protected Quotation but that are subsequently displayed at their original entered limit price as provided in Rules 4702(b)(1)(B) and (4)(B),¹⁹ they are processed in accordance with the time priority under which they were previously ranked on the Nasdaq Book. If an Order is repriced and/or reentered 10,000 times for any reason, the Order will be cancelled. This restriction is designed to conserve System resources by limiting the persistence of Orders that update repeatedly without any reasonable prospect of execution.

Proposed Rule 4702 further describes the behavior of each Order Type. Except where otherwise stated, each Order Type is available to all Participants, although certain Order Types and Order Attributes may require the use of a specific protocol. As a result, a Participant would be required to use that protocol in order to use Order Types and Order Attributes available through it. Moreover, a small number of Order Types and Order Attributes are available only to registered Market Makers in the security for which they are registered.

Price To Comply Order

The Price to Comply Order is an Order Type designed to comply with Rule 610(d) under Regulation NMS by having its price and display characteristics adjusted to avoid the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. The Price to Comply Order is also designed to provide potential price improvement. The Nasdaq Market Center does not have a "plain vanilla" limit order that attempts to execute at its limit price and is then posted at its price or rejected if it cannot be posted; rather, the Price to

Comply Order, with its price and display adjustment features, is one of the primary Order Types used by Participants to access and display liquidity in the Nasdaq Market Center. The price and display adjustment features of the Order Type enhance efficiency and investor protection by offering an Order Type that first attempts to access available liquidity and then to post the remainder of the Order at prices that are designed to maximize their opportunities for execution.

When a Price to Comply Order is entered, the Price to Comply Order will be executed against previously posted Orders on the Nasdaq Book that are priced equal to or better than the price of the Price to Comply Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Nasdaq Book (and/or routed if it has been designated as Routable).²⁰

During Market Hours, the price at which a Price to Comply Order is posted is determined in the following manner. If the entered limit price of the Price to Comply Order would lock or cross a Protected Quotation and the Price to Comply Order could not execute against an Order on the Nasdaq Book at a price equal to or better than the price of the Protected Quotation, the Price to Comply Order will be displayed on the Nasdaq Book at a price one minimum price increment lower than the current Best Offer (for a Price to Comply Order to buy) or higher than the current Best Bid (for a Price to Comply Order to sell) but will also be ranked on the Nasdaq Book with a non-displayed price equal to the current Best Offer (for a Price to Comply Order to buy) or to the current Best Bid (for a Price to Comply Order to sell). The posted Order will then be available for execution at its non-displayed price, thus providing opportunities for price improvement to incoming Orders.

For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. An incoming Order to sell at a price of \$11 or lower would execute against the Price to Comply Order at \$11.²¹

¹⁵ Accordingly, there are no circumstances in which an Order that was previously entered but not displayed on the Nasdaq Book would be displayed without also receiving a new timestamp, and thus no possibility for a Participant to "jump the queue" with respect to other Orders.

Nasdaq is amending Rule 4756 to make it clear that the redesignation of a sell Order as a long sale, short sale, or exempt short sale can be done only with respect to Orders entered through OUCH or FLITE; Orders entered through RASH, QIX, or FIX would have to be cancelled and reentered to change their designation. Similarly, Rule 4756 is being amended to clarify that modification of an Order by the Participant to decrease its size is not possible with respect to an MOO Order, an LOO Order, an OIO Order, an MOC Order, an LOC Order, an IO Order, or a Pegged Order (including a Discretionary Order that is Pegged). Such an Order would have to be cancelled and reentered by the Participant to reduce its size.

¹⁶ The Pegging Order Attribute adjusts the price of the Order based on changes in the NBBO and is described below and in proposed Rule 4703.

¹⁷ The Reserve Size Order Attribute is described below and in Rule 4703.

¹⁸ This is the case because when Orders are repriced, multiple instructions to reprice are sent simultaneously through multiple System gateways in order to modify the Orders as quickly as possible and thereby minimize the possibility that they will be disadvantaged vis-à-vis newly entered Orders.

¹⁹ Governing handling of Price to Comply and Post-Only Orders when formerly unavailable price levels become available.

²⁰ See Rules 4703(f) and 4758.

²¹ Unless the incoming Order was an Order Type that was not immediately executable, in which case the incoming Order would behave in the manner specified for that Order Type. For example, as discussed below, a Post-Only Order to sell priced at \$11 would be repriced and posted at \$11.01.

During Pre-Market Hours and Post-Market Hours, a Price to Comply Order will be ranked and displayed at its entered limit price without adjustment. This is the case because Nasdaq's rule with respect to locked and crossed markets, as adopted pursuant to Rule 610(d) under Regulation NMS and approved by the Commission, applies only during Market Hours.²²

Depending on the protocol used to enter a Price to Comply Order, Participants have different options with respect to adjustment of the Price to Comply Order following its initial entry and posting to the Nasdaq Book. Specifically, if a Price to Comply Order is entered through RASH, QIX, or FIX, during Market Hours the price of the Price to Comply Order will 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 the entered limit price of the Price to Comply Order locked or crossed a Protected Quotation and the NBBO changes, the displayed and non-displayed price of the Price to Comply Order will be adjusted repeatedly in accordance with changes to the NBBO; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the displayed price of a Price to Comply Order, the prices of the Price to Comply Order will not be adjusted. For example, if a Price to Comply Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at its non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer then moves to \$11.01, the displayed price will be changed to \$11 and the Order will be ranked at a non-displayed price of \$11.01. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Price to Comply Order, notwithstanding Rule 610(d) under Regulation NMS), the price of the Price to Comply Order will not be changed.²³ The Order may be repriced repeatedly until such time as the Price to Comply Order is able to be ranked and displayed at its original entered limit price (\$11.02 in the example). The

Price to Comply Order receives a new timestamp each time its price is changed.

- If the original entered limit price of the Price to Comply Order would no longer lock or cross a Protected Quotation, the Price to Comply Order will be ranked and displayed at that price and will receive a new timestamp, and will not thereafter be adjusted under this provision.²⁴

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

- If the entered limit price of the Price to Comply Order crossed a Protected Quotation and the NBBO changes so that the Price to Comply Order could be displayed at a price at or closer to its entered limit price without locking or crossing a Protected Quotation, the Price to Comply Order may either remain on the Nasdaq Book unchanged or may be cancelled back to the Participant, depending on its choice. For example, if a Price to Comply Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer changes to \$11.01, the Order will not be repriced, but rather will either remain with a displayed price of \$10.99 but ranked at a non-displayed price of \$11 or be cancelled back to the Participant, depending on its choice. A Participant's choice with regard to maintaining the Price to Comply Order or cancelling it is set in advance for each port through which the Participant enters Orders.

- If the entered limit price of the Price to Comply Order locked a Protected Quotation, the price of the Price to Comply Order will be adjusted after initial entry only as follows. If the entered limit price would no longer lock a Protected Quotation, the Price to Comply Order may either remain on the Nasdaq Book unchanged, may be cancelled back to the Participant, or may be ranked and displayed at its original entered limit price, depending on the Participant's choice. For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer of \$11, the Price to Comply Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer changes to \$11.01, the Price to Comply Order may either remain with a displayed price of \$10.99 but ranked at a non-displayed price of \$11, be cancelled back to the

Participant, or be ranked and displayed at \$11, depending on the Participant's choice. A Participant's choice with regard to maintaining the Price to Comply Order, cancelling it, or allowing it to be displayed is set in advance for each port through which the Participant enters Orders. If the Price to Comply Order is ranked and displayed at its original entered limit price, it will receive a new timestamp, and will not thereafter be adjusted under this provision.²⁵

With regard to the foregoing options, it is important to emphasize that the Price to Comply Order receives a new timestamp whenever its price is changed, and also receives a new timestamp if the Price to Comply Order would no longer lock a Protected Quotation and is therefore displayed at its original entered limit price. Thus, there are no circumstances under which a Price to Comply Order that originally locked or crossed a Protected Quotation would "jump the queue" and be displayed at its original entered limit price while retaining its original time priority. In fact, as discussed throughout this filing, Nasdaq does not offer any functionality that enables a Participant to "jump the queue" by displaying a previously entered non-displayed Orders without also receiving a new timestamp.²⁶

The following Order Attributes may be assigned to a Price to Comply Order. The effect of each Order Attribute is discussed in detail below with respect to proposed new Rule 4703.

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

- Size.

- Reserve Size (available through RASH, FIX and QIX only).

- A Time-in-Force other than "Immediate or Cancel" ("IOC").²⁷

- Designation as an "ISO". In accordance with Regulation NMS, a Price to Comply Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously

²⁵ Thus, the price of the Order will not move beyond its limit price.

²⁶ As a result, it is possible that a new Order that is entered while previously booked Orders are being repriced may be placed on the Nasdaq Book ahead of them.

²⁷ As discussed below, IOC is a Time-in-Force under which an Order is evaluated to determine if it is marketable, with unexecuted shares cancelled. A Price to Comply Order entered with a Time-in-Force of IOC would be accepted but would be processed as a Non-Displayed Order with a Time-in-Force of IOC.

²² See *supra* n. 10.

²³ This means that, in general, the price of the Price to Comply Order will move toward, but not away from, its original entered limit price. Because a Price to Comply Order is removed from the Nasdaq Book while it is being repriced, however, it is possible that the Order's price will move away from its original entered limit price in the case of a "race condition" where the NBBO changes again while the Order is not on the Nasdaq Book.

²⁴ Thus, the price of the Order will not move beyond its limit price.

routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Comply Order would lock or cross.

- Routing (available through RASH, FIX and QIX only).
- “Primary Pegging” and “Market Pegging” (available through RASH, FIX, and QIX only).
- “Discretion” (available through RASH, FIX and QIX only).
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.²⁸
- Display. A Price to Comply Order is always displayed, although, as provided above, it may also have a non-displayed price and/or Reserve Size.

Price To Display Order

A “Price to Display Order” is an Order Type designed to comply with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours. Price to Display Orders are available solely to Participants that are Market Makers and are always Attributable.²⁹ Like a Price to Comply Order, a Price to Display Order is another form of priced Order that first accesses available liquidity and then posts remaining shares, with price adjustment features similar to those of the Price to Comply Order that provide a means to post displayed Orders at prices that are designed to maximize their opportunities for execution.

When a Price to Display Order is entered, if its entered limit price would lock or cross a Protected Quotation, the Price to Display Order will be repriced to one minimum price increment lower than the current Best Offer (for a Price to Display Order to buy) or higher than the current Best Bid (for a Price to Display Order to sell). For example, if a Price to Display Order to buy at \$11 would cross a Protected Offer of \$10.99, the Price to Display Order will be repriced to \$10.98. The Price to Display Order (whether repriced or not repriced) will then be executed against previously posted Orders on the Nasdaq Book that are priced equal to or better than the

adjusted price of the Price to Display Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Order that cannot be executed in this manner will be posted on the Nasdaq Book (and/or routed if it has been designated as Routable).³⁰

During Market Hours, the price at which a Price to Display Order is displayed and ranked on the Nasdaq Book will be its entered limit price if the Price to Display Order was not repriced upon entry, or the adjusted price if the Price to Comply Order [sic] was repriced upon entry, such that the price will not lock or cross a Protected Quotation. During Pre-Market Hours and Post-Market Hours, a Price to Display Order will be displayed and ranked at its entered limit price without adjustment.

As is the case with a Price to Comply Order, a Price to Display Order may be adjusted after initial entry.³¹ Specifically, if a Price to Display Order is entered through RASH, QIX, or FIX, during Market Hours the Price to Display 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 the entered limit price of the Price to Display Order locked or crossed a Protected Quotation and the NBBO changes, the price of the Order will be adjusted repeatedly in accordance with changes to the NBBO; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the price of a Price to Display Order, the price of the Price to Display Order will not be adjusted.³² For example, if a Price to Display Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be displayed and ranked at \$10.99. If the Best Offer then moves to \$11.01, the displayed/ranked price will be changed to \$11. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Price to Display Order, notwithstanding Rule 610(d) under Regulation NMS), the

price of the Price to Display Order will not be changed. The Order may be repriced repeatedly until such time as the Price to Display Order is able to be displayed and ranked at its original entered limit price (\$11.02 in the example). The Price to Display Order receives a new timestamp each time its price is changed.

- If the original entered limit price of the Price to Display Order would no longer lock or cross a Protected Quotation, the Price to Display Order will be displayed and ranked at that price and will receive a new timestamp, and will not thereafter be adjusted under this provision.³³

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

- If the entered limit price of the Price to Display Order locked or crossed a Protected Quotation and the NBBO changes so that the Price to Display Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Price to Display Order may either remain on the Nasdaq Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. For example, if a Price to Display Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked and displayed at \$10.99. If the Best Offer changes to \$11.01, the Price to Display Order will not be repriced, but rather will either remain at its current price or be cancelled back to the Participant, depending on its choice. A Participant's choice with regard to maintaining the Price to Display Order or cancelling it is set in advance for each port through which the Participant enters Orders.

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

- Price. As described above, the price of the Order may be adjusted to avoid locking or crossing a Protected Quotation.
- Size.
- Reserve Size (available through RASH, FIX and QIX only).
- A Time-in-Force other than IOC.³⁴
- Designation as an ISO. In

accordance with Regulation NMS, a Price to Display Order designated as an ISO would be processed at its entered

²⁸ Primary Pegging, Market Pegging, Discretion and Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross are discussed below and in proposed Rule 4703.

²⁹ As described below and in proposed Rule 4703, Attribution is an Order Attribute that allows for display of the price and size of an Order next to a Market Maker's MPID. In the current rule, the Price to Display Order is referred to as the “Price to Comply Post Order.” The fact that this Order Type is Attributable and available only to registered Market Makers reflects a substantive clarification to the language of the existing rule.

³⁰ See Rules 4703(f) and 4758.

³¹ These adjustments reflect a substantive clarification to the language of the existing rule.

³² This means that, in general, the price of the Price to Display Order will move toward, but not away from, its original entered limit price. Because a Price to Display Order is removed from the Nasdaq Book while it is being repriced, however, it is possible that the Order's price will move away from its original entered limit price in the case of a “race condition” where the NBBO changes again while the Order is not on the Nasdaq Book.

³³ Thus, the price of the Order will not move beyond its limit price.

³⁴ A Price to Display Order entered with a Time-in-Force of IOC would be processed as a Non-Displayed Order with a Time-in-Force of IOC.

limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Price to Display Order would lock or cross.

- Routing (available through RASH, FIX and QIX only).³⁵
- Primary Pegging and Market Pegging (available through RASH, FIX and QIX only).
- Discretion (available through RASH, FIX and QIX only).
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.
- Attribution. All Price to Display Orders are Attributable Orders.
- Display. A Price to Display Order is always displayed (but may also have Reserve Size).

Non-Displayed Order

A “Non-Displayed Order” is an Order Type that is not displayed to other Participants, but nevertheless remains available for potential execution against incoming Orders until executed in full or cancelled. Thus, the Order Type provides a means by which Participants may access and/or offer liquidity without signaling to other Participants the extent of their trading interest. The Order may also serve to provide price improvement vis-à-vis the NBBO. Under Regulation NMS, a Non-Displayed Order may lock a Protected Quotation and may be traded-through by other market centers.³⁶ In addition to the Non-Displayed Order Type, there are other Order Types that are not displayed on the Nasdaq Book. Thus, “Non-Display” is both a specific Order Type and an Order Attribute of certain other Order Types.

When a Non-Displayed Order is entered, the Non-Displayed Order will be executed against previously posted Orders on the Nasdaq Book that are

priced equal to or better than the price of the Non-Displayed Order, up to the full amount of such previously posted Orders, unless such executions would trade through a Protected Quotation. Any portion of the Non-Displayed Order that cannot be executed in this manner will be posted to the Nasdaq Book (unless the Non-Displayed Order has a Time-in-Force of IOC) and/or routed if it has been designated as Routable.³⁷

During Market Hours, the price at which a Non-Displayed Order is posted is determined in the following manner. If the entered limit price of the Non-Displayed Order would lock a Protected Quotation, the Non-Displayed Order will be placed on the Nasdaq Book at the locking price. If the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced to a price that would lock the Protected Quotation and will be placed on the Nasdaq Book at that price.³⁸ For example, if a Non-Displayed Order to buy at \$11 would cross a Protected Offer of \$10.99, the Non-Displayed Order will be repriced and posted at \$10.99. A Non-Displayed Order to buy at \$10.99 would also be posted at \$10.99. During Pre-Market Hours and Post-Market Hours, a Non-Displayed Order will be posted at its entered limit price without adjustment.

As is the case with a Post to Comply Order, a Non-Displayed Order may be adjusted after initial entry.³⁹ Specifically, 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 the original entered limit price of a Non-Displayed Order is higher than the Best Offer (for an Order to buy) or lower than the Best Bid (for an Order to sell) and the NBBO moves toward the original entered limit price of the Non-Displayed Order, the price of the Non-Displayed Order will be adjusted repeatedly in accordance with changes to the NBBO. For example, if a Non-Displayed Order to buy at \$11.02 would cross a Protected Offer of \$11, the Non-Displayed Order will be priced and posted at \$11. If the Best Offer then changes to \$11.01, the price of the Non-Displayed Order will be changed to

\$11.01. The Order may be repriced repeatedly in this manner, receiving a new timestamp each time its price is changed, until the Non-Displayed Order is posted at its original entered limit price.⁴⁰ The Non-Displayed Order will not thereafter be repriced under this provision, except as provided below with respect to crossing a Protected Quotation.

- If, after being posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be repriced at a price that would lock the new NBBO and receive a new timestamp.⁴¹ For example, if a Non-Displayed Order to buy at \$11 would lock a Protected Offer of \$11, the Non-Displayed Order will be posted at \$11. If the Best Offer then changes to \$10.99, the Non-Displayed Order will be repriced at \$10.99, receiving a new timestamp. The Non-Displayed Order may be repriced and receive a new timestamp repeatedly.

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 the original entered limit price of the Non-Displayed Order locked or crossed a Protected Quotation and the NBBO changes so that the Non-Displayed Order could be posted at a price at or closer to its original entered limit price without crossing a Protected Quotation, the Non-Displayed Order may either remain on the Nasdaq Book unchanged or may be cancelled back to the Participant, depending on its choice. For example, if a Non-Displayed Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be priced at \$11. If the Best Offer changes to \$11.01, the Order will not be repriced, but rather will either remain at its current \$11 price or be cancelled back to the Participant, depending on its choice. A Participant's choice with regard to maintaining the Non-Displayed Order or cancelling it is set in advance for each port through which the Participant enters Orders.

- If, after a Non-Displayed Order is posted to the Nasdaq Book, the NBBO changes so that the Non-Displayed Order would cross a Protected Quotation, the Non-Displayed Order will be cancelled back to the

³⁵ The availability of routing for Price to Display Orders reflects a substantive clarification to the language of the existing rule.

³⁶ Rule 611 [sic] requires exchanges to adopt rules that “require . . . members reasonably to avoid . . . [d]isplaying quotations that lock or cross any protected quotations” (emphasis added). Similarly, under Rule 600, a Non-Displayed Order is not a Protected Quotation because it is not displayed. Accordingly, the definition of trade-through does not apply to a transaction at a price that is worse than the price of a Non-Displayed Order. Thus, in opting to use a Non-Displayed Order, a Participant must balance the benefits of not disclosing its trading intentions against the loss of trade-through protection. However, because a Non-Displayed Order may not itself trade-through a Protected Quotation, as described below, the Nasdaq Market Center protects against such trade-throughs by repricing and/or cancelling Non-Displayed Orders that cross or are crossed by a Protected Quotation.

³⁷ See Rules 4703(f) and 4758.

³⁸ Repricing the crossing Non-Displayed Order helps ensure that the Non-Displayed Order will not trade-through the Protected Quotation.

³⁹ These adjustments reflect a substantive clarification to the language of the existing rule.

⁴⁰ Note that because the Order receives a new timestamp, it is processed like a new Order when it is repriced.

⁴¹ *Id.* As noted above, the cancellation of a Non-Displayed Order in this circumstance helps ensure that the Non-Displayed Order will not trade through a Protected Quotation.

Participant. For example, if a Non-Displayed Order to buy at \$11 would lock a Protected Offer of \$11, the Non-Displayed Order will be posted at \$11. If the Best Offer then changes to \$10.99, the Non-Displayed Order will be cancelled back to the Participant.

- If a Non-Displayed Order entered through OUCH or FLITE is assigned a Midpoint Pegging Order Attribute,⁴² 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). The following Order Attributes may be assigned to a Non-Displayed Order:

- Price. As described above, the price of the Order may be adjusted to avoid crossing a Protected Quotation.

- Size.

- “Minimum Quantity”.⁴³

- Time-in-Force.

- Designation as an ISO. In accordance with Regulation NMS, a Non-Displayed Order designated as an ISO would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Non-Displayed Order would cross. As discussed above, a Non-Displayed Order would be accepted at a price that locked a Protected Quotation, even if the Order was not designated as an ISO, because the non-displayed nature of the Order allows it to lock a Protected Quotation under Regulation NMS. Accordingly, the System would not interpret receipt of a Non-Displayed Order marked ISO that locked a Protected Quotation as the basis for determining that the Protected Quotation had been executed for

purposes of accepting additional Orders at that price level.⁴⁴

- Routing (available through RASH, FIX and QIX only).

- Primary Pegging and Market Pegging (available through RASH, FIX and QIX only).

- Pegging to the Midpoint.⁴⁵

- Discretion (available through RASH, FIX and QIX only).

- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.

Post-Only Orders

A “Post-Only Order” is an Order Type designed to have its price adjusted as needed to post to the Nasdaq Book in compliance with Rule 610(d) under Regulation NMS by avoiding the display of quotations that lock or cross any Protected Quotation in a System Security during Market Hours, or to execute against locking or crossing quotations in circumstances where economically beneficial to the Participant entering the Post-Only Order. Post-Only Orders are always displayed, although as discussed below, they may also have a non-displayed price in circumstances similar to a Price to Comply Order. Post-Only Orders are thus designed to allow Participants to help control their trading costs, while also “provid[ing] displayed liquidity to the market and thereby contribut[ing] to public price discovery—an objective that is fully consistent with the Act.”⁴⁶ In addition, under some circumstances, Post-Only Orders provide price improvement.

During Market Hours, a Post-Only Order is evaluated at the time of entry with respect to locking or crossing other Orders on the Nasdaq Book, Protected Quotations, and potential execution as follows:⁴⁷

⁴⁴ For example, if a Non-Displayed Order to buy at \$11 would lock the price of a Protected Offer at \$11, the Non-Displayed Order could be posted at \$11 regardless of whether it was marked as an ISO. Accordingly, even if the Non-Displayed Order was marked as an ISO, the System would not accept a Displayed Order priced at \$11 unless (i) the Displayed Order was itself marked as an ISO, or (ii) market data received by the System demonstrated that the Protected Offer had been removed.

⁴⁵ Pegging to the Midpoint is described below and in proposed Rule 4703. The full functionality of Midpoint Pegging is available through RASH, FIX and QIX, and more limited functionality is available through OUCH and FLITE.

⁴⁶ Securities Exchange Act Release No. 73333 (October 9, 2014), 79 FR 62223 (October 16, 2014) (SR-NYSE-2014-32 and SR-NYSEMKT-2014-56) (hereinafter “SR-NYSE-2014-32 Approval Order”) (approving “Add Liquidity Only” modifier that operates in a manner similar to Post-Only Order).

⁴⁷ Details regarding the processing of a Post-Only Order that locks or crosses both a Protected Quotation and an Order on the Nasdaq Book; the potential execution of a Post-Only Order priced at

- If a Post-Only Order would lock or cross a Protected Quotation, the price of the Order will first be adjusted. If the Order is Attributable, its adjusted price will be one minimum price increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers). If the Order is not Attributable, its adjusted price will be equal to the current Best Offer (for bids) or the current Best Bid (for offers). However, the Order will not post or execute until the Order, as adjusted, is evaluated with respect to Orders on the Nasdaq Book.

- If the adjusted price of the Post-Only Order would not lock or cross an Order on the Nasdaq Book, the Order will be posted in the same manner as a Price to Comply Order (if it is not Attributable) or a Price to Display Order (if it is Attributable). Specifically, if the Post-Only Order is not Attributable, it will be displayed on the Nasdaq Book at a price one minimum price increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers) but will be ranked on the Nasdaq Book with a non-displayed price equal to the current Best Offer (for bids) or to the current Best Bid (for offers). For example, if a Post-Only Order to buy at \$11 would lock a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Post-Only Order is Attributable, it will be ranked and displayed on the Nasdaq Book at a price one minimum price increment lower than the current Best Offer (for bids) or higher than the current Best Bid (for offers). Thus, in the preceding example, the Post-Only Order to buy would be ranked and displayed at \$10.99.

- If the adjusted price of the Post-Only Order would lock or cross an Order on the Nasdaq Book, the Post Only Order will be repriced, ranked, and displayed at one minimum price increment below the current best-priced Order to sell on the Nasdaq Book (for bids) or above the current best-priced Order to buy on the Nasdaq Book (for offers); provided, however, the Post-Only Order will execute if (i) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Nasdaq Book (as measured against the original limit price of the Order) equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Nasdaq Book and subsequently

more than \$1 per share; and the processing of a Post-Only Order with a Time-in-Force of IOC reflect substantive clarifications to the language of the existing rule.

⁴² Midpoint Pegging is described below and in proposed Rule 4703. Specifically, an Order with the Midpoint Pegging Attribute that is entered through OUCH or FLITE is priced upon entry but is not repriced based on changes to the NBBO.

Accordingly, the Order is cancelled if it is no longer at the midpoint between the NBBO.

⁴³ The Minimum Quantity Order Attribute is described below and in proposed Rule 4703.

provided liquidity, or (ii) it is priced at \$1.00 or more and the value of price improvement associated with executing against an Order on the Nasdaq Book (as measured against the original limit price of the Order) equals or exceeds \$0.01 per share. For example, if a Participant entered a Non-Attributable Post-Only Order to buy at \$11.01, another market center is displaying a Protected Offer at \$11, and there is a Non-Displayed Order on the Nasdaq Book to sell at \$11, the adjusted price of the Post-Only Order will be \$11. However, because the Post-Only Order would be executable against the Non-Displayed Order on the Nasdaq Book and would receive \$0.01 price improvement (as measured against the original \$11.01 price of the Post-Only Order), the Post-Only Order would execute.

- If the Post-Only Order would not lock or cross a Protected Quotation but would lock or cross an Order on the Nasdaq Book, the Post Only Order will be repriced, ranked, and displayed at one minimum price increment below the current best-priced Order to sell on the Nasdaq Book (for bids) or above the current best-priced Order to buy on the Nasdaq Book (for offers); provided, however, the Post-Only Order will execute if (i) it is priced below \$1.00 and the value of price improvement associated with executing against an Order on the Nasdaq Book equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the Order posted to the Nasdaq Book and subsequently provided liquidity, or (ii) it is priced at \$1.00 or more and the value of price improvement associated with executing against an Order on the Nasdaq Book equals or exceeds \$0.01 per share. For example, if a Participant entered a Post-Only Order to buy at \$11.02, the Best Offer was \$11.04, and there was a Non-Displayed Order on the Nasdaq Book to sell at \$11.02, the Post-Only Order would be ranked and displayed at \$11.01. However, if a Participant entered a Post-Only Order to buy at \$11.03, the Order would execute against the Order on the Nasdaq Book at \$11.02, receiving \$0.01 per share price improvement.

- If a Post-Only Order is entered with a Time-in-Force of IOC, the price of an Order to buy (sell) will be repriced to the lower of (higher of) (i) one minimum price increment below (above) the price of the Order or (ii) the current Best Offer (Best Bid). The Order will execute against any Order on the Nasdaq Book with a price equal to or better than the adjusted price of the Post-Only Order. If the Post-Only Order cannot execute, it will be cancelled. For example, if a Post-

Only Order to buy at \$11 with a Time-in-Force of IOC was entered and the current Best Offer was \$11.01, the Order would be repriced to \$10.99; however, if the Best Offer was \$10.98, the Order would be repriced to \$10.98.⁴⁸

- If a Post-Only Order would not lock or cross an Order on the Nasdaq Book or any Protected Quotation, it will be posted on the Nasdaq Book at its entered limit price.

During Pre-Market and Post-Market Hours, a Post-Only Order will be processed in a manner identical to Market Hours with respect to locking or crossing Orders on the Nasdaq Book, but will not have its price adjusted with respect to locking or crossing the quotations of other market centers.

If a Post-Only Order is entered through RASH, QIX, or FIX, during System Hours the Post-Only Order may be adjusted in the following manner after initial entry and posting to the Nasdaq Book:⁴⁹

- If the original entered limit price of the Post-Only Order is not being displayed, the displayed (and non-displayed price, if any) of the Order will be adjusted repeatedly in accordance with changes to the NBBO or the best price on the Nasdaq Book, as applicable; provided, however, that if the quotation of another market center moves in a manner that would lock or cross the displayed price of a Post-Only Order, the price(s) of the Post-Only Order will not be adjusted.⁵⁰ For example, if a Non-Attributable Post-Only Order to buy at \$11.02 would cross a Protected Offer of \$11, the Order will be ranked at a non-displayed price of \$11 but will be displayed at \$10.99. If the Best Offer then moves to \$11.01, the displayed price will be changed to \$11 and the non-displayed price at which the Order is ranked will be changed to \$11.01. However, if another market center then displays an offer of \$11 (thereby locking the previously displayed price of the Post-Only Order notwithstanding Rule

⁴⁸ This functionality reflects the overall purpose of the Post-Only Order, which is not to post to the Nasdaq Book in all circumstances, but rather to assist Participants in controlling execution costs by allowing consideration of price improvement, fees, and rebates in the handling of the Order. Thus, entering a Post-Only Order with a Time-in-Force of IOC allows a Participant to stipulate that an Order will execute only if it receives price improvement.

⁴⁹ These adjustments reflect a substantive clarification to the language of the existing rule.

⁵⁰ This means that, in general, the price of the Post-Only Order will move toward, but not away from, its original entered limit price. Because a Post-Only Order is removed from the Nasdaq Book while it is being repriced, however, it is possible that the Order's price will move away from its original entered limit price in the case of a "race condition" where the NBBO changes again while the Order is not on the Nasdaq Book.

610(d) under Regulation NMS), the price of the Post-Only Order will not be changed. The Order may be repriced repeatedly until such time as the Post-Only Order is able to be displayed at its original entered limit price (\$11.02 in the example). The Post-Only Order receives a new timestamp each time its price is changed. If the original entered limit price of the Post-Only Order would no longer lock or cross a Protected Quotation or an Order on the Nasdaq Book, the Post-Only Order will be ranked and displayed at that price and will receive a new timestamp, and will not thereafter be adjusted under this provision.⁵¹

If a Post-Only Order is entered through OUCH or FLITE, the Post-Only Order may be adjusted in the following manner after initial entry and posting to the Nasdaq Book:⁵²

- During Market Hours, if the original entered limit price of the Post-Only Order locked or crossed a Protected Quotation, the Post-Only Order may be adjusted after initial entry in the same manner as a Price to Comply Order (or a Price to Display Order, if it is Attributable). Thus, in the case of a Non-Attributable Post-Only Order that crossed a Protected Quotation, if the NBBO changed so that the Post-Only Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Post-Only Order may either remain on the Nasdaq Book unchanged or may be cancelled back to the Participant, depending on its choice. In the case of a Non-Attributable Post-Only Order that locked a Protected Quotation, if the limit price would no longer lock a Protected Quotation, the Post-Only Order may either remain on the Nasdaq Book unchanged, may be cancelled back to the Participant, or may be ranked and displayed at its original entered limit price, depending on the Participant's choice, and will not thereafter be adjusted under this provision.⁵³ If the Post-Only Order is displayed at its original entered limit price, it will receive a new timestamp. Finally, in the case of an Attributable Post-Only Order that locked or crossed a Protected Quotation, if the NBBO changed so that the Post-Only Order could be ranked and displayed at a price at or closer to its original entered limit price without locking or crossing a Protected Quotation, the Post-Only Order may either remain on the Nasdaq

⁵¹ Thus, the price of the Order will not move beyond its limit price.

⁵² These adjustments reflect a substantive clarification to the language of the existing rule.

⁵³ Thus, the price of the Order will not move beyond its limit price.

Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. A Participant's choice with regard to adjustment of Post-Only Orders is set in advance for each port through which the Participant enters Orders.

- During System Hours, if the original entered limit price of the Post-Only Order locked or crossed an Order on the Nasdaq Book and the Nasdaq Book changes so that the original entered limit price would no longer lock or cross an Order on the Nasdaq Book, the Post-Only Order may either remain on the Nasdaq Book unchanged or may be cancelled back to the Participant, depending on the Participant's choice. For example, if a Post-Only Order to buy at \$11 would lock an Order on the Nasdaq Book priced at \$11, the Post-Only Order will be ranked and displayed at \$10.99. If the Order at \$11 is cancelled or executed, the Post-Only Order may either remain with a displayed price of \$10.99 or be cancelled back to the Participant, depending on the Participant's choice. A Participant's choice with regard to maintaining the Post-Only Order or cancelling it is set in advance for each port through which the Participant enters Orders.

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

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

- Size.

- Time-in-Force.

- Designation as an ISO. In accordance with Regulation NMS, a Post-Only Order designated as an ISO that locked or crossed a Protected Quotation would be processed at its entered limit price, since such a designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross.⁵⁴ However, as described above, a Post-

Only Order designated as an ISO that locked or crossed an Order on the Nasdaq Book would either execute at time of entry or would have its price adjusted prior to posting. Accordingly, the System would not interpret receipt of a Post-Only Order marked ISO that had its price adjusted prior to posting as the basis for determining that any Protected Quotation at the Order's original entered limit price level had been executed for purposes of accepting additional Orders at that price level.⁵⁵ However, if the Post-Only Order is ranked and displayed at its adjusted price, the System would consider the adjusted price level to be open for purposes of accepting additional Orders at that price level. For example, assume that there is a Protected Offer at \$11 and a Participant enters a Post-Only Order marked ISO to buy at \$11. If there are no Orders to sell at \$11 on the Nasdaq Book, the Order to buy will be displayed and ranked at \$11, since the designation of the Order as an ISO reflects the Participant's representation that it has routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross. However, if there was also an Order to sell at \$11 on the Nasdaq Book, the Post-Only Order will be repriced, ranked, and displayed at \$10.99. In that case, the mere fact that the Post-Only Order was designated as an ISO would not allow Nasdaq to conclude that the \$11 price level was "open" for receiving orders to buy at that price; the \$11 price level would be considered open only if market data received by the System demonstrated that the Protected Offer at \$11 had been removed or if a subsequent Displayed Order marked ISO was received and ranked at that price.

- Attribution.
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.
- Display. A Post-Only Order is always displayed, although as provided above, may also have a non-displayed price.

Midpoint Peg Post-Only Orders

A "Midpoint Peg Post-Only Order" is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will execute upon entry against locking or crossing quotes only in circumstances where economically beneficial to the

party entering the Order. Because the Order is priced at the midpoint, it can provide price improvement to incoming Orders when it is executed after posting to the Nasdaq Book. The Midpoint Peg Post-Only Order is available during Market Hours only.

A Midpoint Peg Post-Only Order must be assigned a limit price. When a Midpoint Peg Post-Only Order is entered, it will be priced at the midpoint between the NBBO, unless such midpoint is higher than (lower than) the limit price of an Order to buy (sell), in which case the Order will be priced at its limit price. If the NBBO is locked, the Midpoint Peg Post-Only Order will be priced at the locking price, if the NBBO is crossed, it will nevertheless be priced at the midpoint between the NBBO, and if there is no NBBO,⁵⁶ the Order will be rejected. The Midpoint Peg Post-Only Order will post to the Nasdaq Book unless it is a buy (sell) Order that is priced higher than (lower than) a sell (buy) Order on the Nasdaq Book, in which case it will execute at the price of the Order on the Nasdaq Book. For example, if the Best Bid was \$11 and the Best Offer was \$11.06, the price of the Midpoint Peg Post-Only Order would be \$11.03. If there was a Non-Displayed Order (or another Order with a Non-Display Order Attribute) on the Nasdaq Book to sell at \$11.02, the incoming Midpoint Peg Post-Only Order would execute against it at \$11.02. However, if there was a Non-Displayed Order (or another Order with a Non-Display Order Attribute) to sell at \$11.03, the Midpoint Peg Post-Only Order would post at \$11.03. While a Midpoint Peg Post-Only Order that posts to the Nasdaq Book is locking a preexisting Order, the Midpoint Peg Post-Only Order will execute against an incoming Order only if the price of the incoming sell (buy) Order is lower (higher) than the price of the preexisting Order. Thus, in the previous example, if the incoming Midpoint Peg Post-Only Order locked the preexisting Non-Displayed Order at \$11.03, the Midpoint Peg Post-Only Order could execute only against an incoming Order to sell priced at less than \$11.03.

For purposes of any cross in which a Midpoint Peg Post-Only Order participates, a Midpoint Peg Post-Only Order to buy (sell) that is locking a preexisting Order shall be deemed to have a price equal to the price of the highest sell Order (lowest buy Order) that would be eligible to execute against the Midpoint Peg Post-Only Order in

⁵⁴ In the SR-NYSE-2014-32 Approval Order, the Commission affirmed that exchanges may adopt rules allowing market participants to "ship and post" (i.e., to ship limit orders, as necessary, to remove Protected Quotations while posting an order at the formerly locking price). The Commission further determined that a Day Order with an "Access Liquidity Only" (similar to a Post-Only Order) modifier could be marked as an ISO. Of course, as required by its obligations as a self-regulatory organization, Nasdaq maintains an active regulatory surveillance and enforcement program to verify that Participants are not improperly designating Orders as ISOs.

⁵⁵ The price level would be considered open if a subsequent Displayed Order marked ISO was received at that price or if market data received by the System demonstrated that the Protected Quotation had been removed.

⁵⁶ That is, if no market center is disseminating a displayed bid or a displayed offer, such that it is impossible to determine a midpoint price.

such circumstances. This is the case because, as described above, a Midpoint Peg Post-Only Order that is locking a preexisting Order cedes priority to it and is executable only at a price beyond the limit price of the preexisting Order. Thus, a Midpoint Peg Post-Only Order to buy that locked a preexisting Non-Displayed Order to sell at \$11.03 would be deemed to have a price of \$11.02. It should be noted, however, that Midpoint Peg Post-Only Orders may not be entered prior to the Nasdaq Opening Cross, and the System attempts to cancel Midpoint Peg Post-Only Orders prior to the commencement of the Nasdaq Closing Cross. Thus, the Order would not participate in the Nasdaq Opening Cross under any circumstances, and would participate in the Nasdaq Closing Cross only in a “race” condition whereby the cancellation message was not processed until after the Nasdaq Closing Cross had occurred. A Midpoint Peg Post-Only Order could, however, participate in a Halt Cross under Rule 4753.

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:

- The price of the Midpoint Peg Post-Only Order will be updated repeatedly to equal the midpoint between the NBBO; provided, however, that the Order will not be priced higher (lower) than the limit price of an Order to buy (sell). In the event that the midpoint between the NBBO becomes higher than (lower than) the limit price of an Order to buy (sell), the price of the Order will stop updating, but will resume updating if the midpoint becomes lower than (higher than) the limit price of an Order to buy (sell). Similarly, if a Midpoint Peg Post-Only Order is on the Nasdaq Book and subsequently there is no NBBO, the Order will be cancelled. The Midpoint Peg Post-Only Order receives a new timestamp each time its price is changed.

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), 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.⁵⁷

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

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

Supplemental Orders

A “Supplemental Order” is an Order Type with a Non-Display Order Attribute that is held on the Nasdaq Book in order to provide liquidity at the NBBO through a special execution process described in Rule 4757(a)(1)(D). A Supplemental Order may be entered through the OUCH protocol only. The Order allows a Participant to provide greater depth of liquidity at the NBBO

without signaling the full extent of its trading interest to other Participants.

Upon entry, a Supplemental Order will always post to the Nasdaq Book at a price equal to the Best Bid (for buys) or the Best Offer (for sells). Thereafter, the Supplemental Order may execute against an Order that is designated as eligible for routing, after the Order has executed against all other liquidity on the Nasdaq Book but before routing. An Order will execute against a Supplemental Order(s) only at the NBBO, only if the NBBO is not locked or crossed, and only if the Order can be executed in full. If a Supplemental Order is not executed in full, the remaining portion of the Supplemental Order shall remain on the Nasdaq Book as a Supplemental Order until the Supplemental Order is fully executed, the Supplemental Order is cancelled by the Participant that entered the Supplemental Order, or the size of the Supplemental Order is reduced to less than one normal unit of trading (in which case the Supplemental Order will be cancelled automatically).

The following Order Attributes may be assigned to a Supplemental Order:

- Price. The Price of a Supplemental Order to buy is always equal to the Best Bid, and the price of a Supplemental Order to sell is always equal to the Best Offer.
- Size. All Supplemental Orders must be entered with a size of one or more normal units of trading. When a Supplemental Order is reduced to less than one normal unit of trading, the remainder of the Supplemental Order will be cancelled automatically.
- A Time-in-Force other than IOC. A Supplemental Order may be entered at any time during Pre-Market Hours or Market Hours, but is available for potential execution only during Market Hours. Any Supplemental Orders still on the Nasdaq Book at the conclusion of Market Hours will be cancelled. Supplemental Orders may not participate in the Nasdaq Opening Cross or the Nasdaq Closing Cross.
- Primary Pegging. A Supplemental Order is not pegged to the NBBO through the regular Primary Pegging Order Attribute, and therefore does not have its price adjusted continually. However, if an incoming Order is potentially executable against a Supplemental Order, the System will set the price of the Supplemental Order at the NBBO on the same side of the market, with no offset. As a result, a Supplemental Order may only execute at the NBBO.
- Non-Display. All Supplemental Orders are Non-Displayed.

⁵⁷ The functionality associated with OUCH and FLITE reflects a substantive clarification to the existing rule.

Market Maker Peg Order

A "Market Maker Peg Order" is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2).⁵⁸ The price of the Market Maker Peg Order is set with reference to a "Reference Price" in order to keep the price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH, FIX or QIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current Best Bid (Best Offer) (including Nasdaq), or if no such Best Bid or Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (e.g., dividends or stock splits) in the security.

Upon entry, the price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Rule 4613) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). For example, if the Best Bid is \$10 and the Designated Percentage for the security is 8%, the price of a Market Maker Peg Order to buy would be \$9.20. If the limit price of the Order is not within the Designated Percentage, the Order will be sent back to the Participant.

Once a Market Maker Peg Order has posted to the Nasdaq Book, its price is adjusted if needed as the Reference Price changes. Specifically, if as a result of a change to the Reference Price, the difference between the price of the Market Maker Peg Order and the Reference Price reaches the Defined Limit (as defined in Rule 4613), the price of a Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. In the foregoing example, if the Defined Limit is 9.5% and the Best Bid increased to \$10.17, such that the price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to \$9.35, or 8% away from the Best Bid. Note that calculated prices of less than the minimum increment will be

rounded in a manner that ensures that the posted price will be set at a level that complies with the percentages stipulated by this rule. If the limit price of the Order is outside the Defined Limit, the Order will be sent back to the Participant.

Similarly, if as a result of a change to the Reference Price, the price of a Market Maker Peg Order to buy (sell) is within one minimum price variation more than (less than) a price that is 4% less than (more than) the Reference Price, rounded up (down), then the price of the Market Maker Peg Order to buy (sell) will be adjusted to the Designated Percentage away from the Reference Price. For example, if the Best Bid is \$10 and the Designated Percentage for the security is 8%, the price of a Market Maker Peg Order to buy would initially be \$9.20. If the Best Bid then moved to \$9.57, such that the price of the Market Maker Peg Order would be a minimum of \$0.01 more than a price that is 4% less than the Best Bid, rounded up (i.e., $\$9.57 - (\$9.57 \times 0.04) = \$9.1872$, rounding up to \$9.19), the Order will be repriced to \$8.81, or 8% away from the Best Bid.

A Market Maker may enter a Market Maker Peg Order with a more aggressive offset than the Designated Percentage, but such an offset will be expressed as a price difference from the Reference Price. Such a Market Maker Peg Order will be repriced in the same manner as a Price to Display Order with Attribution and Primary Pegging. As a result, the price of the Order will be adjusted whenever the price to which the Order is pegged is changed.

A new timestamp is created for a Market Maker Peg Order each time that its price is adjusted. In the absence of a Reference Price, a Market Maker Peg Order will be cancelled or rejected. If, after entry, a Market Maker Peg Order is priced based on a Reference Price other than the NBBO and such Market Maker Peg Order is established as the Best Bid or Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until a new Reference Price is established. If a Market Maker Peg Order is repriced 1,000 times, it will be cancelled. This restriction is designed to conserve System resources by limiting the persistence of Orders that update repeatedly without any reasonable prospect of execution.

Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 4613.

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

- Price. As discussed above, the price of Market Maker Peg Order is established by the Nasdaq Market Center based on the Reference Price, the Designated Percentage (or a narrower offset established by the Market Maker), the Defined Limit, and the 4% minimum difference from the NBBO.
- Size.
- A Time-in-Force other than IOC or "Good-till-Cancelled".
- Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross.
- If the Market Maker designates a more aggressive offset, Primary Pegging is required.
- Attribution. All Market Maker Peg Orders are Attributable.
- Display. Market Maker Peg Orders are always Displayed.

Market on Open Order⁵⁹

A "Market On Open Order" or "MOO Order" is an Order Type entered without a price that may be executed only during the Nasdaq Opening Cross. Subject to the qualifications provided below, MOO Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 9:28 a.m. ET. An MOO Order may not be cancelled or modified at or after 9:28 a.m. ET. An MOO Order shall execute only at the price determined by the Nasdaq Opening Cross.

The following Order Attributes may be assigned to a Market On Open Order:

- Price. An MOO Order is entered without a price and shall execute only at the price determined by the Nasdaq Opening Cross.
- Size.
- Time-in-Force. An MOO Order may execute only in the Nasdaq Opening Cross. However, a Participant may designate the Time-in-Force for an MOO Order either by designating a Time-in-Force of "On Open" or by entering another Order Type with a Market Pegging Attribute and flagging the Order to participate in the Nasdaq Opening Cross. An MOO Order entered through RASH or FIX with a Time-in-Force of IOC and flagged to participate in the Nasdaq Opening Cross that is entered after the time of the Nasdaq Opening Cross will be accepted but will be

⁵⁸ As with other Order Types, the Market Maker Peg Order must be an Order either to buy or to sell; thus, at least two Orders would be required to maintain a two-sided quotation.

⁵⁹ The definition of Market On Open Order, as well as the definitions of Limit On Open Order, Opening Imbalance Only Order, Market On Close Order, Limit On Close Order, and Imbalance Only Order, is currently found in Rule 4752 and 4754. Accordingly, conforming changes are being proposed to those rules to reflect the adoption of the definitions in new Rule 4702.

converted into a Non-Displayed Order with a Time-in-Force of IOC and a price established using the Market Pegging Order Attribute with no offset. An Order with a Market Pegging Attribute and a Time-in-Force other than IOC that is flagged to participate in the Nasdaq Opening Cross and entered at or after 9:28 a.m. will be held and entered into the System after the completion of the Nasdaq Opening Cross. All other MOO Orders entered at or after 9:28 a.m. will be rejected.

- Participation in the Nasdaq Opening Cross is required for this Order Type.

Limit on Open Order

A “Limit On Open Order” or “LOO Order” is an Order Type entered with a price that may be executed only in the Nasdaq Opening Cross, and only if the price determined by the Nasdaq Opening Cross is equal to or better than the price at which the LOO Order was entered. Subject to the qualifications provided below, LOO Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 9:28 a.m. ET.

The following Order Attributes may be assigned to a Limit On Open Order:

- Price.
- Size.
- Time-in-Force. In general, an LOO Order may execute only in the Nasdaq Opening Cross. However, a Participant may designate the Time-in-Force for an LOO Order either by designating a Time-in-Force of “On Open,” in which case the Order will execute solely in the Nasdaq Opening Cross, or by entering another Order Type and Time-in-Force and flagging the Order to participate in the Nasdaq Opening Cross. In the latter case, if the Participant designates a Time-in-Force of IOC, the Order will participate solely in the Nasdaq Opening Cross. If the Participant enters a Time-in-Force that continues after the time of the Nasdaq Opening Cross, the Order will participate in the Nasdaq Opening Cross like an LOO Order, while operating thereafter in accordance with its designated Order Type and Order Attributes (if not executed in full in the Nasdaq Opening Cross). Such an Order may be referred to as an “Opening Cross/Market Hours Order.” If such an Order has a Time-in-Force that continues until at least the time of the Nasdaq Closing Cross, the Order may be referred to as a “Cross to Cross Order.”

- Following the Nasdaq Opening Cross, an Opening Cross/Market Hours Order may not operate as a Post-Only Order, Midpoint Peg Post-Only Order, a Supplemental Order, a Retail Order, or an RPI Order. In the case of a Market

Maker Peg Order entered prior to 9:28 a.m. ET that is also designated to participate in the Nasdaq Opening Cross, the price of the Order for purposes of operating as an LOO Order will be established on entry and will not thereafter be pegged until after the completion of the Nasdaq Opening Cross. An Opening Cross/Market Hours Order that is entered between 9:28 a.m. and the time of the Nasdaq Opening Cross will be (i) held and entered into the System after the completion of the Nasdaq Opening Cross if it has been assigned a Pegging Attribute or Routing Attribute, (ii) treated as an Opening Imbalance Only Order and entered into the System after the completion of the Nasdaq Opening Cross if entered through RASH, QIX, or FIX but not assigned a Pegging Attribute or Routing Attribute, or (iii) treated as an Opening Imbalance Only Order and cancelled after the Nasdaq Opening Cross if entered through OUCH or FLITE. An Opening Cross/Market Hours Order entered through RASH or FIX after the time of the Nasdaq Opening Cross will be accepted but the Nasdaq Opening Cross flag will be ignored. A Routable Order flagged to participate in the Nasdaq Opening Cross with a Time-in-Force other than IOC and entered at or after 9:28 a.m. will be held and entered into the System after the Nasdaq Opening Cross. All other LOO Orders and Opening Cross/Market Hours Orders entered at or after 9:28 a.m. will be rejected.⁶⁰

- Participation in the Nasdaq Opening Cross is required for this Order Type.

Opening Imbalance Only Order

An “Opening Imbalance Only Order” or “OIO Order” is an Order Type entered with a price that may be executed only in the Nasdaq Opening Cross and only against MOO Orders, LOO Orders, or Early Market Hours Orders (as defined in Rule 4752). OIO Orders may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Opening Cross, but may not be cancelled or modified at or after 9:28 a.m. ET. If the entered price of an OIO Order to buy (sell) is higher than (lower than) the highest bid (lowest offer) on the Nasdaq Book, the price of the OIO Order will be modified repeatedly to equal the highest bid (lowest offer) on the Nasdaq Book; provided, however, that the price of the Order will not be moved beyond its stated limit price. Thus, for example, if an OIO Order to

buy was entered with a price of \$11 and the current highest bid on the Nasdaq Book was \$10.99, the OIO Order would be priced at \$10.99. If the highest bid subsequently became \$10.98, the OIO Order would again be repriced. However, if the highest bid moved to \$11.01, the OIO Order would not be repriced.

The following Order Attributes may be assigned to an Opening Imbalance Only Order:

- Price.
- Size.
- Time-in-Force. An OIO Order may execute only in the Nasdaq Opening Cross. An OIO Order entered after the time of the execution of the Nasdaq Opening Cross will be rejected.
- Participation in the Nasdaq Opening Cross is required for this Order Type.

Market On Close Order

A “Market On Close Order” or “MOC Order” is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. Subject to the qualifications provided below, MOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, an MOC Order can be cancelled and/or modified only if the Participant requests that Nasdaq correct a legitimate error in the Order (e.g., Side, Size, Symbol, or Price, or duplication of an Order). MOC Orders cannot be cancelled or modified at or after 3:55 p.m. ET for any reason. An MOC Order shall execute only at the price determined by the Nasdaq Closing Cross.

The following Order Attributes may be assigned to a Market On Close Order:

- Price. An MOC Order is entered without a price and shall execute only at the price determined by the Nasdaq Closing Cross.
- Size.
- Time-in-Force. An MOC Order may execute only in the Nasdaq Closing Cross. However, a Participant may designate the Time-in-Force for an MOC Order either by designating a Time-in-Force of “On Close” or by entering a Time-in-Force of IOC and flagging the Order to participate in the Nasdaq Closing Cross. All MOC Orders entered after 3:50 p.m. ET will be rejected. Participation in the Nasdaq Closing Cross is required for this Order Type.

Limit On Close Order

A “Limit On Close Order” or “LOC Order” is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the

⁶⁰Details with regard to the treatment of LOO Orders entered after 9:28 a.m. reflect a substantive clarification to existing rules.

price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. Subject to the qualifications provided below, LOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, an LOC Order can be cancelled but not modified, and only if the Participant requests that Nasdaq correct a legitimate error in the Order (*e.g.*, Side, Size, Symbol, or Price, or duplication of an Order).

The following Order Attributes may be assigned to a Limit On Close Order:

- Price.
- Size.
- Time-in-Force. In general, an LOC Order may execute only in the Nasdaq Closing Cross. However, a Participant may designate the Time-in-Force for an LOC Order either by designating a Time-in-Force of "On Close," in which case the Order will execute solely in the Nasdaq Closing Cross, or by entering another Order Type and Time-in-Force and flagging the Order to participate in the Nasdaq Closing Cross. In the latter case, if the Participant designates a Time-in-Force of IOC, the Order will participate solely in the Nasdaq Closing Cross. If the Participant enters a Time-in-Force that continues after the time of the Nasdaq Closing Cross, the Order will participate in the Nasdaq Closing Cross like an LOC Order, while operating thereafter in accordance with its designated Order Type and Order Attributes (if not executed in full in the Nasdaq Closing Cross). Such an Order may be referred to as a "Closing Cross/Extended Hours Order."

- Following the Nasdaq Closing Cross, a Closing Cross/Extended Hours Order may not operate as a Post-Only Order, Midpoint Peg Post-Only Order, Supplemental Order, Retail Order, or RPI Order. In the case of a Market Maker Peg Order entered prior to 3:50 p.m. ET that is also designated to participate in the Nasdaq Closing Cross, the price of the Order for purposes of operating as an LOC Order will be established on entry and will not thereafter be pegged until after the completion of the Nasdaq Closing Cross. A Closing Cross/Extended Hours Order that is entered between 3:50 p.m. and the time of the Nasdaq Closing Cross will be (i) rejected if it has been assigned a Pegging Attribute, (ii) treated as an Imbalance Only Order and then entered into the System after the completion of the Nasdaq Closing Cross if entered through RASH, QIX, or FIX but not assigned a Pegging Attribute, and (iii) treated as an Imbalance Only Order and cancelled

after the Nasdaq Closing Cross if entered through OUCH or FLITE. A Closing Cross/Extended Hours Order entered through OUCH, FLITE, RASH, or FIX with a Time-in-Force other than IOC after the time of the Nasdaq Closing Cross will be accepted but the Nasdaq Closing Cross flag will be ignored. All other LOC Orders and Closing Cross/Extended Hours Orders entered at or after 3:50 p.m. ET will be rejected.⁶¹

- Participation in the Nasdaq Closing Cross is required for this Order Type.

Imbalance Only Order

An "Imbalance Only Order" or "IO Order" is an Order entered with a price that may be executed only in the Nasdaq Closing Cross and only against MOC Orders or LOC Orders. IO Orders may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross, but may not [*sic*] cancelled or modified at or after 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, however, an IO Order can be cancelled and/or modified if the Participant requests that Nasdaq correct a legitimate error in the Order (*e.g.*, Side, Size, Symbol, or Price, or duplication of an Order). IO Orders cannot be cancelled or modified at or after 3:55 p.m. ET for any reason. If the price of an IO Order to buy (sell) is higher than (lower than) the highest bid (lowest offer) on the Nasdaq Book, the price of the IO Order will be modified repeatedly to equal the highest bid (lowest offer) on the Nasdaq Book; provided, however, that the price of the Order will not be moved beyond its stated limit price. Thus, for example, if an IO Order to buy was entered with a price of \$11 and the current highest bid on the Nasdaq Book was \$10.99, the IO Order would be priced at \$10.99. If the highest bid subsequently became \$10.98, the IO Order would again be repriced. However, if the highest bid moved to \$11.01, the IO Order would not be repriced.

The following Order Attributes may be assigned to an Imbalance Only Order:

- Price.
- Size.
- Time-in-Force. An IO Order may execute only in the Nasdaq Closing Cross. An IO Order entered after the time of the Nasdaq Closing Cross will be rejected.

- Participation in the Nasdaq Closing Cross is required for this Order Type.

⁶¹ Details with regard to the treatment of LOC Orders entered after 3:55 p.m. reflect a substantive clarification to existing rules.

Retail Price Improving Order and Retail Order

These Order Types are currently described in Rule 4780 and were operated under a pilot program that expired on December 31, 2014. Because Nasdaq has opted not to extend this pilot, it is proposing to delete Rule 4780. Accordingly, these Order Types are not described in the restated rules.⁶²

Order Attributes

Proposed Rule 4702 lists the Order Attributes that may be assigned to specific Order Types. Proposed Rule 4703 details the parameters of each Order Attribute.

Time-in-Force

The "Time-in-Force" assigned to an Order means the period of time that the Nasdaq Market Center will hold the Order for potential execution. Participants specify an Order's Time-in-Force by designating a time at which the Order will become active and a time at which the Order will cease to be active. The available times for activating Orders are:

- The time of the Order's receipt by the Nasdaq Market Center;
- the Nasdaq Opening Cross (or 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs);
- Market Hours, beginning after the completion of the Nasdaq Opening Cross (or at 9:30 a.m. ET in the case of a security for which no Nasdaq Opening Cross occurs);
- the Nasdaq Closing Cross (or the end of Market Hours in the case of a security for which no Nasdaq Closing Cross occurs);
- 8:00 a.m. ET, in the case of an Order using the SCAN routing strategy⁶³ that is entered prior to 8:00 a.m. ET;
- the beginning of the Display-Only Period, in the case of a security that is the subject of a trading halt and for which trading will resume pursuant to a halt cross; and
- the resumption of trading, in the case of a security that is the subject of a trading halt and for which trading resumes without a halt cross.

The available times for deactivating Orders are:

- "Immediate" (*i.e.*, immediately after determining whether the Order is marketable);

⁶² Nasdaq's affiliate exchange, NASDAQ OMX BX, Inc., however, has recently adopted these Order Types. See Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (SR-BX-2014-048).

⁶³ The SCAN routing strategy is described in Rule 4758. The ability to enter a SCAN Order with a Time-in-Force that commences at 8:00 a.m. reflects a substantive clarification to existing rules.

- the end of Market Hours;
- the end of System Hours;
- one year after entry; or
- a specific time identified by the Participant; provided, however, that an Order specifying an expire time beyond the current trading day will be cancelled at the end of the current trading day.

Notwithstanding the Time-in-Force originally designated for an Order, a Participant may always cancel an Order after it is entered.

The following Times in Force are referenced elsewhere in Nasdaq's Rules by the designations noted below:

- An Order that is designated to deactivate immediately after determining whether the Order is marketable may be referred to as having a Time in Force of "Immediate or Cancel" or "IOC". Except as provided in Rule 4702 with respect to Opening Cross/Market Hours Orders and Closing Cross/Extended Hours Orders, MOO, LOO, OIO, MOC, LOC and OI Orders all have a Time in Force of IOC, because they are designated for execution in the Nasdaq Opening Cross or the Nasdaq Closing Cross, as applicable, and are cancelled after determining whether they are executable in such cross. Such an Order may also be referred to as having a Time-in-Force of "On Open" or "On Close", respectively. An MOO, LOO, OIO, MOC, LOC or IO Order, or any other Order with a Time-in-Force of IOC entered between 9:30 a.m. ET and 4:00 p.m. ET, may be referred to as having a Time-in-Force of "Market Hours Immediate or Cancel" or "MIOC". An Order with a Time-in-Force of IOC that is entered at any time between 4:00 a.m. ET and 8:00 p.m. ET may be referred to as having a Time-in-Force of "System Hours Immediate or Cancel" or "SIOC".

- An Order that is designated to deactivate at 8:00 p.m. may be referred to as having a Time in Force of "System Hours Day" or "SDAY".

- An Order that is designated to deactivate one year after entry may be referred to as a "Good-till-Cancelled" or "GTC" Order. If a GTC Order is designated as eligible for execution during Market Hours only, it may be referred to as having a Time in Force of "Market Hours Good-till-Cancelled" or "MGTC". If a GTC is designated as eligible for execution during System Hours, it may be referred to as having a Time in Force of "System Hours Good-till-Cancelled" or "SGTC".

- An Order that is designated to deactivate at the time specified in advance by the entering Participant may be referred to as having a Time-in-Force of "System Hours Expire Time" or "SHEX".

- An Order that is designated to activate at any time during Market Hours and deactivate at the completion of the Nasdaq Closing Cross may be referred to as having a Time-in-Force of "Market Hours Day" or "MDAY". An Order entered with a Time-in-Force of MDAY after the completion of the Nasdaq Closing Cross will be rejected.

- An Order that is designated to activate when entered and deactivate at the completion of the Nasdaq Closing Cross may be referred to as having a Time in Force of "Good-till-Market Close" or "GTMC". GTMC Orders entered after 4:00 p.m. ET will be rejected.

- A Participant entering an Order using the SCAN routing strategy prior to 8:00 a.m. ET may designate the Order to activate upon entry, or at 8:00 a.m. ET. The latter option may be referred to as "ESCN".

Size

Except as otherwise provided, an Order may be entered in any whole share size between one share and 999,999 shares. Orders for fractional shares are not permitted. The following terms may be used to describe particular Order sizes:

- "normal unit of trading" or "round lot" means the size generally employed by traders when trading a particular security, which is 100 shares in most instances;

- "mixed lot" means a size of more than one normal unit of trading but not a multiple thereof; and

- "odd lot" means a size of less than one normal unit of trading.

Price

With limited exceptions, all Orders must have a price, such that they will execute only if the price available is equal to or better than the price of the Order. The maximum price that the System will accept is \$199,999.99. MOO and MOC Orders are not assigned a price by the entering party and execute at the price of the Nasdaq Opening Cross and Nasdaq Closing Cross, respectively. Moreover, certain Orders have a price that is determined by the Nasdaq Market Center based on the NBBO or other reference prices, rather than by the Participant. As described below with respect to the Pegging Order Attribute, an Order may have a price that it pegged to the opposite side of the market, in which case the Order will behave like a "market order" or "unpriced order" (*i.e.*, an Order that executes against accessible liquidity on the opposite side of the market, regardless of its price).

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 Pegging will be set with reference to the highest bid or lowest offer disseminated by a market center other than Nasdaq.⁶⁴ An Order with a Pegging Order Attribute may be referred to as a "Pegged Order." The price to which an Order is pegged is 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.

Pegging is available only during Market Hours. An Order with Pegging may specify a limit price beyond which the Order may not be executed; provided, however, that if an Order has been assigned a Pegging Order Attribute and a Discretion Order Attribute, the Order may execute at any price within the discretionary price range, even if beyond the limit price specified with respect to the Pegging Order Attribute. If an Order with Pegging is priced at its limit price, the price of the Order may nevertheless be changed to a less aggressive price based on changes to the Inside Quotation.⁶⁵ In addition, an Order with Primary Pegging or Market Pegging may specify an Offset Amount,

⁶⁴ This is the case because otherwise the Pegged Order would become pegged to itself if set the NBBO.

⁶⁵ For example, if an Order to buy with Primary Pegging is entered with a limit price of \$11.05 at a time when the Inside Bid is \$11, the initial price of the Order will be \$11. If, thereafter, the Inside Bid changes to \$11.05, \$11.06, and \$11.04, the price of the Order at such times will be \$11.05, \$11.05, and \$11.04.

such that the price of the Order will vary from the Inside Quotation by the selected Offset Amount. The Offset Amount may be either aggressive or passive. Thus, for example, if a Participant entered an Order to buy with Primary Pegging and a passive Offset Amount of \$0.05 and the Inside Bid was \$11, the Order would be priced at \$10.95. If the Participant selected an aggressive Offset Amount of \$0.02, however, the Order would be priced at \$11.02. An Order with Primary Pegging and an Offset Amount will not be Displayed, unless the Order is Attributable. An Order with Midpoint Pegging will not be Displayed. An Order with Market Pegging and no Offset behaves as a "market order" with respect to any liquidity on the Nasdaq Book at the Inside Quotation on the opposite side of the market because it is immediately executable at that price. If, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected. In the case of an Order with Midpoint Pegging, if the Inside Bid and Inside Offer are locked, the Order will be priced at the locking price, if the Inside Bid and Inside Offer are crossed, the Order will nevertheless be priced at the midpoint between the Inside Bid and Inside Offer, and if there is no Inside Bid and/or Inside Offer, the Order will be rejected.

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 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 NBBO changes so that the Midpoint is lower than (higher than) the price of an Order to buy (sell), the Pegged Order will be cancelled back to the Participant.

An Order entered through RASH, QIX or FIX with Pegging will have its price set upon initial entry and will thereafter have its price reset in accordance with changes to the relevant Inside Quotation. An Order with Pegging receives a new timestamp whenever its price is updated and therefore will be evaluated with respect to possible execution (and routing, if it has been assigned a Routing Order Attribute) in the same manner as a newly entered Order. If the price to which an Order is pegged is not available, the Order will be rejected.

Pegging functionality allows a Participant to have the System adjust the price of the Order continually in

order to keep the price within defined parameters. Thus, the System performs price adjustments that would otherwise be performed by the Participant through cancellation and reentry of Orders. The fact that a new timestamp is created for a Pegged Order whenever it has its price adjusted allows the Order to seek additional execution opportunities and ensures that the Order does not "jump the queue" with respect to any Orders that were previously at the Pegged Order's new price level.

If an Order with Primary Pegging is updated 1,000 times, it will be cancelled; if an Order with other forms of Pegging is updated 10,000 times, it will be cancelled. This restriction is designed to conserve System resources by limiting the persistence of Orders that update repeatedly without any reasonable prospect of execution.

Minimum Quantity

Minimum Quantity is an Order Attribute that allows a Participant to provide that an Order will not execute unless a specified minimum quantity of shares can be obtained. Thus, the functionality serves to allow a Participant that may wish to buy or sell a large amount of a security to avoid signaling its trading interest unless it can purchase a certain minimum amount. An Order with a Minimum Quantity Order Attribute may be referred to as a "Minimum Quantity Order." For example, a Participant could enter an Order with a Size of 1000 shares and specify a Minimum Quantity of 500 shares.

A Participant may specify two alternatives with respect to the processing of a Minimum Quantity Order at time of entry:

- First, the Participant may specify that the minimum quantity condition may be satisfied by execution against multiple Orders. In that case, upon entry, the System would determine whether there were one or more posted Orders executable against the incoming Order with an aggregate size of at least the minimum quantity (500 shares in the above example). If there were not, the Order would post on the Nasdaq Book in accordance with the characteristics of its underlying Order Type.
- Second, the Participant may specify that the minimum quantity condition must be satisfied by execution against one or more Orders, each of which must have a size that satisfies the minimum quantity condition. If there are such Orders but there are also other Orders that do not satisfy the minimum quantity condition, the Minimum Quantity Order will be partially

executed and the remainder of the Order will be cancelled. For example, if a Participant entered an Order to buy at \$11 with a size of 1,500 shares and a minimum quantity condition of 500 shares, and there were three Orders to sell at \$11 on the Nasdaq Book, two with a size of 500 shares each and one with a size of 200 shares, the two 500 share Orders would execute and the remainder of the Minimum Quantity Order would be cancelled.

Alternatively, if the Order would lock or cross Orders on the Nasdaq Book but none of the resting Orders would satisfy the minimum quantity condition, an Order with a minimum quantity condition to buy (sell) will be repriced to one minimum price increment lower than (higher than) the lowest price (highest price) of such Orders. For example, if there was an Order to buy at \$11 with a minimum quantity condition of 500 shares, and there were resting Orders on the Nasdaq Book to sell 200 shares at \$10.99 and 300 shares at \$11, the Order would be repriced to \$10.98 and ranked at that price.

Once posted to the Nasdaq Book, a Minimum Quantity Order retains its Minimum Quantity Order Attribute, such that the Order may execute only against incoming Orders with a size of at least the minimum quantity condition. An Order that has a Minimum Quantity Order Attribute and that posts to the Nasdaq Book will not be displayed.

Upon entry, an Order with a Minimum Quantity Order Attribute must have a size of at least one round lot. An Order entered through OUCH or FLITE may have a minimum quantity condition of any size of at least one round lot. An Order entered through RASH, QIX or FIX must have a minimum quantity of one round lot or any multiple thereof, and a mixed lot minimum quantity condition will be rounded down to the nearest round lot. In the event that the shares remaining in the size of an Order with a Minimum Quantity Order Attribute following a partial execution thereof are less than the minimum quantity specified by the Participant entering the Order, the minimum quantity value of the Order will be reduced to the number of shares remaining. An Order with a Minimum Quantity Order Attribute may not be displayed; if a Participant marks an Order with both a Minimum Quantity Order Attribute and a Display Order Attribute, the System will accept the Order but will give a Time-in-Force of IOC, regardless of the Time-in-Force marked by the Participant. An Order marked with a Minimum Quantity

Order Attribute and a Routing Order Attribute will be rejected.

Routing

Routing is an Order Attribute that allows a Participant to designate an Order to employ one of several Routing Strategies offered by Nasdaq, as described in Rule 4758; such an Order may be referred to as a "Routable Order." Upon receipt of an Order with the Routing Order Attribute, the System will process the Order in accordance with the applicable Routing Strategy. In the case of a limited number of Routing Strategies, the Order will be sent directly to other market centers for potential execution. For most other Routing Strategies, the Order will attempt to access liquidity available on Nasdaq in the manner specified for the underlying Order Type and will then be routed in accordance with the applicable Routing Strategy. Shares of the Order that cannot be executed are then returned to Nasdaq, where they will (i) again attempt to access liquidity available on Nasdaq and (ii) post to the Nasdaq Book or be cancelled, depending on the Time-in-Force of the Order. Under certain Routing Strategies, the Order may be routed again if the System observes an accessible quotation of another market center, and returned to Nasdaq again for potential execution and/or posting to the Nasdaq Book.

In connection with the trading of securities governed by Regulation NMS, all Orders shall be routed for potential execution in compliance with Regulation NMS. Where appropriate, Routable Orders will be marked as Intermarket Sweep Orders.

Discretion

Discretion is an Order Attribute under which an Order has a non-displayed discretionary price range within which the entering Participant is willing to trade; such an Order may be referred to as a "Discretionary Order."⁶⁶ Thus, an Order with Discretion has both a price (for example, buy at \$11) and a discretionary price range (for example, buy up to \$11.03). Depending on the Order Type used, the price may be displayed (for example, a Price to Display Order) or non-displayed (for example, a Non-Displayed Order). The discretionary price range is always non-displayed. In addition, it should be noted that the Discretion Order Attribute may be combined with the Pegging Order Attribute, in which case either the price of the Order or the

discretionary price range or both may be pegged in the ways described in Rule 4702(d) with respect to the Pegging Order Attribute. For example, an Order with Discretion to buy might be pegged to the Best Bid with a \$0.05 passive Offset and might have a discretionary price range pegged to the Best Bid with a \$0.02 passive Offset. In that case, if the Best Bid was \$11, the price of the Order would be \$10.95, with a discretionary price range up to \$10.98. If the Best Bid moved to \$10.99, the price of the Order would then be \$10.94, with a discretionary price range up to \$10.97. Alternatively, if the price of the Order was pegged but the discretionary price range was not, the price of the Order would be \$10.94, but the discretionary price range would continue to range up to \$10.98. Likewise, if the discretionary price range was pegged but the price of the Order was not, the Order would remain priced at \$10.95 but with a discretionary price range of up to \$10.97. A Participant may also specify a limit price beyond which the discretionary price range may not extend.

Under the circumstances described below, the Nasdaq Market Center processes an Order with Discretion by generating a Non-Displayed Order with a Time-in-Force of IOC (a "Discretionary IOC") that will attempt to access liquidity available within the discretionary price range. The Discretionary IOC will not be permitted to execute, however, if the price of the execution would trade through a Protected Quotation. If more than one Order with Discretion satisfies conditions that would cause the generation of a Discretionary IOC simultaneously, the order in which such Discretionary IOCs are presented for execution is random, based on the respective processing time for each such Order. Whenever a Discretionary IOC is generated, the underlying Order with Discretion will be withheld or removed from the Nasdaq Book and will then be routed and/or placed on the Nasdaq Book if the Discretionary IOC does not exhaust the full size of the underlying Order with Discretion, with its price determined by the underlying Order Type and Order Attributes selected by the Participant.⁶⁷ Because the

circumstances under which a Discretionary IOC will be generated are dependent upon a range of factors, several specific scenarios are described below.

- If an Order has been assigned a Discretion Order Attribute, but has not been assigned a Routing Order Attribute, upon entry of the Order, the Nasdaq Market Center will automatically generate a Discretionary IOC with a price equal to the highest price for an Order with Discretion to buy (lowest price for an Order with Discretion to sell) within the discretionary price range and a size equal to the full size of the underlying Order to determine if there are any Orders within the discretionary price range on the Nasdaq Book. If the Discretionary IOC does not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Nasdaq Book in accordance with the parameters that apply to the underlying Order Type. Thus, for example, if a Participant enters a Price to Display Order to buy at \$11 with a discretionary price range of up to \$11.03, upon entry the Nasdaq Market Center will generate a Discretionary IOC to buy priced at \$11.03. If there is an Order on the Nasdaq Book to sell priced at \$11.02 and an execution at \$11.02 would not trade through a Protected Quotation, the Discretionary IOC will execute against the Order on the Nasdaq Book, up to the full size of each Order. Any remaining size of the Price to Display Order would post to the Nasdaq Book in accordance with its parameters.

- After the Order posts to the Nasdaq Book, the Nasdaq Market Center System will examine whether at any time there is an Order on the Nasdaq Book with a price in the discretionary price range against which the Order with Discretion could execute. In doing so, the Nasdaq Market Center System will examine all Orders (including Orders that are not Displayed). If the Nasdaq Market Center System observes such an Order, it will generate a Discretionary IOC with a price equal to the highest price for an Order to buy (lowest price for an Order to sell) within the discretionary price range and a size equal to the full size of the Order.

- If an Order that uses a passive routing strategy (*i.e.*, a strategy such as SCAN⁶⁸ that does not seek routing opportunities after posting to the Nasdaq Book) has been assigned a Discretion Order Attribute but does not have a pegged discretionary price range,

⁶⁶ The proposed rule text reflects a substantive clarification to the existing description of Discretionary Orders.

⁶⁷ It should be noted that a Discretionary IOC is deemed to be accessing liquidity for purposes of Nasdaq's schedule of fees and rebates, unless one Discretionary IOC executes against another Discretionary IOC, in which case the Order that had reached the Nasdaq Book first would be deemed to provide liquidity. See Rule 7018(d). Thus, a Participant may not use a Discretionary IOC to obtain a rebate for accessing previously posted liquidity.

⁶⁸ The SCAN routing strategy is described in Rule 4758.

upon entry of the Order, the Nasdaq Market Center will examine all Orders (including Orders that are not Displayed) on the Nasdaq Book to determine if there is an Order on the Nasdaq Book with a price in the discretionary price range against which the Order with Discretion could execute. If the Nasdaq Market Center System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Nasdaq Book and a size equal to the applicable size of the Order on the Nasdaq Book. The Nasdaq Market Center System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the Nasdaq Market Center System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System's routing broker may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Nasdaq Book in accordance with the parameters that apply to the underlying Order Type. The Nasdaq Market Center System will then examine whether at any time there is an Order on the Nasdaq Book with a price in the discretionary price range against which the Order with Discretion could execute. In doing so, the Nasdaq Market Center System will examine all Orders (including Orders that are not Displayed). If the Nasdaq Market Center System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Nasdaq Book and a size equal to the applicable size of the Order on the Nasdaq Book.

- If an Order that uses a reactive routing strategy (*i.e.*, a strategy such as STGY⁶⁹ that seeks routing opportunities after posting to the Nasdaq Book) has been assigned a Discretion Order Attribute but does not have a pegged discretionary price range, upon entry of the Order, the Nasdaq Market Center will examine all Orders (including Orders that are not Displayed) on the Nasdaq Book to determine if there is an Order on the Nasdaq Book with a price in the discretionary price range against

which the Order with Discretion could execute. If the Nasdaq Market Center System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Nasdaq Book and a size equal to the applicable size of the Order on the Nasdaq Book. The Nasdaq Market Center System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the Nasdaq Market Center System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Nasdaq Book in accordance with the parameters that apply to the underlying Order Type. The Nasdaq Market Center System will then examine whether at any time there is an Order on the Nasdaq Book or an accessible quotation at another trading venue with a price in the discretionary price range against which the Order with Discretion could execute. In examining the Nasdaq Book, the Nasdaq Market Center System will examine all Orders (including Orders that are not Displayed). If the Nasdaq Market Center System observes such an Order or quotation, it will generate a Discretionary IOC with a price equal to the price of such the Order or quotation and a size equal to the applicable size of the Order on the Nasdaq Book or the displayed size of the quotation.

- If an Order that uses a passive routing strategy has been assigned a Discretion Order Attribute and does have a pegged discretionary price range, upon entry of the Order, the Nasdaq Market Center will examine all Orders (including Orders that are not Displayed) on the Nasdaq Book to determine if there is an Order on the Nasdaq Book with a price in the discretionary price range against which the Order with Discretion could execute. If the Nasdaq Market Center System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Nasdaq Book and a size equal to the applicable size of the Order on the Nasdaq Book. The Nasdaq Market Center System will also determine if

there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the Nasdaq Market Center System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Nasdaq Book in accordance with the parameters that apply to the underlying Order Type. Thereafter, the Order will not generate further Discretionary IOCs unless the Order is updated in a manner that causes it to receive a new timestamp, in which case the Order will behave in the same manner as a newly entered Order.

- If an Order that uses a reactive routing strategy has been assigned a Discretion Order Attribute and does have a pegged discretionary price range, upon entry of the Order, the Nasdaq Market Center will examine all Orders (including Orders that are not Displayed) on the Nasdaq Book to determine if there is an Order on the Nasdaq Book with a price in the discretionary price range against which the Order with Discretion could execute. If the Nasdaq Market Center System observes such an Order, it will generate a Discretionary IOC with a price equal to the price of the Order on the Nasdaq Book and a size equal to the applicable size of the Order on the Nasdaq Book. The Nasdaq Market Center System will also determine if there are any accessible quotations with prices that are within the discretionary price range at destinations on the applicable routing table for the selected routing strategy. If there are such quotations, the Nasdaq Market Center System will generate one or more Discretionary IOCs to route to such destinations, with a price and size that match the price and size of the market center's quotation. If necessary to maximize execution opportunities and comply with Regulation NMS, the System may mark such Discretionary IOCs as Intermarket Sweep Orders. If the Discretionary IOC(s) do not exhaust the full size of the Order with Discretion, the remaining size of the Order with Discretion will post to the Nasdaq Book in accordance with the

⁶⁹ The STGY routing strategy is described in Rule 4758.

parameters that apply to the underlying Order Type. The Nasdaq Market Center System will then examine whether at any time there is an Order on the Nasdaq Book or an accessible quotation at another trading venue with a price in the discretionary price range against which the Order with Discretion could execute. In examining the Nasdaq Book, the Nasdaq Market Center System will examine Displayed Orders but will not examine Non-Displayed Orders. If the Nasdaq Market Center System observes such an Order or quotation, it will generate a Discretionary IOC with a price equal to the price of such the Order or quotation and a size equal to the applicable size of the Order on the Nasdaq Book or the displayed size of the quotation.

Reserve Size

Reserve Size is an Order Attribute that permits a Participant to stipulate that an Order Type that is displayed may have its displayed size replenished from additional non-displayed size. An Order with Reserve Size may be referred to as a "Reserve Order." At the time of entry, the displayed size of such an Order selected by the Participant must be one or more normal units of trading; an Order with a displayed size of a mixed lot will be rounded down to the nearest round lot. A Reserve Order with displayed size of an odd lot will be accepted but with the full size of the Order displayed. Reserve Size is not available for Orders that are not displayed; provided, however, that if a Participant enters Reserve Size for a Non-Displayed Order with a Time-in-Force of IOC, the full size of the Order, including Reserve Size, will be processed as a Non-Displayed Order.

Whenever a Participant enters an Order with Reserve Size, the Nasdaq Market Center will process the Order as two Orders: A Displayed Order (with the characteristics of its selected Order Type) and a Non-Displayed Order. Upon entry, the full size of each such Order will be processed for potential execution in accordance with the parameters applicable to the Order Type. For example, a Participant might enter a Price to Display Order with 200 shares displayed and an additional 3,000 shares non-displayed. Upon entry, the Order would attempt to execute against available liquidity on the Nasdaq Book, up to 3,200 shares. Thereafter, unexecuted portions of the Order would post to the Nasdaq Book as a Displayed Price to Display Order and a Non-Displayed Order; provided, however, that if the remaining total size is less than the display size stipulated by the Participant, the Displayed Order

will post without Reserve Size. Thus, if 3,050 shares executed upon entry, the Price to Display Order would post with a size of 150 shares and no Reserve Size.

When an Order with Reserve Size is posted, if there is an execution against the Displayed Order that causes its size to decrease below a normal unit of trading, another Displayed Order will be entered at the level stipulated by the Participant while the size of the Non-Displayed Order will be reduced by the same amount. Any remaining size of the original Displayed Order will remain on the NASDAQ Book. The new Displayed Order will receive a new timestamp, but the Non-Displayed Order (and the original Displayed Order, if any) will not; although the new Displayed Order will be processed by the System as a new Order in most respects at that time, if it was designated as Routable, the System will not automatically route it upon reentry. For example, if a Price to Comply Order with Reserve Size posted with a Displayed Size of 200 shares, along with a Non-Displayed Order of 3,000 and the 150 shares of the Displayed Order was executed, the remaining 50 shares of the original Price to Comply Order would remain, a new Price to Comply Order would post with a size of 200 shares and a new timestamp, and the Non-Displayed Order would be decremented to 2,800 shares.⁷⁰

A Participant may stipulate that the Displayed Order should be replenished to its original size. Alternatively, the Participant may stipulate that the original and subsequent displayed size will be an amount randomly determined based on factors selected by the Participant.⁷¹ Specifically, the Participant would select both a theoretical displayed size and a range size, which may be any share amount less than the theoretical displayed size. The actual displayed size will then be determined by the System within a range in which the minimum size is the theoretical displayed size minus the range size, and the maximum size is (i) the minimum size plus (ii) an amount that is two times the range size minus one round lot. For example, if the

⁷⁰ Because the Displayed Order is reentered and the Non-Displayed Order is not, there are circumstances in which the Displayed Order may receive a different price than the Non-Displayed Order. For example, if, upon reentry, a Price to Display Order would lock or cross a newly posted Protected Quotation, the price of the Order will be adjusted but its associated Non-Displayed Order would not be adjusted. In that circumstance, it would be possible for the better priced Non-Displayed Order to execute prior to the Price to Display Order.

⁷¹ The ability to specify a random size reflects a substantive clarification of existing rules.

theoretical displayed size is 600 shares and the range size is 500, the minimum displayed size will be 100 shares (600 – 500), and the maximum size will be 1,000 shares ((600 – 500) + ((2 × 500) – 100)).

When the Displayed Order with Reserve Size is executed and replenished, applicable market data disseminated by Nasdaq will show the execution and decrementation of the Displayed Order, followed by replenishment of the Displayed Order. In all cases, if the remaining size of the Non-Displayed Order is less than the fixed or random amount stipulated by the Participant, the full remaining size of the Non-Displayed Order will be displayed and the Non-Displayed Order will be removed.

Attribution

Attribution is an Order Attribute that permits a Participant to designate that the price and size of the Order will be displayed next to the Participant's MPID in market data disseminated by Nasdaq. An Order with Attribution is referred to as an "Attributable Order" and an Order without attribution is referred to as a "Non-Attributable Order."

Intermarket Sweep Order

Designation of an Order as an Intermarket Sweep Order, or ISO, is an Order Attribute that allows the Order to be executed within the Nasdaq Market Center by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) under Regulation NMS. ISOs are immediately executable within the Nasdaq Market Center against Orders against which they are marketable. An Order designated as an ISO may not be assigned a Routing Order Attribute; provided, however, that an Order using the Directed Order strategy may be designated as an ISO with respect to the market center to which it is directed.⁷² In connection with the trading of securities governed by Regulation NMS, Intermarket Sweep Orders shall be executed exclusively within the System and the entering Participant shall be responsible for compliance with Rules 610 and 611 under Regulation NMS with respect to order protection and locked and crossed markets with respect to such Orders. Orders eligible for execution outside the System shall be processed in compliance with Regulation NMS, including accessing Protected Quotations and resolving

⁷² In addition, Orders that are assigned a Routing Order Attribute may be designated as ISOs by Nasdaq when routed to other market centers to maximize their opportunities for execution.

locked and crossed markets, as instructed.

Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering Participant to execute against the full displayed size of any Protected Quotation with a price that is superior to the price of the Order identified as an Intermarket Sweep Order (as defined in Rule 600(b) under Regulation NMS). These additional routed orders must be identified as Intermarket Sweep Orders.

Upon receipt of an ISO, the System will consider the stated price of the ISO to be available for other Orders to be entered at that price, unless the ISO is not itself accepted at that price level (for example, a Post-Only Order that has its price adjusted to avoid executing against an Order on the Nasdaq Book) or the ISO is not Displayed.⁷³

In addition, as described with respect to various Order Types, such as the Price to Comply Order, Orders on the Nasdaq Book that had their price adjusted may be eligible to be reentered at the stated price of the ISO. For example, if a Price to Comply Order to buy at \$11 would lock a Protected Offer at \$11, the Price to Comply Order will be posted with a non-displayed price of \$11 and a displayed price of \$10.99. If the System then receives an ISO to buy at \$11, the ISO will be posted at \$11 and the Price to Comply Order will be reentered at \$11 (if the Participant opted to have its Orders reentered). The respective priority of such reentered Orders will be maintained among multiple repriced Orders; however, other new Orders may also be received after receipt of the ISO but before the repricing of the Price to Comply Order is complete; accordingly, the priority of an Order on the Nasdaq Book vis-à-vis a newly entered Order is not guaranteed.

Display

Display is an Order Attribute that allows the price and size of an Order to be displayed to market participants via market data feeds. All Orders that are Attributable are also displayed, but an Order may be displayed without being Attributable. As discussed in Rule 4702, a Non-Displayed Order is a specific Order Type, but other Order Types may also be non-displayed if they are not assigned a Display Order Attribute;

however, depending on context, all Orders that are not displayed may be referred to as "Non-Displayed Orders." An Order with a Display Order Attribute may be referred to as a "Displayed Order."

Participation in the Nasdaq Opening Cross or the Nasdaq Closing Cross

All Order Types except Supplemental Orders, Retail Orders, and RPI Orders participate in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross if the Order has a Time-in-Force that would cause the Order to be in effect at the time of the Nasdaq Opening Cross and/or Nasdaq Closing Cross. MOO Orders, LOO Orders, and IOI Orders participate in the Nasdaq Opening Cross in the manner specified in Rule 4752. Other Order Types eligible to participate in the Nasdaq Opening Cross operate as "Market Hours Orders" or "Open Eligible Interest" as specified in Rule 4752. MOC Orders, LOC Orders and IO Orders participate in the Nasdaq Closing Cross in the manner specified in Rule 4754. Other Order Types eligible to participate in the Nasdaq Closing Cross operate as "Close Eligible Interest" in the manner specified in Rule 4754.

Statistics on Order Types Usage

Although Nasdaq, like many exchanges, offers a wide range of possible combinations of Order Types and Order Attributes in order to provide options that support of [sic] a range of legitimate trading strategies, Nasdaq believes that an analysis of the extent of usage of particular Order Type permutations is important to promoting a deeper understanding of current market structure. Based on analysis of a month of data for the period from August 26, 2013 through September 29, 2013, Nasdaq offers the following observations about the usage of different Order Types on its market:

- 23.38% of entered Order volume was Price to Comply Orders with no Order Attributes other than price and size. Such Orders were involved in 10.67% of execution volume.⁷⁴ Price to Display Orders with no special Order Attributes accounted for 0.82% of Order volume and 0.16% of execution volume.
- 28.22% of entered Order volume was Post-Only Orders with no Order Attributes other than price and size.

Such Orders were involved in 11.79% of execution volume.

- Non-Displayed Orders with a Time-in-Force of IOC and no special Order Attributes accounted for 4.25% of entered Order volume and 14.03% of execution volume. Non-Displayed Orders with a Time-in-Force of IOC marked as ISOs but with no other special Order Attributes accounted for 2.17% of entered Order volume and 23.89% of execution volume.

- Non-Displayed Orders with a Time-in-Force longer than IOC but no special Order Attributes accounted for 19.15% of entered Order volume and 1.48% of execution volume.

- Post-Only Orders marked ISO but with no other special Order Attributes accounted for 7.65% of entered Order volume and 6.75% of execution volume. Price to Comply Orders marked ISO but with no other special Order Attributes accounted for 2.75% of entered Order volume and 1.24% of execution volume.

- MOO, LOO, IOI, MOC, LOC and IO Orders accounted for 1.3% of entered Order volume and 8.73% of execution volume.

- All other Order Type and Order Attribute combinations accounted for 10.31% of entered Order volume and 21.27% of execution volume. Of these, the predominant Order Type was Price to Comply Orders using special Order Attributes, accounting for 4.94% of entered Order volume and 15.82% of execution volume. Moreover, in the case of 76.15% of the entered volume and 61.82% of the executed volume of these Orders (i.e., Price to Comply Orders using special Order Attributes), the only special Order Attributes being used were Routing and/or Reserve Size.

Thus, while a range of combinations of Order Types and Order Attributes can exist in Nasdaq, Nasdaq believes that these data support the conclusion that many of these possible combinations are not used to any appreciable extent. Rather, the vast majority of Order entry and Order execution volume is attributable to a small number of simple combinations: IOC Orders designed to access posted liquidity, various forms of priced limit Orders designed to access available liquidity and thereafter post to the Nasdaq Book to provide liquidity, and Post-Only Orders, which promote price discovery by offering displayed liquidity at a price that may narrow the bid/offer spread on Nasdaq and/or provide price improvement to subsequent Orders. The inclusion of an ISO Order Attribute on Orders is done in full compliance with Regulation NMS and serves to provide notice to Nasdaq that liquidity has been accessed on other markets at a given price level in

⁷³ Thus, for example, a Non-Displayed Order with a Time-in-Force of IOC marked ISO could execute against Orders on the Nasdaq Book. However, the price level of the Non-Displayed Order would be considered open for Orders to post only if applicable market data showed that the price level was available.

⁷⁴ Data about executions reflect both sides of a trade in instances where trades executed on Nasdaq and one side of a trade in instances where a Routable Order executed at another market center. The data does not include information about Orders with a Time-in-Force of GTC to the extent that such Orders executed on a day after the day of their original entry.

order to allow it to post liquidity on Nasdaq at that price. While Nasdaq does not believe that its Order Type offerings are excessively complex, given the relatively limited usage of certain Order Types and Order Attributes, Nasdaq is continuing to analyze whether changes may be made to eliminate any Order Types, Order Attributes, or permissible combinations in a manner that would further promote the goals of transparency and ease of use for Participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷⁵ in general, and with Section 6(b)(5) of the Act⁷⁶ in particular, in that the proposal is 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act⁷⁷ in that it seeks to assure fair competition among brokers and dealers and among exchange markets. In particular, Nasdaq believes that the reorganized and enhanced descriptions of its Order Types, Order Attributes, and related System functionality will promote just and equitable principles of trade and perfect the mechanisms of a free and open market and the national market system by providing greater clarity concerning certain aspects of the System's operations. Nasdaq further believes that the proposed rule change will contribute to the protection of investors and the public interest by making Nasdaq's rules easier to understand. Nasdaq further believes that the proposed rules, together with the presented statistics regarding Order Type and Order Attribute usage, will promote the efficient execution of investor transactions and further enhance public understanding of Nasdaq's operations, and thereby strengthen investor confidence in Nasdaq and in the national market system. In addition, Nasdaq believes that additional specificity in its rules will promote a better understanding of

Nasdaq's operation, thereby facilitating fair competition among brokers and dealers and among exchange markets.

Most of the System functionality described in the proposed rule change has already been described in previous proposed rule changes by Nasdaq and approved or permitted to take effect on an immediate basis by the Commission. However, Nasdaq believes that the reiteration of several principles underlying its Order Types and Order Attributes might be helpful in promoting a fuller understanding of these rules' operation and their consistency with the Act.

The functionality underlying Price to Comply Orders and Price to Display Orders provides a means by which Participants may enter a displayed limit order in compliance with Regulation NMS without the Participant definitively ascertaining whether the price of the Order would lock or cross a Protected Quotation. In the absence of the repricing functionality associated with the Order, Nasdaq would need to reject the Order if it locked or crossed a Protected Quotation.

By accepting a Price to Comply Order with a locking, non-displayed price and displayed price that is one minimum increment inferior to the locking price, Nasdaq allows this Order Type to achieve several purposes. First, the displayed price of the Order promotes price discovery by establishing a new NBBO or adding to liquidity available at the NBBO. Second, the non-displayed price of the Order allows the Order to provide price improvement when the Order is executed. A Price to Display Order similarly promotes price discovery by establishing a new NBBO or adding liquidity available at the NBBO. It also provides one of the Order Types through which a Market Maker may offer displayed liquidity that is Attributable to its MPID. Notably, given the price adjustment functionality of the Order, it allows a Market Maker to offer Attributable liquidity at the NBBO.

In addition, the repricing functionality associated with Price to Comply Orders and Price to Display Orders, whereby an Order that has been repriced by the System upon entry may be cancelled or reentered if a previously unavailable price level becomes available, promotes price discovery and provision of greater liquidity by facilitating the display of an Order at its chosen limit price. Because a reentered Order always receives a new timestamp, moreover, the functionality does not present fairness concerns that might arise if an Order that was not displayed became displayed at a different price

level while retaining the timestamp that it received when originally entered.

The Non-Displayed Order provides a means by which Participants may access and/or offer liquidity without signaling to other Participants the extent of their trading interest. Moreover, because the Non-Displayed Order may lock a Protected Quotation, it provides a means by which a Participant may provide price improvement. For example, if the Best Bid was \$11 and the Best Offer was \$11.01, a Non-Displayed Order to buy at \$11.01 would provide \$0.01 price improvement to an incoming sell Order priced at the Best Bid.

In addition, the repricing functionality associated with Non-Displayed Order promotes provision of greater liquidity and eventual price discovery (via reporting of Order executions) because it facilitates the posting of a Non-Displayed Order at its chosen limit price. In addition, the functionality that cancels Non-Displayed Orders when crossed by a Protected Quotation helps to prevent trade-throughs by ensuring that a Non-Displayed Order will not execute at a price inferior to the Price of a Protected Quotation. Because a reentered Order always receives a new timestamp, moreover, the functionality does not present fairness concerns that might arise if an Order was able to move price while retaining an earlier timestamp.

The primary purpose of Post-Only Orders is to "provide displayed liquidity to the market and thereby contribute to public price discovery—an objective that is fully consistent with the Act."⁷⁸ Under the prevailing "maker/taker" cost structure of most exchanges, the Post-Only Order also allows a Participant to control its trading costs by giving consideration to costs in determining whether the Order should execute upon entry. However, the manner in which the Post-Only Order operates ensures that a Post-Only Order that locks or crosses an Order on the Nasdaq Book will either execute upon entry or post at a displayed price that potentially provides liquidity. Moreover, because a Post-Only Order does not cancel back to the Participant if it cannot post at its limit price, it does not provide a means to ascertain the existence of locking or crossing Orders without also reflecting a commitment to execute or post and display. Similarly, the functionality that allows a Post-Only Order to be marked IOC does not provide information regarding the existence of locking or crossing Orders on the Nasdaq Book since the Order has

⁷⁵ 15 U.S.C. 78f.

⁷⁶ 15 U.S.C. 78f(b)(5).

⁷⁷ 15 U.S.C. 78k-1(a)(1).

⁷⁸ SR-NYSE-2014-32 Approval Order.

its price adjusted automatically, without reference to the price of any other Orders other than Orders at the NBBO.

In addition, the processing of Post-Only Orders with respect to locking or crossing Protected Quotations serves the same purposes as the processing discussed above with respect to Price to Comply Orders and Price to Display Orders. By accepting a Non-Attributable Post-Only Order that locks or crosses a Protected Quotation with a locking, non-displayed price and displayed price that is one minimum increment inferior to the locking price, Nasdaq allows the displayed price of the Order to promote price discovery by establishing a new NBBO or adding to liquidity available at the NBBO, while also allowing the non-displayed price of the Order to provide price improvement when the Order is executed. An Attributable Post-Only Order similarly promotes price discovery by establishing a new NBBO or adding liquidity available at the NBBO.

The repricing functionality associated with Post-Only Orders, whereby an Order that has been repriced by the System upon entry may be cancelled or reentered if a previously unavailable price level becomes available, promotes price discovery and provision of greater liquidity by facilitating the display of an Order at its chosen limit price. Because a reentered Order always receives a new timestamp, moreover, the functionality does not present fairness concerns that might arise if an Order that was not displayed became displayed at a different price level while retaining the timestamp that it received when originally entered.

A Post-Only Order may be designated as an ISO and accepted at a price that locks or crosses a Protected Quotation, since such designation reflects a representation by the Participant that it has simultaneously routed one or more additional limit orders, as necessary, to execute against the full displayed size of any Protected Quotations that the Post-Only Order would lock or cross.⁷⁹ Because Nasdaq maintains an active regulatory surveillance and enforcement program to verify that Participants are not improperly designating Orders as ISOs, the possibility for a Participant to systematically use a Post-Only Order marked ISO to occupy a price level while locking Protected Quotations is mitigated. Moreover, the System does not interpret a Post-Only Order that is marked ISO but that has its price adjusted prior to posting as the basis for

accepting additional Orders at the Order's limit price level, thereby providing further assurance against the use of an ISO designation for an improper purpose.

Like a Post-Only Order, a Midpoint Peg Post-Only Order allows a Participant to control its trading costs by executing upon entry when receiving price improvement but otherwise posting to the Nasdaq Book. Thereafter, the Order Type serves to provide price improvement to other incoming Orders by executing a price between the NBBO. Although the Order Type has a Non-Display Order Attribute, the Order further serves to promote price discovery when it executes by evincing the existence of trading interest at a price better than the NBBO.

Supplemental Orders allow a Participant to provide greater depth of liquidity at the NBBO without signaling the full extent of its trading interest to other Participants. The Order Type thereby may promote more rapid and complete execution of incoming Orders, potentially eliminating the need for such Orders to be routed in order to access liquidity available at other market centers. The requirement that a Supplemental Order may execute only at the NBBO ensures that the Order Type may not be used to provide inferior executions.

Market Maker Peg Orders allow a Market Maker to maintain a continuous two-sided quotation at a price that is compliant with the requirements for Market Makers set forth in Rule 4613(a)(2). Thus, the Order Type serves the function of ensuring that Market Makers offer Displayed and Attributable liquidity at prices that bear a reasonable relation to the NBBO. Of course, Market Makers may also provide liquidity at prices closer to the NBBO than those established by the Market Maker Peg Order, but the Order Type enables the Market Maker to provide a backstop of liquidity at prices that are not unreasonably distant from the NBBO.

The variety of Order Types associated with the Nasdaq Opening Cross and the Nasdaq Closing Cross—Market On Open Orders, Limit On Open Orders, Opening Imbalance Only Orders, Market On Close Orders, Limit On Close Orders, and Imbalance Only Orders—all provide means for a Participant to enter Orders into Nasdaq's single price auction process for establishing the market open and market close price each day. As detailed in approved Rules 4752 and 4754, the auction processes seek to establish a price that maximizes execution opportunities for Cross-eligible Orders. MOO and MOC Orders allow a Participant to execute shares at

whatever price the Cross is executed, thereby maximizing execution opportunities; LOO and LOC Orders allow a Participant to set a price limit on potential executions; and OIO and IO Orders allow a Participant to provide liquidity to MOO and LOO or MOC and LOC Orders that would not otherwise execute in the Cross, at a price pegged to the Nasdaq inside price leading up to the Cross. Nasdaq believes that all of these Order Types promote the interest of investors in conducting an orderly process for establishing the opening and closing prices of securities.

Several of the available Order Attributes merely provide means to designate the basic parameters of any Order: These include price, size, Time-in-Force, Attribution, Display, and Participation in the Nasdaq Opening Cross and/or the Nasdaq Closing Cross. The proposed rules clearly state limitations applicable to each of these parameters, such as available Times-in-Force and limitations on the permissible prices and sizes of Orders.

The Pegging Order Attribute allows a Participant to have the System adjust the price of the Order continually in order to keep the price within defined parameters. Thus, the System performs price adjustments that would otherwise be performed by the Participant through cancellation and reentry of Orders. The fact that a new timestamp is created for a Pegged Order whenever it has its price adjusted allows the Order to seek additional execution opportunities and ensures that the Order does not "jump the queue" with respect to any Orders that were previously at the Pegged Order's new price level. Thus, while the Order Attribute may be seen as introducing additional complexity with respect to the operation of the Nasdaq market, it is in effect merely a process for removing and entering Orders at new prices based on changed market conditions.

The Minimum Quantity Order Attribute allows a Participant that may wish to buy or sell a large amount of a security to avoid signaling its trading interest unless it can purchase a certain minimum amount. Thus, the Order Attribute supports the interest of institutional investors and others in being able to minimize the impact of their trading on the price of securities.

The Routing Order Attribute, which is thoroughly described in existing Rule 4758, provides an optional means by which a Participant may direct Nasdaq to seek opportunities to execute an Order at other market centers. The System is designed to pursue execution opportunities on behalf of Participants in an aggressive manner by, in most

⁷⁹ See SR-NYSE-2014-32 Approval Order (affirming that exchanges may adopt rules allowing market participants to "ship and post").

instances, first obtaining shares available on the Nasdaq Book, then routing to other market centers in accordance with the strategy designated by the Participant, then returning [sic] the Nasdaq Book as if a new Order before posting to the Nasdaq Book. In addition, to maximize execution opportunities, the System will, as appropriate and in accordance with Regulation NMS, designate a Routable Order as an Intermarket Sweep Order.

The Discretion Order Attribute allows a Participant to expand opportunities for an Order to access liquidity by allowing it to execute at any price within a specified range. Thus, while there is some complexity associated with the processing of Discretionary Orders, the Order Attribute merely allows the System to ascertain whether, under the conditions provided for in the rule, the Participant could access liquidity at a price within the range that the Participant has designated. If so, the Order Attribute generates an IOC Order to access the liquidity. Moreover, it should be noted that although in some circumstances, the System will examine Orders on the Nasdaq Book that are not Displayed to ascertain the existence of execution opportunities, the System would convey information to the Participant regarding such Orders only by executing against them. Thus, the discretionary price range reflects an actionable commitment by the Participant to trade at prices in that range. As a result, the Order Attribute promotes price discovery through executions that occur in the price range. Finally, it should be noted that Discretionary IOCs access liquidity, and therefore the Order Attribute does not present an opportunity for a Participant to obtain a rebate with respect to executions against previously posted Orders.

The Reserve Size Order Attribute allows a Participant to display trading interest at a given price while also posting additional non-displayed trading interest. The functionality assists the Participant in managing this trading interest by eliminating the need for the Participant to enter additional size following the execution of the displayed trading interest. Thus, the functionality achieves a balance between promoting price discovery through displayed size and allowing a Participant to guard against price impact by hiding the full extent of its trading interest. The random reserve feature of the Order further assists a Participant in not revealing the extent of its trading interest because it diminishes the likelihood that other Participants will conclude that the Order is a Reserve

Size Order if they repeatedly view it being replenished at the same size. Similarly, the manner in which Nasdaq disseminates data regarding the execution and replenishment of a Reserve Size Order ensures that the process is indistinguishable to other Participants from the execution of an Order without Reserve Size followed by the entry of a new Order; this processing also ensures that only the displayed portion of the Reserve Size Order is treated as a Protected Quotation.

The Intermarket Sweep Order attribute is a function of Regulation NMS, which provides for an Order to execute without respect to Protected Quotations if it is designated as an ISO and if one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any Protected Quotation with a price that is superior to the price of the Order identified as an ISO. As recently reaffirmed by the Commission, Regulation NMS allows such additional orders to be routed by an exchange or by the Participant that enters the ISO.⁸⁰ Accordingly, the exchange receiving an ISO may accept the receipt of the Order as a representation that the Participant entering it has satisfied its obligations; provided, however, that the exchange itself maintains a surveillance and enforcement program to verify that the Participant is not acting in violation of this requirement. For this reason, it is also consistent with the Act for a Participant to designate an Order with a Time-in-Force longer than IOC, or an Order with functionality such as the Post-Only Order, as an ISO.⁸¹ Specifically, attaching an ISO designation to such Order reflects a representation that the Participant has determined that Protected Quotations at the price of the Order have been eliminated, such that the Order is entitled to post and provide liquidity. In the case of a Post-Only Order, however, if the Order's price is adjusted to avoid executing against an Order on the Nasdaq Book, Nasdaq will not consider the ISO designation in determining whether the Post-Only Order's limit price level is now open, since the Post-Only ISO itself is not actually posting at that price. Accordingly, in that circumstance the use of a Post-Only ISO cannot be used to open a price level to additional Orders unless Nasdaq ascertains through market data provided by other exchanges that the price level actually is open.

⁸⁰ SR-NYSE-2014-32 Approval Order.

⁸¹ *Id.*

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 that is not necessary or appropriate in furtherance of the purposes of the Act. As previously stated, the Exchange is not proposing substantively to modify the operation of any of its current Order Types or Order Attributes or the operation of the System; rather, the proposed rule change is intended to provide more detail regarding the System's functionality. The proposed rule change is not designed to address any competitive issues, but rather to provide additional specificity and transparency to Participants and the investing public regarding Nasdaq's Order Types, Order Attributes, and System functionality. Since the Exchange does not propose substantively to modify the operation of Order Types, Order Attributes, or System functionality, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2015-024 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2015–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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–2015–024, and should be submitted on or before April 16, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸²

Brent J. Fields,
Secretary.

[FR Doc. 2015–06891 Filed 3–25–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74553; File No. SR–Phlx–2015–27]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Surveillance Agreements

March 20, 2015.

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 March 16, 2015, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”)³ filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1009 (Criteria for Underlying Securities) to allow the listing of options overlying Exchange-Traded Fund Shares (“ETFs”) that are listed pursuant to generic listing standards on equities exchanges for series of portfolio depositary receipts (“PDRs”) and index fund shares (“IFSs”) based on international or global indexes, pursuant to which a comprehensive surveillance agreement⁴ is not required.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Commentary .06 to Rule 1009 to allow the listing of options overlying ETFs⁵ that are listed pursuant to generic listing standards on equities exchanges for series of PDRs and IFSs based on international or global indexes under which a CSSA is not required.⁶ Adding proposed new Commentary .06(b)(i) to Rule 1009 will enable the Exchange to list and trade options on ETFs without a CSSA provided that the underlying ETF is listed on an equities exchange pursuant to the generic listings standards that do not require a CSSA pursuant to Rule 19b–4(e) of the Exchange Act.⁷

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4⁸ if the Commission has approved, pursuant to Section 19(b) of the Act,⁹ the SRO's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.¹⁰ This proposal allows the Exchange to list and trade options on ETFs based on international or global indexes that meet the generic listing standards.¹¹

⁵ ETFs are also referred to in Exchange rules as “Fund Shares.” See, e.g., Rules 1009 and 1009A [sic].

⁶ NASDAQ is the principal exchange within the Group for listing ETFs. NASDAQ has generic listing standards for PDRs and IFSs. See NASDAQ Rule 5705(b)(3)(A)(ii) regarding IFSs and 5705(a)(3)(A)(ii) regarding PDRs (IFSs and PDRs are together known as ETFs in NASDAQ Rule 5705). See also NYSE MKT Rule 1000 Commentary .03(a)(B); NYSE Arca Equities Rule 5.2(j)(3) Commentary .01(a)(B); and BATS Rule 14.11(b)(3)(A)(ii).

⁷ 17 CFR 240.19b–4(e).

⁸ 17 CFR 240.19b–4(c)(1).

⁹ 15 U.S.C. 78s(b).

¹⁰ When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities products. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

¹¹ See NASDAQ Rule 5705(a)(3)(A)(ii) and (b)(3)(A)(ii); NYSE MKT Rule 1000, Commentary

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange, The NASDAQ Stock Market LLC (“NASDAQ”), and NASDAQ OMX BX, Inc. (“BX”) are self-regulatory organizations (“SROs”) that are wholly owned subsidiaries of The NASDAQ OMX Group, Inc. (the “Group”).

⁴ Surveillance agreements are also referred to in Exchange rules as “surveillance sharing agreements” or “comprehensive surveillance sharing agreements” (“CSSA”). See, e.g., Rules 1009 and 803.

⁸² 17 CFR 200.30–3(a)(12).