

amended by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**. As discussed above, Amendment No. 1 amends and restates the original proposed rule change to: (i) Clarify that the information submitted by underwriters includes asset allocation information for the assets of each investment option; (ii) omit statements concerning the interpretation of the meaning of “underwriter” under the federal securities laws; (iii) clarify that each entity must determine, based on the facts and circumstances, whether it is an underwriter under the federal securities laws; (iv) revise the rule text to clarify that an underwriter that submits Form G-45 would be obligated to submit information only for itself and those entities that identify themselves as underwriters of 529 plans and that aggregate their information with the submitter’s information; (v) clarify that underwriters identify the percentage of each underlying investment in an investment option but not submit information regarding the assets in each underlying investment; (vi) clarify that, for each investment option offered by a 529 plan, the underwriter will provide the MSRB with the name and allocation percentage of each underlying investment in each investment option as of the end of the most recent semi-annual period; (vii) clarify that the MSRB does not contemplate that a state sponsor of a 529 plan, as an instrumentality of the state, would be an underwriter under federal securities laws; (viii) explain that an underwriter would not be required to submit information on Form G-45 if it neither possesses nor has the legal right to obtain; (ix) explain that, to the extent the information submitted on Form G-45 was prepared by the underwriter or, through delegation, one of its contractors or sub-contractors, and the information was inaccurate or incomplete, the underwriter would be responsible for the information and therefore be liable for such information under proposed Rule G-45; and (x) revise the rule text to clarify in Rule G-45 that performance data shall be reported annually. These proposed revisions respond to a number of concerns expressed in the comment letters discussed above. The Commission believes that these revisions provide greater clarity on several aspects of the proposal, such as to whom the obligations of the proposed rule apply and the scope of the information that is required to be submitted by underwriters of 529 plans. Accordingly, the Commission finds

good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

## VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>109</sup> that the proposed rule change (SR-MSRB-2013-04), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>110</sup>

**Kevin M. O’Neill**,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71597; File No. SR-NASDAQ-2014-004]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rule 4754 Governing the NASDAQ Closing Cross

February 21, 2014.

#### I. Introduction

On January 7, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Exchange Rule 4754 governing the NASDAQ Closing Cross. The proposed rule change was published for comment in the **Federal Register** on January 14, 2014.<sup>3</sup> The Commission received no comments on the proposal. On February 20, 2014, NASDAQ filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the

<sup>109</sup> 15 U.S.C. 78s(b)(2).

<sup>110</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 71254 (January 8, 2014), 79 FR 2493 (“Notice”).

<sup>4</sup> In Amendment No. 1, NASDAQ amended the proposal: (i) To clarify that an additional tie-breaker will apply to selecting the execution price of the LULD Closing Cross (defined below); (ii) to describe the treatment of IO orders (defined below) prior to the determination of the execution price; (iii) to make a change the type of information that will be disseminated during a Trading Pause prior to the end of regular trading hours; (iv) to describe its

proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

In its filing with the Commission, the Exchange proposes to amend Exchange Rule 4754 governing the NASDAQ Closing Cross (“Cross”),<sup>5</sup> to modify the operation of the Cross to accommodate changes in market structure triggered by Phase 2 of the National Market System Plan to Address Extraordinary Market Volatility submitted to the Commission pursuant to Rule 608 of Regulation NMS (“Plan”).<sup>6</sup> The Exchange proposes to create the LULD Closing Cross,<sup>7</sup> which modifies the Cross in circumstances where a Plan Trading Pause is triggered between 3:50 and 4:00 p.m. EST (“LULD Closing Cross”).

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands.<sup>8</sup> The requirements of the Plan are coupled with Trading Pauses, or halts, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). The Commission approved the Plan, as amended, on a one-year pilot basis.<sup>9</sup> The Plan first became operational in April of 2013, with a staged rollout with respect to the portion of the trading day to which the Plan applies as well as the securities subject to the Plan. All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan. The Exchange is a Participant in the Plan.

As currently implemented, the Plan applies to securities between 9:30 a.m. and 3:45 p.m. E.T. each trading day. In the near future, the operation of the Plan will be extended to include the time between 3:45 p.m. and 4:00 p.m. E.T.,

rationale for the time-based execution priority method currently employed in the case of a trading halt; and, (v) to clarify that new market orders may be entered during an LULD Trading Pause, but only until 4:00 p.m.

<sup>5</sup> “NASDAQ Closing Cross” shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders. See Exchange Rule 4754.

<sup>6</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility).

<sup>7</sup> See proposed rule 4754(b)(6).

<sup>8</sup> Unless otherwise specified, capitalized terms used herein are based on the defined terms of the Plan.

<sup>9</sup> See *supra* note 6.

which is the end of regular trading hours on the Exchange and is when the Exchange typically conducts a Closing Cross for each of its listed securities. The Exchange proposes to adopt rules for a LULD Closing Cross in connection with the extension of the Plan to 4:00 p.m. E.T.

The Exchange proposes to add new paragraph (b)(6) to Rule 4754 to govern the operation of the LULD Closing Cross, which will apply to Trading Pauses triggered at or after 3:50 p.m. and before 4:00 p.m.<sup>10</sup> As noted by the Exchange, the LULD Closing Cross will be a hybrid containing elements of the NASDAQ Closing Cross and the NASDAQ Halt Cross.<sup>11</sup> The five significant components to the proposed change, described in further detail below, are: (1) Timing, (2) information dissemination (3) participation of certain order types, (4) execution processing, and (5) re-opening of trading following execution.

#### A. Timing

For securities halted due to an LULD Trading Pause triggered between 3:50 and 4:00 p.m., NASDAQ will conduct an LULD Closing Cross at 4:00 p.m.<sup>12</sup> For securities paused after 3:55 p.m., the Trading Pause will be shortened to ensure a consistent close at 4:00 p.m., subject to limited exception in the case of extreme volatility described below.<sup>13</sup> Consistent with the Closing Cross, if at 4:00 p.m. there is insufficient trading interest in the NASDAQ system to execute an LULD Closing Cross,<sup>14</sup> NASDAQ will not conduct an LULD Closing Cross in that security.<sup>15</sup> In that case, NASDAQ shall instead use the last sale on NASDAQ as the NASDAQ Official Closing Price (defined in the Exchange's rules) in that security for that trading day, as it does when there

is insufficient interest in the Closing Cross.<sup>16</sup>

According to the Exchange, NASDAQ will delay execution of the LULD Closing Cross if the market experiences volatility during the Trading Pause just prior to the time of execution.<sup>17</sup> Specifically, the Exchange notes that if the expected closing price changes more than five percent, or 50 cents, whichever is greater, in the last 15 seconds of the Trading Pause, or if there is a market order imbalance (e.g., there is a greater quantity of shares to buy priced as market orders than total eligible sell interest) preventing the calculation of a cross price, NASDAQ will delay the execution of the LULD Closing Cross.<sup>18</sup> In that case, the LULD Closing Cross will be extended in one-minute increments until such time as sufficient trading interest does exist, the volatility condition is eliminated, and/or the market order imbalance has been eliminated.<sup>19</sup> The above volatility checks will be governed under Rule 4120(c)(7)(C)(1) and 4120(c)(7)(C)(3). If this condition persists until 5:00 p.m., NASDAQ will not conduct an LULD Closing Cross in that security and shall instead use the last-sale on NASDAQ as the NASDAQ Official Closing Price in that security for that trading day.<sup>20</sup> As noted by the Exchange, in the event that the volatility condition persists until 5:00 p.m., all orders will be cancelled back to the entering firms, and after hours trading will begin at 5:00 p.m.<sup>21</sup>

#### B. Information Dissemination

The change in timing, referenced above, also changes how the Exchange will disseminate the Net Order Imbalance Indicator ("NOII"). According to the Exchange, NASDAQ disseminates the NOII every five seconds from 3:50 p.m. until the close of trading at 4:00 p.m., and it will continue to do so under this proposal.<sup>22</sup> If the LULD Closing Cross is extended beyond 4:00 p.m. due to late volatility or a market order imbalance, NASDAQ will continue to disseminate the NOII every five seconds until the LULD Closing Cross actually occurs or until 5:00 p.m.<sup>23</sup>

The Exchange notes that NOII message during the Trading Pause preceding an LULD Closing Cross will be similar to those disseminated during a standard closing Cross and other halt

crosses.<sup>24</sup> Specifically, the Near Clearing Price,<sup>25</sup> Far Clearing Price,<sup>26</sup> and Current Reference Price<sup>27</sup> contained in the NOII will all represent the price at which the LULD Closing Cross would execute should the Cross conclude at that time.<sup>28</sup> The Exchange originally proposed that the NOII would also include the size and side of any shares not currently paired at the Reference Price. Amendment No. 1 proposes to change this provision by requiring dissemination of an indicator for "market buy" or "market sell" if marketable buy or sell shares would remain unexecuted above or below the Near or Far Clearing Price for the expected LULD Closing Cross, rather than disclosing the size and side of order imbalances, which is consistent with what is currently done in the NASDAQ Halt and IPO Crosses.<sup>29</sup> The Exchange stated this language conforms to the dissemination of indicative pricing information currently set forth in Exchange Rule 4753(a)(2)(E)(iii) and 4754(a)(7)(E)(ii) governing the NASDAQ Halt/IPO Cross and the NASDAQ Closing Cross.<sup>30</sup>

#### C. Participation of Order Types

The Exchange notes that currently, two sets of orders can participate in the Closing Cross: (1) Orders resting on NASDAQ's continuous book at the time of the Cross, and (2) any "Special Closing Order" entered and not cancelled prior to the close.<sup>31</sup> Special Closing Orders, as set forth in NASDAQ Rule 4754, are Market on Close ("MOC"), Limit on Close, ("LOC"), and Imbalance Only ("IO") orders. Under this proposal, the LULD Closing Cross would include Special Closing Orders,

<sup>24</sup> See *id.*

<sup>25</sup> Far Clearing Price means the price at which both the MOC, LOC, and IO, orders would execute. See Exchange Rule 4754(a)(7)(E)(i).

<sup>26</sup> Near Clearing Price means the price at which the MOC, LOC, IO, and Eligible Interest would execute. See Exchange Rule 4754(a)(7)(E)(ii).

<sup>27</sup> Current Reference Price means: (i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, IO and Close Eligible Interest can be paired; (ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance; (iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross; (iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination. See Exchange Rule 4754(a)(7)(A).

<sup>28</sup> See Notice *supra* note 3 at 2494.

<sup>29</sup> See Amendment No. 1 to the proposal, *supra* note 4.

<sup>30</sup> *Id.*

<sup>31</sup> See Notice *supra* note 3 at 2494.

<sup>10</sup> See Notice, *supra* note 3 at 2494.

<sup>11</sup> NASDAQ Halt Cross means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. See Exchange Rule 4753(a)(3)

<sup>12</sup> The LULD Closing Cross will not apply for any security halted by an LULD Trading Pause triggered prior to 3:50 p.m. Specifically, if an LULD Trading Pause is triggered at 3:49:59 and ends at 3:54:59, the stock will open via the standard NASDAQ Halt Cross as specified in the rules toady and then close via the standard NASDAQ Closing Cross at 4:00 p.m. See *id.*

<sup>13</sup> See *id.*

<sup>14</sup> Insufficient trading interest is defined as the lack of any bid interest priced to be marketable against any available offer interest. For example, if the most aggressively priced bid interest is priced at \$1.00 and the most aggressively priced offer interest is priced at \$5.00, there is insufficient trading interest to execute an LULD Closing Cross. See *id.*

<sup>15</sup> See proposed rule 4754(b)(6)(A)(ii).

<sup>16</sup> See Notice *supra* note 3 at 2494.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See proposed rule 4754(b)(6)(A)(iii).

<sup>21</sup> See Notice *supra* note 3 at 2494.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

newly entered orders, and all orders resting on the continuous book.<sup>32</sup>

In the event of an LULD Closing Cross, MOC, LOC and IO intended for the closing cross entered into the system and placed on the book prior to 3:50 p.m. will remain on the book to participate in the LULD Closing Cross and may not be modified or cancelled.<sup>33</sup> Currently, under Rule 4754, MOC and LOC orders can be cancelled between 3:50:00 p.m. and 3:55:00 p.m. only by requesting NASDAQ to correct a legitimate error (e.g., side, size, symbol, price or duplication of an order).<sup>34</sup> In addition, currently, MOC and LOC orders cannot be cancelled after 3:55:00 p.m. for any reason.<sup>35</sup>

The Exchange notes that under the proposal, members will be permitted to enter and modify (only to increase the number of shares represented), but not cancel new IO orders up to the time of execution of the LULD Closing Cross.<sup>36</sup> In the original filing, NASDAQ described the treatment of IO Orders after the system determines the execution price of the LULD Closing Cross. However, NASDAQ neglected to describe their treatment prior to that determination, and their impact on the execution price. Specifically, in the case of an LULD Trading Pause prior to the close of trading, prior to the determination of the execution price, IO Orders entered prior to the LULD Closing Cross will be re-priced to one penny above the LULD band price (for sell IOs) or one penny below the LULD price band (for buy IOs) or to the entered price if it is less aggressive than the LULD price band at the time of the LULD Trading Pause.<sup>37</sup>

With respect to continuous book orders resting on the book at the time of the Trading Pause, all such orders eligible to participate in the Cross will remain on the book to participate in the LULD Closing Cross and such orders may be modified or cancelled up until the time the LULD Closing Cross.<sup>38</sup> The Exchange notes that all order times in force eligible to participate in the Cross today will continue to do so in the proposed LULD Closing Cross.<sup>39</sup>

NASDAQ also proposes to permit the entry, modification, and cancellation of additional orders (whether market or limit orders) during the Trading Pause. Specifically, during a Trading Pause that is triggered or extended after 3:50 p.m., members will be permitted to enter, modify, and cancel new market orders up until 4:00 p.m. The Exchange notes that it does not currently permit the entry of market orders after 4:00 p.m.; only limit orders may be entered after 4:00 p.m. Therefore, if an LULD Trading Pause is extended beyond 4:00 p.m. due to continuing volatility, entry of new market orders will be prohibited after 4:00 p.m. Limit orders may still be entered up to the time of execution of the LULD Closing Cross.<sup>40</sup> New orders of any order type or any time in force described in NASDAQ Rule 4751 will be eligible to participate in the LULD Closing Cross.<sup>41</sup> Any new order entered between 3:50 and 4:00 p.m. that is not executed in the LULD Closing Cross shall be processed after the LULD Closing Cross is executed according to the entering firm's instructions on that order.<sup>42</sup>

#### D. Execution Processing

The Exchange will determine the closing price by taking the closing book (MOC and LOC orders only), the remaining eligible orders on the book prior to the LULD halt, and any new interest entered after the LULD halt.<sup>43</sup> The Exchange notes that priority in the cross will be price/time, with IO orders more aggressive than the closing price re-priced to the closing price but retaining their original time priority.<sup>44</sup> The Exchange states that the execution algorithm for the LULD Closing Cross shall be the same as currently used for the Cross.<sup>45</sup> Specifically,

(A) The Nasdaq Closing Cross will occur at the price that maximizes the number of shares of Eligible Interest in the Nasdaq Market Center to be executed;

(B) If more than one price exists under subparagraph (A), the Nasdaq Closing Cross shall occur at the price that minimizes any Imbalance;

(C) If more than one price exists under subparagraph (B), the Nasdaq Closing Cross shall occur at the entered price at which shares will remain unexecuted in the cross.

(“SGTC”), or Good-til-Market Close “GTMC”). See Notice *supra* note 3 at 2495.

<sup>40</sup> See Amendment No. 1 to the proposal, *supra* note 4 and proposed rule 4754(b)(6)(C)(iii).

<sup>41</sup> See Notice, *supra* note 3 at 2495.

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

(D) If more than one price exists under subparagraph (C), the Nasdaq Closing Cross shall occur at:

i. In the case where a security has already traded during normal market hours on that trading day, the price that is closest to the last Nasdaq execution prior to the Trading Pause;

ii. In the case where a security has not already traded during normal market hours on that trading day, the price that is closest to the previous NASDAQ Official Closing Price.<sup>46</sup>

Once the algorithm determines the proper closing price, the LULD Closing Cross will execute all orders at the determined price in strict price/time priority, rather than the complex priority currently set forth in NASDAQ Rule 4754(b)(3).<sup>47</sup> The Exchange notes that it selected the time-based priority method currently employed in the case of a trading halt rather than the more complex method used in the case of a standard closing cross because it believes that trading behavior during an LULD Trading Pause immediately prior to the close of trading will more closely resemble behavior during a trading halt than trading just prior to the close.<sup>48</sup> This is likely to be the case due to the absence of a continuous market during the LULD Trading Pause, as opposed to the presence of a continuous market just prior to the standard close of trading.<sup>49</sup>

According to the Exchange, excess interest at the closing price will be available for execution against available IO orders on the opposite side of the market.<sup>50</sup> Aggressive IO orders opposite the side of the imbalance that were entered prior to other orders at exactly the crossing price will be re-priced to the crossing price and have priority over those orders.<sup>51</sup> The LULD Closing Cross price will be the NASDAQ Official Closing Price for stocks that participate in the LULD Closing Cross.

#### E. Re-Opening Trading

After hours trading will begin immediately following execution of the

<sup>46</sup> See Notice, *supra* note 3 at 2495; Amendment No. 1, *supra* note 4. The Exchange notes that this fourth tie-breaker would be used rarely but that when it is used this tie-breaker must be based on a fixed reference prices such as the last reported trade. This fixed tie-breaker, according to the Exchange, is superior to a floating one, such as midpoint or an NBBO, in situations where there is no continuous market just prior to the execution of the cross, as is the case prior to any halt. *Id.*

<sup>47</sup> See Notice, *supra* note 3 at 2495.

<sup>48</sup> See Amendment No. 1, *supra* note 4.

<sup>49</sup> See *id.*

<sup>50</sup> See Notice, *supra* note 3 at 2495.

<sup>51</sup> This treatment of IO orders differs slightly from the current closing cross where aggressive IO Orders may be re-priced to either the best bid or offer in order to interact only with MOC and LOC interest. See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> See proposed rule 4754(b)(6)(C)(i).

<sup>34</sup> See Exchange Rule 4754(a)(4) and (5).

<sup>35</sup> See *id.*

<sup>36</sup> See Notice *supra* note 3 at 2495. See also proposed rule 4754(b)(6)(C)(iii).

<sup>37</sup> See Amendment No. 1 to the proposal, *supra* note 4.

<sup>38</sup> See proposed rule 4754(b)(6)(C)(ii).

<sup>39</sup> Those orders include the following Time In Force markings: Market Hours Good-til-Cancelled (“MGTC”), Market Hours Day (“MDAY”), System Hours Expire Time (“SHEX”), System Hours Day (“SDAY”), System Hours Good-til-Cancelled

LULD Closing Cross. According to the Exchange, at that time, all resting orders or newly entered orders not executed in the LULD Closing Cross will be either cancelled or available for execution in after-hours trading based on the entering firm's instruction on the order.<sup>52</sup>

### III. Discussion and Commission Findings

After careful review of the proposal, as modified by Amendment No. 1, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>53</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>54</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public.

The Exchange notes that all aspects of the proposed LULD Closing Cross are based upon existing processes built into both the Exchanges' Closing Cross and Halt Cross. Consistent with existing processes, the Exchange will accept all orders resting on NASDAQ's continuous book at the time of the LULD Closing Cross, including newly entered orders, and any Special Closing Order, defined as a MOC, LOC, or IO order. Priority in the LULD Closing Cross will be price/time, with IO orders more aggressive than the closing price re-priced to the closing price but retaining their original time priority. The execution algorithm for the LULD Closing Cross shall be the same as currently used for the NASDAQ Closing Cross. Once the algorithm determines the proper closing price, the LULD Closing Cross will execute all orders at the determined price in strict price/time priority, rather than the complex priority currently set forth in NASDAQ Rule 4754(b)(3).<sup>55</sup>

Additionally, the Exchange will continue to disseminate the similar market data information for the LULD Closing Cross as it does with the IPO Cross and Halt Cross, which the Exchange notes is designed to facilitate the entry of additional offsetting interest in the closing process.<sup>56</sup>

The Exchange notes that it attempted to mitigate the risks associated with a Trading Pause that occurs near the end of regular trading hours to the greatest extent possible.<sup>57</sup> The Exchanges stated that it believes that this proposal is consistent with the Act and that the proposal is designed to preserve to the extent possible current order entry and trading behaviors, thereby reducing the potential for member and investor confusion.<sup>58</sup> The Exchange further stated that it believes this proposal is well-tailored to provide transparency and predictability by clearly defining when the LULD Closing Cross will occur, what orders will be included, what information will be disseminated, how the execution algorithm will operate, and when after-hours trading will begin.<sup>59</sup> Specifically the Exchange stated that it believes that maintaining the 4:00 p.m. market closing time is the approach most likely to result in a fair and orderly market at the close of trading.<sup>60</sup>

Regarding the proposed rule change in Amendment No. 1 concerning the treatment of IO orders, the Exchanges notes that, consistent with IO orders in the Cross, the purpose of IO orders in the LULD Closing Cross is to aid in the price discovery process and provide a stabilizing mechanism, which in a time of greater market volatility becomes all the more important.<sup>61</sup> As noted by the Exchange, in the standard Cross, IO orders are re-priced to a reference price that is the NASDAQ best bid for buys or the NASDAQ best offer for sells.<sup>62</sup> Without a bid or offer based on continuous trading due to the LULD Trading Pause, the LULD band price becomes a substitute reference price for the LULD Closing Cross IO Orders.<sup>63</sup> Additionally, buy and sell IO orders are not meant to trade against each other or cause imbalances and thus the IO orders in a LULD Closing Cross will be re-priced to \$0.01 below the LULD band for buys and \$0.01 above the LULD band for sells.<sup>64</sup>

Due to the likelihood of increased volatility after an LULD pause and the importance of orderly trading at the close, NASDAQ has determined to treat IO Orders differently in this circumstance.<sup>65</sup> NASDAQ believes that this treatment of IO Orders is appropriate and beneficial to investors and the market because, by definition, an LULD pause follows a period of unusual volatility and an LULD pause at the close of trading poses risks at a particularly important time of the trading day.<sup>66</sup> Using the LULD band as the reference price upon which to base IO Order prices will foster stability in an otherwise unstable time in the market. NASDAQ considered various alternatives for the re-pricing of IO Orders, ranging from re-pricing at the LULD bands, at one penny away from those bands, and at multiple pennies away. NASDAQ believes that re-pricing at a penny away from the LULD bands properly balances the need for a buffer to protect investors from excessive volatility (which would militate towards a narrower banding) and the need for unfettered price discovery (which would push towards wider banding). This balance, in NASDAQ's view, is the best way to protect investors and maintain a fair and orderly market.

Regarding the decision to prevent the cancellation or modification of previously entered MOC and LOC orders, the Exchange notes that the proposal is designed to promote stability and predictability in the orders that are entered for the close, rather than having last-minute cancellations of "on close" orders which would cause continual changes to the order balance in a security near the end of trading.<sup>67</sup> The Exchange further notes that Members are not required to enter such orders in the first place. The Exchange considered permitting members to cancel or modify previously entered MOC and LOC Orders, but decided not to for several reasons. First, the Exchange notes that members that participate in NASDAQ's Closing Cross rely on the fixed status of MOC and LOC Orders to anchor the crosses; the benefits of stability apply with equal force to the LULD Closing Cross.<sup>68</sup> Second, the Exchange notes that there is a benefit to maintaining the same behavior of specific order types to the greatest extent possible; changing the behavior of order types could create member confusion.<sup>69</sup> Lastly, the

<sup>52</sup> See *id.*

<sup>53</sup> In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>54</sup> 15 U.S.C. 78f(b)(1).

<sup>55</sup> See proposed rule 4754(b)(6)(D) and Notice, *supra* note 3 at 2495. As the Exchange noted further, it selected the time-based priority method currently employed in the case of a trading halt rather than the more complex method used in the case of a standard closing cross because it believes that trading behavior during an LULD Trading Pause immediately prior to the close of trading will more closely resemble behavior during a trading halt than trading just prior to the close. See Amendment No. 1, *supra* note 4.

<sup>56</sup> See Notice, *supra* note 3 at 2494.

<sup>57</sup> See *id.* at 2496.

<sup>58</sup> See *id.* at 2495.

<sup>59</sup> See *id.* at 2496.

<sup>60</sup> See *id.* at 2494.

<sup>61</sup> See Amendment No. 1, *supra* note 4.

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See *id.*

<sup>66</sup> See *id.*

<sup>67</sup> See Notice, *supra* note 3 at 2496.

<sup>68</sup> See *id.* at 2495.

<sup>69</sup> See *id.*

Exchange notes that members that enter MOC and LOC orders are and will continue to be fully aware of the risk of price movements at the close, including the risk of an LULD Trading Pause and that members can avoid that risk by changing their behavior and entering other order types if they deem the risk to be too large.<sup>70</sup> The Exchange concluded that the better course is to prevent the cancellation or modification of MOC and LOC Orders to the same extent as currently allowed on the Exchange.<sup>71</sup>

As explained above, the Exchange has proposed certain price and execution constraints for the LULD Closing Cross to ensure that the auction occurs at a price that is based on rational and current market conditions.<sup>72</sup> Specifically, NASDAQ stated that it believes that the proposed price check for movement of five percent or 50 cents, whichever is greater, in the last 15 seconds of an LULD Trading Pause is prudent in light of the volatility that stocks are, by definition, experiencing at the time of the LULD Trading Pause.<sup>73</sup> Additionally, the Exchange retains discretion under Rule 4754(b)(6)(A)(iii) to extend the timing of the LULD Closing Cross if an order imbalance exists at the time designated for the LULD Closing Cross to occur, up to 5:00 p.m. The Exchange states that 5:00 p.m. is a reasonable time to end such volatility extensions and cancel the closing cross because as volatility in a security continues towards 5:00 p.m., the likelihood of a smooth LULD Closing Cross diminishes.<sup>74</sup> The Exchange notes that while it is prudent to extend the time for executing the closing cross rather than risk a volatile close, the extension must be balanced by the need for closure.<sup>75</sup> NASDAQ represents that the 5:00 p.m. cut-off time represents a reasonable balance.<sup>76</sup>

For the various reasons noted above, the Commission finds that the proposed rule change as modified by Amendment No. 1 is consistent with the Act, including Section 6(b)(5) of the Act,<sup>77</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market

system, and, in general, protect investors and the public.

The Commission finds good cause to approve the filing, as modified by Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of the publication of notice of the filing thereof in the **Federal Register**. The proposed revisions should further enhance the Exchange's policies and procedures with respect to the operation of the Plan. Accelerated approval would allow the Exchange to update its rule text immediately, thus providing users with greater clarity and certainty with respect to the use of the new LULD Closing Cross functionality offered by the Exchange in anticipation of the application of the Plan through the end of regular trading Hours. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act, to approve the filing, as modified by Amendment No. 1, on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-004 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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 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-2014-004, and should be submitted on or before March 20, 2014.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>78</sup> that the proposed rule change, SR-NASDAQ-2014-004, as modified by amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>79</sup>

**Kevin M. O'Neill**,  
Deputy Secretary.

[FR Doc. 2014-04241 Filed 2-26-14; 8:45 am]

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## DEPARTMENT OF STATE

[Public Notice 8647]

### Culturally Significant Objects Imported for Exhibition Determinations: "Lygia Clark"

**AGENCY:** Department of State.

**ACTION:** Notice, correction.

**SUMMARY:** On May 3, 2012, notice was published on page 26353 of the **Federal Register** (volume 77, number 86) of determinations made by the Department of State pertaining to the exhibition "Lygia Clark." The referenced notice is corrected here to include additional objects as part of the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of

<sup>78</sup> 15 U.S.C. 78s(b)(2).

<sup>79</sup> 17 CFR 200.30-3(a)(12).

<sup>70</sup> See *id.*

<sup>71</sup> See *id.*

<sup>72</sup> See *supra* notes 41-47, and accompanying text.

<sup>73</sup> See Notice, *supra* note 3 at 2494.

<sup>74</sup> See Notice, *supra* note 3 at 2494.

<sup>75</sup> See *id.*

<sup>76</sup> See *id.*

<sup>77</sup> 15 U.S.C. 78f(b)(1).