

designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On May 28, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>8</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was February 27, 2019. August 26, 2019, is 180 days from that date, and October 25, 2019, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> designates October 25, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSEArca-2019-04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>5</sup> See Securities Exchange Act Release No. 85573, 84 FR 15239 (Apr. 15, 2019).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 85946, 84 FR 25599 (June 3, 2019). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." See *id.* at 25602 (citing 15 U.S.C. 78f(b)(5)).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 200.30-3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86642; File No. SR-NASDAQ-2019-064]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Certain Cutoff Times for On-Close Orders Entered for Participation in the Nasdaq Closing Cross and Adopt a Second Reference Price for Limit-on-Close Orders

August 13, 2019.

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> notice is hereby given that on July 31, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("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 certain cutoff times for on-close orders entered for participation in the Nasdaq Closing Cross and adopt a second reference price for limit-on-close orders

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

#### 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.

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

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

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

##### 1. Purpose

The Nasdaq Closing Cross is a price discovery facility that crosses orders at a single price and establishes the Nasdaq Official Closing Price for a security. The Closing Cross was designed to create a robust close that allows for efficient price discovery through a transparent automated auction process. Nasdaq is proposing to (i) preclude on-close orders from being cancelled or modified after 3:50 p.m. ET and (ii) permit Limit-on-Close orders entered after 3:55 p.m. ET to be accepted and priced at or between the First or Second Reference Prices (as defined below). Nasdaq believes that the proposed changes will enhance price discovery, stability and transparency in the Closing Cross process.

Nasdaq has proposed related enhancements to the Closing Cross process that will be implemented in conjunction with the proposed changes.<sup>3</sup> On February 27, 2019, Nasdaq filed a proposed rule change to establish the Early Order Imbalance Indicator ("EOII") that the Exchange will begin disseminating at 3:50 p.m. or ten minutes prior to the market close. The EOII will contain a subset of the information comprising the Net Order Imbalance Indicator ("NOII"), which will be disseminated at 3:55 p.m. or five minutes prior to the market close.

The NOII is a message disseminated by electronic means containing information about market-on-close ("MOC"),<sup>4</sup> limit-on-close ("LOC"),<sup>5</sup> imbalance only ("IO")<sup>6</sup> orders, and Close Eligible Interest<sup>7</sup> and the price at which those orders would execute at the time of dissemination.<sup>8</sup> MOC, LOC and

<sup>3</sup> See Securities Exchange Act Release No. 34-85292 (Mar. 12, 2019), 84 FR 9848 (Mar. 18, 2019) (SR-NASDAQ-2019-010).

<sup>4</sup> A "Market on Close Order" or "MOC" is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. See Rule 4702(b)(11).

<sup>5</sup> Pursuant to Rule 4702(b)(12), a "Limit on Close Order" or "LOC" is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. See Rule 4754(a)(9).

<sup>6</sup> An "Imbalance Only Order" or "IO" 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. See Rule 4702(b)(13).

<sup>7</sup> "Close Eligible Interest" means "any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGT, MDAY, MGTC, SHEX, or GTMC." See Rule 4754(a)(1).

<sup>8</sup> See Rule 4754(a)(7).

IO orders are on-close order types that are executable only during the Closing Cross.

#### MOC Orders

Currently, pursuant to Rule 4702(b)(11)(A), MOC orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, a MOC order can be cancelled and/or modified only if the participant requests that Nasdaq correct a legitimate error in the order.<sup>9</sup> MOC orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason.

In conjunction with the adoption of EOII, Nasdaq is proposing to revise Rule 4702(b)(11)(A) to permit MOC orders to be entered until 3:55 p.m. ET and prohibit cancellation or modification of MOC orders after 3:50 p.m. ET except to correct a legitimate error in the order. Nasdaq believes that these changes will enhance stability in the Closing Cross process because they will reduce the possibility of large indicative price movements due to participants cancelling or modifying orders in reaction to the EOII. It will also enhance the price discovery and liquidity of a security by increasing the number of participants in the Nasdaq Closing Cross, which establishes the Nasdaq Official Closing Price for a security. In addition, participants may continue to enter MOC orders until 3:55 p.m. ET, which allows participants to consider information in the EOII in making informed decisions about whether and how to participate in the Closing Cross.

#### IO Orders

Currently, pursuant to Rule 4702(b)(13)(A), an IO order may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross, but may not be cancelled or modified at or after 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 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. IO orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason.

In conjunction with the adoption of EOII, Nasdaq is proposing to revise Rule 4702(b)(13)(A) to prohibit cancellation or modification of IO orders after 3:50 p.m. ET except to correct a legitimate error in the order. IO orders provide liquidity and are intended to offset a buy or sell imbalance during the Closing

Cross. Nasdaq believes that this change will enhance stability in the Closing Cross process because it will reduce the possibility of participants modifying an IO position in reaction to the EOII. In addition, participants may continue to enter IO orders until 3:55 p.m. ET, which allows participants to consider information in the EOII in making informed decisions about whether and how to participate in the Closing Cross.

#### LOC Orders

Currently, pursuant to Rule 4702(b)(12)(A), LOC orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, LOC orders may be entered provided that there is a First Reference Price<sup>10</sup> and may be cancelled, but not modified, only if the participant requests that Nasdaq correct a legitimate error in the order. A LOC order entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET is accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for an LOC order to buy (sell), in which case the LOC order is handled consistent with the Participant's instruction that the LOC order is to be: (1) Rejected; or (2) re-priced to the First Reference Price, provided that if the First Reference Price is not at a permissible minimum increment, the First Reference Price will be rounded (i) to the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii) down if there is a sell imbalance. The default configuration for participants that do not specify otherwise is to have such LOC orders re-priced rather than rejected.

In conjunction with the adoption of EOII, Nasdaq is proposing to revise Rule 4702(b)(12)(A) to expand the order entry of a LOC order submitted after 3:55 p.m.

ET ("Late LOC") to be accepted and priced at either the First Reference Price or the Second Reference Price. In connection with this change, Nasdaq is proposing to revise the definition of First Reference Price in Rule 4754(a)(9) to refer to the Current Reference Price in the EOII disseminated at 3:50 p.m. ET, or 10 minutes prior to the early closing time on a day when Nasdaq closes early. Nasdaq is also proposing to add a new definition of Second Reference Price in Rule 4754(a)(11) to refer to the Current Reference Price in the NOII disseminated at 3:55 p.m. ET, or five minutes prior to the early closing time on a day when Nasdaq closes early.

Under the proposed rule change, a LOC order 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 3:55 p.m. ET, a LOC order may be entered but can only be cancelled and/or modified if the participant requests that Nasdaq correct a legitimate error in the order. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, a Late LOC order may be entered, provided that there is a First Reference Price or a Second Reference Price. Late LOC orders can also only be cancelled and/or modified if the participant requests that Nasdaq correct a legitimate error in the order. LOC orders cannot be cancelled or modified at or after 3:58 p.m.

A Late LOC order to buy will be accepted at its limit price, unless its limit price is higher than the higher of the First Reference Price and the Second Reference Price, in which case the Late LOC order will be handled consistent with the participant's instruction that the Late LOC order is to be: (1) Rejected; or (2) re-priced to the higher of the First Reference Price and the Second Reference Price. Similarly, a Late LOC order to sell will be accepted at its limit price, unless its limit price is lower than the lower of the First Reference Price and the Second Reference Price, in which case the Late LOC order will be handled consistent with the participant's instruction that the LOC order is to be: (1) Rejected; or (2) re-priced to the lower of the First Reference Price and the Second Reference Price.<sup>11</sup> For example, if the

<sup>9</sup> "Legitimate error" for a MOC, LOC or IO order includes, for example, an error in the Side, Size, Symbol, or Price, or duplication of an order, as set forth in the applicable rule for each Order Type.

<sup>10</sup> "First Reference Price" is presently defined as "the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:55 p.m. ET." See Rule 4754(a)(9). "Current Reference Price" means the following: (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, and IO orders 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; or (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 Rule 4754(a)(7)(A).

<sup>11</sup> In each case, if either the First Reference Price or the Second Reference Price is not at a permissible minimum increment, the First Reference Price or the Second Reference Price, as applicable, will be rounded (i) to the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii) down if there is a sell imbalance. The default configuration for participants that do not specify otherwise will

First Reference Price for a security is \$10 and the Second Reference Price is \$10.25, and a participant submits a Late LOC order to buy the security with a limit of \$11, the order would either be rejected or repriced to \$10.25 in accordance with the participant's instructions.

Nasdaq believes that allowing Late LOC orders to be priced at the more aggressive of the two reference prices will provide flexibility to market participants by allowing participants to consider information in both the EOII and NOII in making informed decisions about whether and how to participate in the Closing Cross. It will also increase participation for a wider variety of liquidity providers who otherwise would have had a Late LOC order rejected or repriced if its limit was outside of the First Reference Price. Nasdaq believes that increased participation may enhance price discovery and stability of the Closing Cross because it will allow more price forming orders to offset imbalances and to participate in the Closing Cross.

#### Additional Conforming Changes

In connection with the proposed rule changes, Nasdaq is proposing to revise Sections 118(a)(1),<sup>12</sup> 118(a)(2),<sup>13</sup> and 118(a)(3)<sup>14</sup> of Equity 7 Pricing Schedule

to have Late LOC orders re-priced rather than rejected.

<sup>12</sup> Section 118(a)(1) of the Equity 7 Pricing Schedule currently provides that the fee for execution and routing of orders in Nasdaq-listed securities is \$0.0027 per share executed for a member with shares of liquidity provided in the Opening and Closing Crosses, excluding Market-on-Close, Limit-on-Close (other than an Limit-on-Close Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET), Market-on-Open, Limit-on-Open, Good-til-Cancelled, and Immediate-or-Cancel orders, through one or more of its Nasdaq Market Center MPIDs that represent more than 0.01% of Consolidated Volume during the month.

<sup>13</sup> Section 118(a)(2) of the Equity 7 Pricing Schedule currently provides that the fee for execution and routing of securities listed on NYSE is \$0.0027 per share executed for a member with shares of liquidity provided in the Opening and Closing Crosses, excluding Market-on-Close, Limit-on-Close (other than an Limit-on-Close Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET), Market-on-Open, Limit-on-Open, Good-til-Cancelled, and Immediate-or-Cancel orders, through one or more of its Nasdaq Market Center MPIDs that represent more than 0.01% of Consolidated Volume during the month.

<sup>14</sup> Section 118(a)(3) of the Equity 7 Pricing Schedule currently provides that the fee for execution and routing of orders in securities listed on exchanges other than Nasdaq and NYSE ("Tape B Securities") is \$0.0027 per share executed for a member with shares of liquidity provided in the Opening and Closing Crosses, excluding Market-on-Close, Limit-on-Close (other than an Limit-on-Close Order entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET), Market-on-Open, Limit-on-Open, Good-til-Cancelled, and Immediate-or-Cancel orders, through one or more of its Nasdaq Market Center MPIDs that represent

to reflect the revised cutoff times for modifications to LOC orders. Nasdaq is also proposing to revise "Eligible Interest" to "Close Eligible Interest" in Rules 4754(a)(7)(E)(ii) and 4754(b)(2)(A) to correct an inadvertent error.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest because the proposed changes will improve the stability and price discovery process of the Closing Cross. Prohibiting cancellation or modification of MOC, LOC or IO orders after 3:50 p.m. ET will enhance stability in the Closing Cross process because it will reduce the possibility of large indicative price movements due to participants cancelling or modifying orders in reaction to the EOII, while participants maintain the ability to cancel or modify orders to correct a legitimate error in the order. In addition, permitting Late LOC orders to be repriced at the more aggressive of the First Reference Price or Second Reference Price may enhance price discovery and stability of the Closing Cross because it will allow more price forming orders to offset imbalances and to participate in the Closing Cross.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule changes are designed to render the Nasdaq Closing Cross more transparent and more flexible to participants. The proposed changes will affect all participants using MOC, LOC and IO orders equally.

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

No written comments were either solicited or received.

more than 0.01% of Consolidated Volume during the month.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

### 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2019-064 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2019-064. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2019-064, and should be submitted on or before September 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86651; File No. SR-NYSE-2019-14]

### Self-Regulatory Organizations; New York Stock Exchange 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 Section 703.18 of the Listed Company Manual To Permit the Listing of Event-Based Contingent Value Rights and Make Other Changes to the Listing Standards for Contingent Value Rights

August 13, 2019.

#### I. Introduction

On April 25, 2019, New York Stock Exchange LLC (“NYSE” or the “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 Section 703.18 of the Exchange’s Listed Company Manual (“Manual”) to expand the circumstances under which a contingent value right (“CVR”) may be listed on the Exchange and make other changes to the listing standards for CVRs. The proposed rule change was published for comment in the **Federal Register** on May 15, 2019.<sup>3</sup> On August 8, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The

Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Section 703.18 of the Manual currently provides only for the listing of CVRs that are related to the price of an affiliate’s equity security (a “Price-Based CVR”).<sup>5</sup> The Exchange proposes to amend Section 703.18 of the Manual to also provide for the listing of CVRs based on the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer (an “Event-Based CVR”). As proposed by the Exchange, an Event-Based CVR would be defined as an unsecured obligation of the issuer providing for a possible cash payment, within a specified time period, upon the occurrence of a specified event or events relating to the business of the issuer of the CVR or an affiliate of such issuer.<sup>6</sup> The Exchange notes that, with the exception of the payment triggering event or events, Event-Based CVRs are identical in structure to Price-Based CVRs.<sup>7</sup> The Exchange also proposes to amend Section 703.18 of the Manual to make other changes to the listing standards for both Price-Based and Event-Based CVRs, as described in more detail below.

According to the Exchange, Price-Based CVRs are generally distributed to shareholders of an acquired company who are receiving shares of the acquirer

material terms of a CVR prior to listing; (2) require public disclosure of an occurrence of any event or events upon which a CVR payment is conditioned, or the failure of such event or events to occur, in accordance with Sections 202.05 and 202.06 of the Manual; (3) specify that the Exchange will not list a CVR if, at the time of the proposed listing, the issuer is below compliance with applicable listing standards; (4) state that, in addition to its original proposal to promptly delist any CVR when the issuer’s common stock ceases to be listed on a national securities exchange, the Exchange will also promptly delist a CVR when the related equity security to which the cash payment at maturity is tied is no longer listed on a national security exchange; and (5) make technical, clarifying changes. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nyse-2019-14/srnyse201914-5944385-189087.pdf>.

<sup>5</sup> Under Section 703.18 of the Manual, Price-Based CVRs are defined as unsecured obligations of the issuer providing for a possible cash payment at maturity based upon the price performance of an affiliate’s equity security.

<sup>6</sup> See proposed Section 703.18 of the Manual. See also Amendment No. 1.

<sup>7</sup> See Notice, *supra* note 3, at 21862. See also proposed Section 703.18 of the Manual.

as acquisition consideration.<sup>8</sup> The Price-Based CVRs provide the acquiree’s shareholders with some medium-term protection against poor stock price performance of the shares of the acquirer by guaranteeing them a specified cash payment if the acquirer’s average stock price is below a specified level at the time of maturity of the Price-Based CVR.<sup>9</sup> According to the Exchange, Event-Based CVRs are also typically issued to the shareholders of an acquired entity as consideration in an acquisition transaction.<sup>10</sup> Event-Based CVRs entitle their holders to receive a specified cash payment upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer prior to the maturity date of the Event-Based CVR.<sup>11</sup> The Event-Based CVR provides the shareholders of the acquiree an additional interest in the medium-term performance of the merged entity upon occurrence of its specified event(s).<sup>12</sup> Pursuant to the amended proposal, the Exchange would require that all material terms of a Price-Based or Event-Based CVR be publicly disclosed prior to listing a CVR.<sup>13</sup>

Section 703.18 of the Manual currently provides that the issuer of a listed CVR must be an entity that has assets in excess of \$100 million and meets the “size and earnings” requirements of Section 102 of the Manual. While the proposed rule change will retain the \$100 million assets requirement for CVRs, the Exchange proposes to amend the reference to the “size and earnings requirements” of Section 102 of the Manual by specifying instead that the issuer must meet the requirements of Sections 102.01B and 102.01C of the Manual.<sup>14</sup> The requirements of Section 102.01B of the Manual include the size requirements for all newly-listed operating companies. In the case of companies listing CVRs, Section 102.01B would require the company to have an aggregate market value of publicly held shares of \$100 million <sup>15</sup> and a \$4.00 stock price.

As for the requirement for the issuer of the CVR to also meet one of the standards set forth in Section 102.01C of

<sup>8</sup> See Notice, *supra* note 3, at 21861.

<sup>9</sup> See *id.* at 21861–62.

<sup>10</sup> See *id.* at 21862.

<sup>11</sup> See *id.* See also Amendment No. 1.

<sup>12</sup> See Notice, *supra* note 3, at 21862, which also provides examples of common Event-Based CVRs.

<sup>13</sup> See Amendment No. 1.

<sup>14</sup> See proposed Section 703.18(A) of the Manual.

<sup>15</sup> As noted by the Exchange, this is the same requirement that currently applies to companies transferring from another national securities exchange. See Notice, *supra* note 3, at 21862.

<sup>17</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. 85812 (May 9, 2019), 84 FR 21861 (“Notice”).

<sup>4</sup> In Amendment No. 1, the Exchange revised the proposal to: (1) Require public disclosure of all