

that, among other things, are clear and transparent; clearly prioritize the safety and efficiency of the covered clearing agency; and support the public interest requirements of the Exchange Act.<sup>42</sup> In adopting Rule 17Ad-22(e)(2), the Commission discussed comments it received regarding the concept of skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.<sup>43</sup> And, while the Commission declined to include a specific skin-in-the-game requirement in the rule, it stated its belief that "the proper alignment of incentives is an important element of a covered clearing agency's risk management practices," and noted that skin-in-the-game "may play a role in those risk management practices in many instances."<sup>44</sup> OCC's current rules require the application management compensation and excess capital as skin-in-the-game, which in turn should help further align the interests of OCC's stakeholders, including OCC management and Clearing Members.<sup>45</sup>

As described above, OCC's proposal would not reduce the resources OCC would apply to address default losses or remove the current skin-in-the-game component of OCC's rules. Rather, OCC proposes to set aside a defined amount of capital for the sole purpose of absorbing losses and shortfalls arising out of a Clearing Member default. OCC has clearly stated the factors that the Board would consider when determining the amount of resources to hold as skin-in-the-game, a portion of which would comprise the Minimum Corporate Contribution. OCC also proposes to establish a clear process for addressing reductions in the Minimum Corporate Contribution arising out of a Clearing Member's default. Accordingly, the Commission believes that the proposed changes to establish a persistent minimum level of skin-in-the-game are consistent with Rule 17Ad-22(e)(2) under the Exchange Act.<sup>46</sup>

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of

Section 17A of the Exchange Act<sup>47</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>48</sup> that the Proposed Rule Change (SR-OCC-2021-003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>49</sup>

**J. Matthew DeLesDernier**,

*Assistant Secretary*.

[FR Doc. 2021-11606 Filed 6-2-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92068; File No. SR-NASDAQ-2021-009]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Equity 4, Rule 4754 Relating to the Limit Up-Limit Down Closing Cross

May 28, 2021.

#### I. Introduction

On February 11, 2021, The Nasdaq Stock Market LLC ("Exchange" or "Nasdaq") 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 Equity 4, Rule ("Rule") 4754 relating to the Limit Up-Limit Down ("LULD") closing cross. The proposed rule change was published for comment in the **Federal Register** on March 3, 2021.<sup>3</sup> On April 9, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.<sup>4</sup> On April 15, 2021, pursuant to

<sup>47</sup> In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>48</sup> 15 U.S.C. 78s(b)(2).

<sup>49</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. 91208 (February 25, 2021), 86 FR 12503.

<sup>4</sup> In Amendment No. 1, the Exchange amended the proposal to: (1) Specify the dissemination of certain imbalance information before the LULD closing cross; (2) clarify the process for calculating the LULD closing cross price and the benchmark prices for the LULD closing cross; (3) specify the treatment of imbalance only orders for purposes of LULD closing cross price selection; (4) provide additional explanation to support the proposal; (5) specify the implementation date for the proposal;

Section 19(b)(2) of the Act,<sup>5</sup> the Commission 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>6</sup> The Commission has not received any 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

The Nasdaq closing cross is the Exchange's process for determining the price at which orders will be executed at the close and for executing those orders, and the price determined by the Nasdaq closing cross is the Nasdaq official closing price for securities that participate in the cross.<sup>7</sup> The Nasdaq closing cross begins at 4:00 p.m.,<sup>8</sup> and the Exchange applies a price range within which the Nasdaq closing cross must occur.<sup>9</sup> Currently, the Exchange applies a threshold amount that is the greater of \$0.50 or 10% of the midpoint of the Nasdaq best bid and offer, and that amount is then added to the Nasdaq best offer and subtracted from the Nasdaq best bid to establish the price range.<sup>10</sup>

The LULD closing cross is the Exchange's process for executing closing trades in Nasdaq-listed securities when an LULD trading pause pursuant to Rule 4120(a)(12) exists at or after 3:50 p.m.

and (6) make other clarifying, technical, and conforming changes. Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2021-009/srnasdaq2021009-8670132-235426.pdf>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 91581, 86 FR 20759 (April 21, 2021). The Commission designated June 1, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1.

<sup>7</sup> See Rule 4754(a)(6) and (b)(4). See also Rule 4754(b)(2) (describing the methodology for determining the Nasdaq closing cross price).

<sup>8</sup> All times referenced are in Eastern Time.

<sup>9</sup> See Rule 4754(b). If the Nasdaq closing cross price established pursuant to Rule 4754(b)(2)(A)-(D) is outside the benchmarks established by the Exchange by a threshold amount, the Nasdaq closing cross will occur at a price within the threshold amounts that best satisfies the conditions of Rule 4754(b)(2)(A)-(D). See Rule 4754(b)(2)(E).

<sup>10</sup> See Amendment No. 1, *supra* note 4, at 6. Nasdaq management may set and modify the benchmarks and thresholds from time to time upon prior notice to market participants. See Rule 4754(b)(2)(E).

<sup>42</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>43</sup> Covered Clearing Agency Standards, 81 FR at 70805-06.

<sup>44</sup> Covered Clearing Agency Standards, 81 FR at 70806.

<sup>45</sup> See CMP Approval Order at 5507.

<sup>46</sup> 17 CFR 240.17Ad-22(e)(2).

and before 4:00 p.m.<sup>11</sup> The Exchange proposes to make certain changes to the LULD closing cross in order to further align that process with the regular Nasdaq closing cross process.<sup>12</sup>

#### A. LULD Closing Cross Time and Benchmark Prices

Currently, unlike the regular Nasdaq closing cross, the LULD closing cross occurs at 4:00 p.m. unless an order imbalance exists, in which case the Exchange will extend the time of the cross by one minute until the order imbalance no longer exists.<sup>13</sup> If this condition persists until 5:00 p.m., the Exchange will not conduct an LULD closing cross in the security and will instead use the last sale on the Exchange as the Nasdaq official closing price for that security.<sup>14</sup> In addition, currently, unlike the regular Nasdaq closing cross, the Exchange does not apply a price range within which the LULD closing cross must occur. The Exchange now proposes to eliminate extensions of the LULD closing cross beyond 4:00 p.m.<sup>15</sup> and to require that the LULD closing cross occur within certain benchmark prices.

As proposed, for any security that entered a trading pause that was extended prior to 3:50 p.m., the upper (lower) benchmark price would be established by adding (subtracting) a threshold amount to the upper (from the lower) auction collar<sup>16</sup> that was last updated with the extension of the trading pause, rounded to the nearest minimum price increment (with midpoint prices being rounded up), and the lower (upper) benchmark price would be the lower (upper) auction collar that was last updated with the upper (lower) auction collar used to calculate the upper (lower) benchmark price.<sup>17</sup> For any security that entered a

trading pause that was not extended prior to 3:50 p.m., the upper (lower) benchmark price would be established by adding (subtracting) a threshold amount to the upper auction collar for a Limit Up triggered pause (from the lower auction collar for a Limit Down triggered pause), rounded to the nearest minimum price increment (with midpoint prices being rounded up), and the lower (upper) benchmark price would be the lower (upper) auction collar disseminated with the upper (lower) auction collar used to calculate the upper (lower) benchmark price.<sup>18</sup> For any security that entered a trading pause at or after 3:50 p.m., the upper (lower) benchmark price would be established by adding (subtracting) a threshold amount to the upper band for a Limit Up triggered pause (from the lower band for a Limit Down triggered pause), rounded to the nearest minimum price increment (with midpoint prices being rounded up), and the lower (upper) benchmark price would be the lower (upper) band in place at the time the trading pause was triggered.<sup>19</sup> The benchmark prices would be published via the Nasdaq UTP SIP and Exchange proprietary data feeds.<sup>20</sup>

The Exchange proposes to initially set the price threshold amounts at the greater of \$1.00 or 10% for securities with a reference price greater than \$1.00 (or \$0.50 for securities with a reference price equal to or less than \$1.00).<sup>21</sup> As proposed, Nasdaq management would be able to set and modify these thresholds from time to time upon prior notice to market participants.<sup>22</sup>

As proposed, at 4:00 p.m., the Exchange would conduct the LULD closing cross, and if the cross price would fall outside of the benchmark

increments if the specified reopening criteria are not met, widening the relevant auction collar at the start of each five-minute extension. See Amendment No. 1, *supra* note 4, at 9 n.18.

<sup>18</sup> See proposed Rule 4754(b)(6)(E)(ii). The Exchange states that this scenario would cover securities that entered a trading pause between 3:45 p.m. and 3:50 p.m., and because the Exchange does not extend the reopening process in Rule 4120(c)(10) or widen auction collars past 3:50 p.m., it would use the initial reopening auction collar. See Amendment No. 1, *supra* note 4, at 9–10 n.19.

<sup>19</sup> See proposed Rule 4754(b)(6)(E)(iii). The Exchange states that it would use the LULD band that triggered the pause in this scenario because the Exchange does not conduct the LULD reopening process at or after 3:50 p.m. and therefore there are no reopening auction collars in this scenario. See Amendment No. 1, *supra* note 4, at 10 n.20.

<sup>20</sup> See Amendment No. 1, *supra* note 4, at 8.

<sup>21</sup> See *id.* at 8–9.

<sup>22</sup> See proposed Rule 4754(b)(6)(E). These threshold amounts, like the threshold amounts currently used for the regular Nasdaq closing cross, would be published on the Exchange's public website. See Amendment No. 1, *supra* note 4, at 8.

prices, the LULD closing cross would execute all available orders at a price within or equal to the benchmark prices.<sup>23</sup> Any unexecuted orders intended for the LULD closing cross (*i.e.*, market on close (“MOC”),<sup>24</sup> limit on close (“LOC”),<sup>25</sup> and imbalance only (“IO”) orders),<sup>26</sup> including those that fall outside the benchmark prices, would be cancelled.<sup>27</sup> All other orders not executed in the LULD closing cross would be processed according to the entering firm's instructions.<sup>28</sup>

#### B. LULD Closing Cross Price Determination

Currently, the LULD closing cross price is determined by the same execution algorithm as the regular Nasdaq closing cross.<sup>29</sup> The Exchange now proposes to modify the methodology for determining the LULD closing cross price.<sup>30</sup> As proposed, the LULD closing cross would occur at the price within the benchmark prices established pursuant to proposed Rule 4754(b)(6)(E) that maximizes the number of shares of eligible interest,<sup>31</sup> MOC, LOC, and IO orders in the Nasdaq market center to be executed.<sup>32</sup> If more than one such price exists, the LULD closing cross would occur at the price within the benchmark prices that minimizes any imbalance.<sup>33</sup> If more

<sup>23</sup> See Amendment No. 1, *supra* note 4, at 12.

<sup>24</sup> See Rule 4702(b)(11) (defining a MOC order as an order type entered without a price that may be executed only during the Nasdaq closing cross).

<sup>25</sup> See Rule 4702(b)(12) (defining a LOC order as 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).

<sup>26</sup> See Rule 4702(b)(13) (defining an IO order as an order entered with a price that may be executed only in the Nasdaq closing cross and only against MOC orders or LOC orders).

<sup>27</sup> See Amendment No. 1, *supra* note 4, at 12.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at 16.

<sup>30</sup> See proposed Rule 4754(b)(6)(D). See also Rule 4754(b)(2)(A)–(F) (describing the methodology for determining the regular Nasdaq closing cross price).

<sup>31</sup> For purposes of the LULD closing cross, the Exchange proposes to define “eligible interest” to have the same meaning as “close eligible interest” in Rule 4754(a), with the addition of any new orders with an eligible underlying order type and order attribute entered during the trading pause. See proposed Rule 4754(b)(6)(A)(i). See also Rule 4754(a)(1) (defining “close eligible interest” to mean any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC).

<sup>32</sup> See proposed Rule 4754(b)(6)(D)(i). The Exchange states that proposed Rule 4754(b)(6)(D)(i) is similar to Rule 4754(b)(2)(A) (*i.e.*, maximizing the number of shares executed in the cross). See Amendment No. 1, *supra* note 4, at 16.

<sup>33</sup> See proposed Rule 4754(b)(6)(D)(ii). For purposes of the LULD closing cross, the Exchange proposes to define “imbalance” to mean the

Continued

<sup>11</sup> See Rule 4754(b)(6).

<sup>12</sup> See Amendment No. 1, *supra* note 4, at 4. The Exchange proposes to implement the proposed changes by the end of Q3 2021, and will provide prior notice in an Equity Trader Alert. See *id.*

<sup>13</sup> See Rule 4754(b)(6)(A)(i) and (iii).

<sup>14</sup> See Rule 4754(b)(6)(A)(iii).

<sup>15</sup> In connection with eliminating extensions of the LULD closing cross, the Exchange proposes to remove Rule 4754(b)(6)(A)(iii), which currently describes extensions of the LULD closing cross, and parts of Rule 4754(b)(6)(C)(iii), which currently describe the handling of certain orders after 4:00 p.m. for purposes of the LULD closing cross.

<sup>16</sup> See Rule 4120(c)(10) (describing the auction collars for reopening following an LULD trading pause).

<sup>17</sup> See proposed Rule 4754(b)(6)(E)(i). The Exchange states that it would use the last widened auction collar in this scenario because a security that entered a trading pause prior to 3:50 p.m. would be subject to the Exchange's reopening process in Rule 4120(c)(10), where the Exchange would halt the security for an initial five-minute period and extend the halt in five-minute

than one such price exists, the LULD closing cross would occur at the entered price within the benchmark prices at which shares will remain unexecuted in the cross.<sup>34</sup> If no price within the benchmark prices would satisfy these conditions, then: (i) If an imbalance exists, the LULD closing cross would occur at a price equal to the upper (lower) benchmark price for a buy (sell) imbalance; and (ii) if no imbalance exists, the LULD closing cross would occur at a price that minimizes the distance from the last published upper band (lower band) for a Limit Up (Limit Down) trading pause.<sup>35</sup>

Currently, Rule 4754(b)(6) provides that, in the event of an LULD closing cross, MOC, LOC, and IO orders intended for the closing cross entered into the system and placed on the book prior to the trading pause will remain on the book to participate in the LULD closing cross, but these orders may not be modified or cancelled. Rule 4754(b)(6) also provides that, during the pause and prior to 4:00 p.m., new orders (other than MOC or LOC orders) may be entered, modified, and cancelled and may participate in the LULD closing cross. The Exchange now proposes to modify the handling of MOC, LOC, and IO orders such that they could be entered, modified, and cancelled pursuant to Rules 4702(b)(11), 4702(b)(12), and 4702(b)(13), respectively.<sup>36</sup> Therefore, as proposed, MOC, LOC, and IO orders could be entered, modified, and cancelled during the same time periods for an LULD closing cross as for a regular Nasdaq closing cross. However, unlike the regular Nasdaq closing cross where 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

number of shares of buy or sell MOC or LOC orders or eligible interest that cannot be matched with other MOC, LOC, or IO orders or eligible interest at a particular price at any given time. See proposed Rule 4754(b)(6)(A)(ii). The Exchange states that proposed Rule 4754(b)(6)(D)(ii) is based on the same principle as Rule 4754(b)(2)(B) (*i.e.*, minimizing the number of shares that cannot be matched in the cross). See Amendment No. 1, *supra* note 4, at 17.

<sup>34</sup> See proposed Rule 4754(b)(6)(D)(iii). The Exchange states that proposed Rule 4754(b)(6)(D)(iii) is similar to Rule 4754(b)(2)(C). See Amendment No. 1, *supra* note 4, at 18.

<sup>35</sup> See proposed Rule 4754(b)(6)(D)(iv). The Exchange states that Rule 4754(b)(2)(D) uses the midpoint of the Nasdaq best bid and offer as the tiebreaker for the regular Nasdaq closing cross, whereas there would be no continuous market prior to the execution of the LULD closing cross and proposed Rule 4754(b)(6)(D)(iv) would better reflect current market forces and conditions for an LULD closing cross. See Amendment No. 1, *supra* note 4, at 18–19.

<sup>36</sup> See proposed Rule 4754(b)(6)(F)(ii).

repeatedly to equal the highest bid (lowest offer) on the Nasdaq book,<sup>37</sup> for purposes of LULD closing cross price selection, buy (sell) IO orders would be re-priced to one minimum price increment below (above) the LULD band that triggered the trading pause.<sup>38</sup>

### C. Imbalance Information

Currently, Rule 4754(b)(6)(B) provides that, in the event of an LULD closing cross, the Exchange continues disseminating the order imbalance indicator (“NOII”) every second until after hours trading begins. The Exchange proposes to amend this rule to also specify the dissemination of the early order imbalance indicator (“EOII”) before the LULD closing cross.<sup>39</sup> As with the regular Nasdaq closing cross, EOII would be disseminated every 10 seconds beginning at 3:50 p.m. until the NOII begins to disseminate, and the NOII would be disseminated every second beginning at 3:55 p.m. until market close.<sup>40</sup>

Currently, Rule 4754(b)(6)(B) also provides that the near price, far price, and reference prices contained in the NOII all represent the price at which the LULD closing cross would execute should the cross conclude at that time. As proposed, the near clearing price<sup>41</sup> and reference price contained in the EOII and NOII, as applicable, would represent the price at which the LULD closing cross would execute should the cross conclude at that time (*i.e.*, bounded by the benchmark prices),<sup>42</sup> and the far clearing price would represent the price at which eligible interest, MOC, LOC, and IO orders would execute (*i.e.*, not bounded by the benchmark prices).<sup>43</sup>

### D. Other Changes

The Exchange proposes to specify in Rule 4754(b)(6) that the LULD closing cross process only applies to Nasdaq-listed securities, rather than all stocks.

<sup>37</sup> See Rule 4702(b)(13)(A).

<sup>38</sup> See proposed Rule 4754(b)(6)(F)(iii).

<sup>39</sup> See proposed Rule 4754(b)(6)(C).

<sup>40</sup> See *id.*; Amendment No. 1, *supra* note 4, at 21–22. See also Rule 4754(b)(1) (describing EOII and NOII dissemination for the regular Nasdaq closing cross).

<sup>41</sup> The Exchange proposes to replace all references to the “near price” and “far price” with the “near clearing price” and “far clearing price” respectively to align with terminology used throughout Rule 4754. See Amendment No. 1, *supra* note 4, at 22.

<sup>42</sup> See proposed Rule 4754(b)(6)(C); Amendment No. 1, *supra* note 4, at 22.

<sup>43</sup> See proposed Rule 4754(b)(6)(C); Amendment No. 1, *supra* note 4, at 22. The far clearing price would be different from the near clearing price and reference price to indicate that not all marketable orders can be filled within the benchmark prices. See Amendment No. 1, *supra* note 4, at 22.

The Exchange also proposes a conforming change in Rule 4754(b)(6)(B)(i) to clarify that the LULD closing cross applies when a trading pause exists (rather than is triggered) at or after 3:50 p.m. and before 4:00 p.m. Finally, the Exchange proposes to update obsolete cross references in Rules 4756(c)(3)(B) and 4763(b) to Rule 4751.<sup>44</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>45</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>46</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed benchmark prices and other changes to the LULD closing cross would more closely align the LULD closing cross process with the regular Nasdaq closing cross process and would promote a more consistent experience for those that participate in the crosses. The Commission also believes that the differences between the proposed LULD closing cross process and the regular Nasdaq closing cross process are reasonably designed to reflect the differences in market conditions leading up to the crosses.

More specifically, the Commission believes that the proposed benchmark prices for the LULD closing cross would help ensure that the closing price of a security is reasonably related to current market conditions. The Commission also believes that the addition of benchmark prices would further harmonize the LULD closing cross process with the regular Nasdaq closing cross process, while reflecting market

<sup>44</sup> See Amendment No. 1, *supra* note 4, at 23.

<sup>45</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>46</sup> 15 U.S.C. 78f(b)(5).

conditions for the security leading up to the LULD closing cross. In particular, the Commission believes that the proposed methodology for determining the benchmark prices would reflect that there is no continuous trading in the security and no Nasdaq best bid and offer based on continuous trading in the security during the pause leading up to the cross,<sup>47</sup> that the cross would occur following a period of increased volatility in the security,<sup>48</sup> and the direction of trading that triggered the pause in the security and the existence of buy or sell pressure in the security leading up to the cross.<sup>49</sup>

The Commission also believes that the proposed methodology for determining the LULD closing cross price would reflect the proposed benchmark prices and allow for similar experiences for those that participate in the regular Nasdaq closing cross and the LULD closing cross. In addition, the Commission believes that the proposed methodology, including the proposed definitions of eligible interest and imbalance and the proposed treatment of IO orders, are reasonably designed to reflect market conditions leading up to the LULD closing cross, including that there is no continuous trading in the security and no Nasdaq best bid and offer based on continuous trading in the security leading up to the cross, and the existence of any buy or sell imbalance in the security leading up to the cross.

Further, the Commission believes that the proposal to eliminate extensions of the LULD closing cross past 4:00 p.m. would provide more certainty regarding the timing of the LULD closing cross and align that timing with the regular Nasdaq closing cross. The Commission

<sup>47</sup> As described above, the benchmark prices for the LULD closing cross would be calculated based on the reopening auction collars or the LULD bands, rather than the midpoint of the Nasdaq best bid and offer as is the case with the regular Nasdaq closing cross.

<sup>48</sup> As described above, the initial threshold amounts for determining the benchmark prices for the LULD closing cross (*i.e.*, the greater of \$1.00 or 10% for securities with a reference price greater than \$1.00, and \$0.50 for securities with a reference price equal to or less than \$1.00) may be greater than the current threshold amounts for determining the price range for the regular Nasdaq closing cross (*i.e.*, the greater of \$0.50 or 10%). As with the regular Nasdaq closing cross, Nasdaq management would be able to set and modify these threshold amounts from time to time upon prior notice to market participants.

<sup>49</sup> As described above, the threshold amounts for the LULD closing cross would be applied to the most recently expanded reopening auction collar (if the trading pause was extended before 3:50 p.m.) or in the direction of trading that caused the trading pause (if the trading pause was not extended before 3:50 p.m. or if the trading pause occurred at or after 3:50 p.m.), whereas the threshold amounts for the regular Nasdaq closing cross are applied to both the Nasdaq best bid and Nasdaq best offer.

also believes that the proposed timing for entering, modifying, and cancelling MOC, LOC, and IO orders for the LULD closing cross would allow additional interest to participate in the cross and further align the LULD closing cross process with the regular Nasdaq closing cross process with respect to these orders.

Finally, the Commission believes that the proposal to specify the dissemination of EOII would provide transparency regarding the information that is disseminated in advance of the LULD closing cross.<sup>50</sup> Similarly, the Commission believes that the proposal to specify that the LULD closing cross only applies to Nasdaq-listed securities and clarify that the LULD closing cross applies when a trading pause exists (rather than is triggered) at or after 3:50 p.m. and before 4:00 p.m. would provide greater transparency regarding the LULD closing cross process. The Commission also believes that updating obsolete cross references in Rules 4756(c)(3)(B) and 4763(b) would provide greater clarity in the Exchange's rules.

#### IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-009 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-2021-009. 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

<sup>50</sup> The Commission also believes that the proposed differences between the near clearing price and reference price, and the far clearing price, would reflect the addition of benchmark prices to the LULD closing cross.

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-2021-009, and should be submitted on or before June 24, 2021.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. As discussed above, in Amendment No. 1, the Exchange specified the dissemination of certain imbalance information before the LULD closing cross, clarified the process for calculating the LULD closing cross price and the benchmark prices, specified the treatment of IO orders for purposes of LULD closing cross price selection, provided additional explanation to support the proposal, specified the implementation date for the proposal, and made other clarifying, technical, and conforming changes. The Commission believes that the changes made in Amendment No. 1 do not raise any material or novel regulatory issues and they provide further clarity to and consistency within the proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>51</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

<sup>51</sup> 15 U.S.C. 78s(b)(2).

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>52</sup> that the proposed rule change (SR-NASDAQ-2021-009), 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>53</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-11693 Filed 6-2-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92053; File No. SR-NYSEArca-2021-43]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fees and Charges

May 27, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 14, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to replace the monthly rebate tied to the performance in the opening and closing auctions in NYSE Arca-listed Securities and the ETF Incentive Program for NYSE Arca-listed Securities with a new pricing incentive for Lead Market Makers and ETP Holders registered as Market Makers. The Exchange proposes to implement the fee changes effective May 14, 2021. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

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

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule to replace the monthly rebate tied to the performance in the opening and closing auctions in NYSE Arca-listed Securities and the ETF Incentive Program for NYSE Arca-listed Securities<sup>4</sup> with a new pricing incentive that is tied to meeting enhanced market quality metrics. The Exchange now proposes to provide financial incentives for Lead Market Makers (“LMMs”)<sup>5</sup> that are based on whether the LMM meets certain Performance Metrics (as described below). Specifically, the Exchange would provide incremental credits to LMMs based on how many Performance Metrics an LMM meets in each NYSE Arca-listed Security. The Exchange also proposes to make the additional credits available for ETP Holders registered as Market Maker (“Market Makers”).<sup>6</sup> The Exchange believes that the proposed rule change would encourage LMMs and Market

Makers to maintain better market quality in NYSE Arca-listed Securities in which they are registered, including in lower volume securities.

The Exchange notes that its listing business operates in a highly competitive market in which market participants, including issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or other factors at a particular venue to be insufficient or excessive. The proposed rule change reflects the current competitive pricing environment and is designed to incentivize market participants to participate as LMMs or Market Makers, and thereby, further enhance the market quality on all securities listed on the Exchange and encourage issuers to list new products on the Exchange.

The Exchange proposes to implement the fee changes effective May 14, 2021.<sup>7</sup>

##### Background

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>8</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>9</sup> Indeed, equity trading is currently dispersed across 16

<sup>4</sup> See Securities and Exchange Act Release No. 87978 (January 15, 2020), 85 FR 3727 (January 22, 2020) (SR-NYSEArca-2020-03).

<sup>5</sup> The term “Lead Market Maker” is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

<sup>6</sup> Pursuant to Rule 7.23-E(a)(1), all registered Market Makers, including LMMs, have an obligation to maintain continuous, two-sided trading interest in those securities in which the Market Maker is registered to trade. In addition, pursuant to Rule 7.24-E(b), LMMs are held to higher performance standards in the securities in which they are registered as LMM. LMMs can earn additional financial incentives for meeting the higher performance standards specified from time to time in the Fee Schedule. Only one LMM can be registered in a NYSE-Arca listed security, but that security can have an unlimited number of registered Market Makers. Market Makers can also be registered in securities that trade on an unlisted trading privileges basis on the Exchange.

<sup>7</sup> The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR-NYSEArca-2021-33). SR-NYSEArca-2021-33 was subsequently withdrawn and replaced by this filing.

<sup>8</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>9</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>52</sup> *Id.*

<sup>53</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.