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

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[64] to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the **Federal Register**. As discussed in Section II.D above, in Partial Amendment No. 1, NSCC amends its Form 19b–4, Item 3(a) disclosure to provide additional description of the purpose of the Proposed Rule Change, and Partial Amendment No. 1 does change the substance of the proposal, the proposed text of the Rules that was provided as Exhibit 5 to the Proposed Rule Change, the manner in which the Proposed Rule Change will operate, or the manner in which the Proposed Rule Change will affect its Members or other interested persons.

Furthermore, as discussed in Section III.A above, the Commission believes that the Proposed Rule Change, as modified by Partial Amendment No. 1, should help NSCC ensure it can complete settlement for all its Members in the event one Member defaults, which the Commission believes should promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).[65] Therefore, the Commission believes the nature of the changes in Partial Amendment No. 1 and NSCC's intended enhancements to its daily liquidity risk management warrants accelerated approval of the Proposed Rule Change. Accordingly, the Commission finds good cause for approving the Proposed Rule Change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[66]

VI. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[67] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[68] that Proposed Rule Change, as modified by Partial Amendment No. 1, SR–NSCC–2021–002, be, and hereby is, *Approved* on an accelerated basis.[69] [70]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[70]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13413 Filed 6–23–21; 8:45 am]

BILLING CODE 8011–01–P

[64] 15 U.S.C. 78s(b)(2).

[65] 15 U.S.C. 78q–1(b)(3)(F)

[66] 15 U.S.C. 78s(b)(2).

[67] 15 U.S.C. 78q–1.

[68] 15 U.S.C. 78s(b)(2).

[69] In approving the Proposed Rule Change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[70] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92185; File No. SR–FICC–2021–003]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Add the Sponsored GC Service and Make Other Changes

June 15, 2021.

On May 12, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FICC–2021–003 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on June 1, 2021.[3] The Commission has received no comment letters on the Proposed Rule Change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is July 16, 2021.

The Commission is extending the 45-day period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act[5] and for the reasons stated above, the Commission designates August 30, 2021, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR–FICC–2021–003.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–13287 Filed 6–23–21; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 92014 (May 25, 2021), 86 FR 29334 (June 1, 2021) (SR–FICC–2021–003) (''Notice''). FICC also filed the proposal contained in the Proposed Rule Change as advance notice SR–FICC–2021–801 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on June 3, 2021. Securities Exchange Act Release No. 92019 (May 27, 2021), 86 FR 29834 (June 3, 2021) (SR–FICC–2021–801) (''Notice of Filing''). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92180; File No. SR–NASDAQ–2021–044]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rules 4702 and 4703 in Light of Planned Changes to the System

June 15, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2021, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange proposes to amend Equity 4, Rules 4702 and 4703 [3] in light of planned changes to the System, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

Presently, the Exchange is making functional enhancements and improvements to specific Order Types [4] and Order Attributes [5] that are currently only available via the RASH Order entry protocol.[6] Specifically, the Exchange will be upgrading the logic and implementation of these Order Types and Order Attributes so that the features are more streamlined across the Nasdaq Systems and order entry protocols, and will enable the Exchange to process these Orders more quickly and efficiently. Additionally, this System upgrade will pave the way for the Exchange to enhance the OUCH Order entry protocol [7] so that Participants may enter such Order Types and Order Attributes via OUCH, in addition to the RASH Order entry protocols.[8] The Exchange plans to implement its enhancement of the OUCH protocol sequentially, by Order Type and Order Attribute.[9]

To support and prepare for these upgrades and enhancements, the Exchange recently submitted two rule filings to the Commission that amended its rules pertaining to, among other things, Market Maker Peg Orders and Orders with Reserve Size.[10] The Exchange now proposes to further amend its Rules governing Order Attributes, at Rule 4703. In particular, the Exchange proposes to adjust the current functionality of the Pegging [11] and Trade Now and Midpoint Trade Now Order Attributes,[12] as described below, so that they align with how the System, once upgraded, will handle these Order Attributes going forward. The Exchange also proposes to make several associated clarifications, corrections, and other changes to Rule 4702 as it prepares to enhance its order handling processes, including changes to Market on Open and Limit on Open Orders.

Changes to Pegging Order Attribute

First, the Exchange proposes to amend Rule 4703(d), which governs the Pegging Order Attribute. The Exchange offers three types of Pegging: Primary Pegging, Market Pegging, and Midpoint Pegging.[13] The Rule presently provides that if, at the time of entry, there is no price to which a Pegged Order can be pegged, the Order will be rejected, provided, however, that a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, will be accepted at its limit price. The Exchange proposes to replace this text by stating that if, at the time of entry, there is no price to which a Pegged Order, that has not been assigned a Routing Order Attribute, can be pegged or pegging would lead to a price at which the Order cannot be posted, then the Order will not be immediately available on the Nasdaq Book and will be entered once there is a permissible price.[14] The Exchange proposes this change so as to enhance the manner in which the Exchange presently handles Pegged Orders in this scenario. Rather than reject such Orders outright, and require customers to continuously reenter the Orders thereafter until a pegging price emerges, which may cost them queue priority, the Exchange believes that it would be more efficient and customer-friendly to simply hold a Pegged Order until a permissible pegging price emerges.[15]

A similar rationale applies to the Exchange's proposal to cease accepting certain Market or Primary Pegged Orders at their limit prices if no pegging price is available. Because participants presumably prefer for their orders to

[3] References herein to Nasdaq Rules in the 4000 Series shall mean Rules in Nasdaq Equity 4.

[4] An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. *See* Equity 1, Section 1(a)(7).

[5] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. *See id.*

[6] The RASH (Routing and Special Handling) Order entry protocol is a proprietary protocol that allows members to enter Orders, cancel existing Orders and receive executions. RASH allows participants to use advanced functionality, including discretion, random reserve, pegging and routing. See *http://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/rash_sb.pdf.*

[7] The OUCH Order entry protocol is a Nasdaq proprietary protocol that allows subscribers to quickly enter orders into the System and receive executions. OUCH accepts limit Orders from members, and if there are matching Orders, they will execute. Non-matching Orders are added to the Limit Order Book, a database of available limit Orders, where they are matched in price-time priority. OUCH only provides a method for members to send Orders and receive status updates on those Orders. See *https://www.nasdaqtrader.com/Trader.aspx?id=OUCH.*

[8] The Exchange designed the OUCH protocol to enable members to enter Orders quickly into the System. As such, the Exchange developed OUCH with simplicity in mind, and it therefore lacks more complex order handling capabilities. By contrast, the Exchange specifically designed RASH to support advanced functionality, including discretion, random reserve, pegging and routing. Once the System upgrades occur, then the Exchange intends to propose further changes to its Rules to permit participants to utilize OUCH, in addition to RASH, to enter order types that require advanced functionality.

[9] The Exchange notes that its sister exchanges, Nasdaq BX and Nasdaq PSX, plan to file similar proposed rule changes with the Commission shortly.

[10] *See* Securities Exchange Act Release No. 34–90389 (November 10, 2020), 85 FR 73304 (November 17, 2020) (SR–NASDAQ–2020–071); Securities Exchange Act Release No. 34–91109 (February 11, 2021), 86 FR 10141 (February 18, 2021) (SR–NASDAQ–2020–090).

[11] *See* Rule 4703(d).

[12] *See* Rule 4703(m)–(n).

[13] *See* Rule 4703(d) (defining ''Primary Pegging as pegging with reference to the inside quotation on the same side of the market, ''Market Pegging'' as pegging with reference to the inside quotation on the opposite side of the market, and ''Midpoint Pegging'' as pegging with reference to the midpoint between the inside bid and the inside offer).

[14] This change is applicable to Primary, Market and Midpoint Pegging Orders entered via RASH/QIX/FIX; OUCH/FLITE Midpoint Pegging behavior is not affected by this change. The Exchange also proposes to amend existing language in this provision which states that ''if the Inside Bid and Inside Offer are crossed or if there is no Inside Bid and/or Inside Offer, the Order will not be accepted.'' The proposed amendment would specify that this language applies only to Orders with Midpoint Pegging entered through OUCH or FLITE. The proposed changes to pegged orders entered through RASH, QIX, or FIX will allow the Exchange to handle the Order more consistent with the customer intended instruction, and are necessary to facilitate forthcoming System enhancements.

[15] Meanwhile, the Exchange proposes to amend the Rule to state that if a Pegged Order is assigned a Routing Order Attribute, and a permissible pegging price is not available upon entry, then the Order will continue to be rejected. The Exchange proposes to retain existing practice for Pegged Orders with Routing Order Attributes because the Exchange is not yet prepared to make similar changes to such Orders, although it contemplates doing so in the near future.

post at the pegging price, the Exchange believes that participants would prefer for the Exchange to hold such orders until a permissible pegging price emerges, rather than post the orders at their limit prices.[16] [17]

The Exchange proposes similar changes to the paragraph of Rule 4703(d) that applies to Pegged Orders entered through RASH, QIX, or FIX that posted to the Nasdaq Book. The text presently provides that if the price to which an Order is pegged is not available, the Order will be rejected. The Exchange proposes instead to state that if the price to which an Order is pegged becomes unavailable or pegging would lead to a price at which the Order cannot be posted,[18] then the Exchange will remove the Order from the Nasdaq Book and re-enter it once there is a permissible price. Again, the Exchange proposes this change to enhance and make the System more efficient by providing for the Exchange to re-post the Pegged Orders rather than rejecting them when there is no permissible pegging price and requiring participants to re-enter them once a valid price becomes available.[19] The Exchange notes that the proposed change will not apply to Pegged Orders with Routing Attributes assigned to them; the existing Rule functionality will continue to apply to those Orders.

Rule 4703(d) also subjects Pegging Orders to collars, meaning that any portion of a Pegging Order that would [20] execute, either on the Exchange or when routed to another market center, at a price of more than $0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled. Although the Rule states that it applies this collar to Orders with Primary and Market Pegging, the Exchange has always intended for the collar to also apply to Orders with Midpoint Pegging, and in practice, it does so. The failure of the Rule to reflect the application of the collar to Midpoint Pegged Orders was an unintended omission. The Exchange now proposes to revise Rule 4703(d) to correct this omission.

Changes to Trade Now and Midpoint Trade Now Order Attributes

Additionally, the Exchange proposes to amend its rules governing the Trade Now and Midpoint Trade Now Order Attributes, at Rule 4703(m) and (n), respectively. Pursuant to Rule 4703(m), Trade Now is an Order Attribute that allows a resting Order that becomes locked by an incoming Displayed Order to execute against a locking or crossing Order as a liquidity taker. Pursuant to Rule 4703(n), Midpoint Trade Now is an Order Attribute that allows: (i) A resting Order that becomes locked at its non-displayed price by an incoming Midpoint Peg Post-Only Order to execute against a locking or crossing Order as a liquidity taker; and (ii) a Non-Displayed Order with Midpoint Pegging or a Midpoint Peg Post-Only Order (collectively, ''Midpoint Orders'') to execute against a M–ELO+CB Order Type, subject to certain eligibility requirements.

The Exchange proposes to combine Rule 4703(m) and (n) under the general header of ''Trade Now.'' The Exchange proposes to combine these two related Order Attributes to streamline and simplify the instructions that participants must enter to address the handling of their orders in various locking or crossing scenarios.[21] Rather than having to enable both Trade Now and Midpoint Trade Now separately, participants will only have to enable one Order Attribute to address both functionalities.[22] Additionally, rather than require a participant to manually send a Trade Now instruction whenever an Order entered through OUCH or FLITE becomes locked, the proposed amended Rule will allow for a participant to enable Trade Now functionality on a port-level basis for all Order entry protocols and for all Order Types that support Trade Now, as well as on an order-by-order basis, for the Non-Displayed Order Type, when entered through OUCH or FLITE.[23] For Orders entered through RASH or FIX, Trade Now will be available on an order-by-order basis for all Order Types that support Trade Now. The proposal will not extend Trade Now (or Midpoint Trade Now) functionality to new Order Types.[24]

The Exchange proposes other non-substantive changes to Rule 4703(m) to incorporate the inclusion of the text of the Midpoint Trade Now Order Attribute, including a reorganization of its bulleted provisions. Furthermore, it

[16] When a Pegged Order lacks a pegging price or a permissible pegging price, the System will not wait indefinitely for a pegging price or a permissible pegging price to become available. Instead, the System will cancel the Order if no permissible pegging price becomes available within one second after Order entry or after the Order was removed due to the lack of a permissible pegging price and no longer available on the Book. The Exchange may, in the exercise of its discretion, modify the length of this maximum time period by posting advance notice of the applicable new time period on its website.

[17] In this paragraph of Rule 4703(d), the Exchange again proposes to state that it will continue to reject a Pegged Order entered through RASH, QIX, or FIX when a permissible pegging price is unavailable, if the Pegged Order is assigned a Routing Order Attribute. The Exchange will continue to accept certain Market and Primary Pegged Orders at their limit price where they have Routing Order Attributes. The Exchange proposes to retain existing practice for Pegged Orders with Routing Order Attributes because the Exchange is not yet prepared to make similar changes to such Orders, although it contemplates doing so in the near future. See n. 15, *supra.*

[18] An example of a scenario where pegging would lead to a price at which an Order cannot be posted is as follows. Assume that the NBBO is $0.0002 × $0.0003. A Primary Pegged Order to buy is entered with a passive offset amount of $0.0003. This would result in the Order being made unavailable by the Exchange as −$0.0001 is not a permissible price. Currently, the Exchange accepts such Orders at its limit price, and will post the Orders to the Nasdaq Book in accordance with the parameters that apply to the underlying Order Type.

[19] The Exchange proposes to apply a similar time limitation to the holding period prescribed above. *See supra,* n.16. Similarly, for an Order with Midpoint Pegging, if the Inside Bid or Inside Offer become crossed, or there is no Inside Bid or Inside Offer, the System will cancel the Order if no permissible price becomes available within one second after the Order was removed and no longer available on the Nasdaq Book (the Exchange may, in the exercise of its discretion modify the length of this one second time period by posting advance notice of the applicable time period on its website). For an Order with Midpoint Pegging with a Routing Attribute, the new one second time period will be applicable.

[20] Additionally, the Exchange proposes to replace the word ''would'' with ''could'' in this provision, so as to clarify that collars apply in circumstances in which Pegged Orders might execute, but do not necessarily do so. An example of a circumstance in which such Orders do not execute is as follows. Assume that the NBBO is $10.00 × $10.01. A Market Pegged Order to buy posts at $10.01. The NBBO then updates to $10.00 × $11.00. Because re-pricing and posting the Market Pegged Order would result in the Order being available on the Book and executable at $11.00 (outside of the collars), the Order will be canceled.

[21] An example of a crossing scenario is as follows. A non-displayed Order to buy rests on the Book at $0.0015. Thereafter, a Post Only Order to sell is entered at $0.0014, which would post on the Book and display at $0.0014, thereby crossing the non-displayed Order as the price improvement requirements were not met.

[22] The Exchange believes that the proposal to combine the Trade Now and Midpoint Trade Now Order Attributes will not adversely impact participants because those that choose to utilize these Order Attributes are seeking opportunities to remove liquidity, and they are less fee sensitive in their choices. Participants will still be able to deactivate Trade Now on an order-by-order basis for RASH and FIX.

[23] This proposed change in functionality for OUCH and FLITE is enabled by the migration of Trade Now and Midpoint Trade Now to the Exchange's matching System.

[24] The Exchange proposes to add language to Rule 4703(m) to state that Trade Now allows a resting Order that becomes locked ''or crossed, as applicable'' at its non-displayed price by the ''posted price'' of an incoming Displayed Order or a Midpoint Peg Post-Only Order to execute against a locking or crossing Order(s) automatically. The Exchange proposes to add the phrase ''or crossed, as applicable,'' for completeness. It also proposes to add the phrase ''posted price'' for purposes of clarity. It merely communicates that the incoming Displayed Order or Midpoint Peg Post-Only Order first posts to the Nasdaq Book, thereby locking or crossing the resting Order at its non-displayed price.

proposes to delete Rule 4703(n) in its entirety as well as references to Midpoint Trade Now in Rule 4702.

Changes to Market on Open and Limit on Open Order Types

Finally, the Exchange proposes to amend Rule 4702(b)(8) and (9), which describe the Market on Open (''MOO'') [25] and Limit on Open (''LOO'') [26] Order Types, to account for a change in functionality that will occur when the Exchange upgrades the logic and implementation for processing certain aspects of LOO and MOO Orders as part of the forthcoming System enhancements. When these Order Types are assigned Pegging Attributes and submitted just prior to the onset of the Nasdaq Opening Cross, the proposed changes will limit the circumstances in which the System will hold these Order Types until after the Nasdaq Opening Cross occurs. The Exchange proposes these changes to streamline the handling of LOO and MOO orders, thereby reducing the potential for confusion about the Exchange's practice for holding these Order Types in these circumstances. Additionally, the proposed changes will allow these Order Types, where applicable, to participate and contribute to offsetting any order imbalance in the Nasdaq Opening Cross. The Exchange notes that only a very small number of LOO and MOO orders will be affected by these changes, such that the overall impact of the changes should be minor.

Specifically, Rule 4702(b)(8)(B) presently provides that a MOO with a Market Pegging Order Attribute and with a Time-in-Force other than Immediate-Or-Cancel that is flagged to participate in the Nasdaq Opening Cross and which is entered at or after 9:28 a.m. will not participate in the Opening Cross, but instead will be held and entered into the System after the Opening Cross completes. The Exchange proposes to amend this provision, such that, going forward, a MOO with a Market Pegging Order Attribute and with a Time-in-Force other than Immediate-Or-Cancel that is flagged to participate in the Nasdaq Opening Cross and which is entered at or after 9:28 a.m. will be rejected just as the Rule presently provides for all other MOOs that are entered at or after 9:28 a.m. (and prior to the Nasdaq Opening Cross). The rule text language, as amended, will specify, however, that the existing holding practice will continue to apply to Orders with Market Pegging and Routing Attributes and a Time-in-Force other than Immediate-Or-Cancel as the Exchange is not yet ready to implement a similar change to such Orders, although it contemplates doing so in a future proposal. The Exchange also notes that this clarification will provide for LOOs and MOOs with Routing Attributes to be handled similarly when entered just prior to the time of the Nasdaq Opening Cross.[27]

Meanwhile, Rule 4702(b)(9)(B) presently provides that an Opening Cross/Market Hours LOO Order that is entered between 9:29:30 a.m. and the time of the Nasdaq Opening Cross will be: (i) Held and entered into the System after the completion of the Nasdaq Opening Cross if it has been assigned a Pegging or Routing Attribute, (ii) treated as an Opening Imbalance Only Order and entered into the System after the completion of the Nasdaq Opening Cross if entered through RASH, QIX, or FIX but not assigned a Pegging or Routing Attribute, or (iii) treated as an Opening Imbalance Only Order and cancelled after the Nasdaq Opening Cross if entered through OUCH or FLITE. The Exchange proposes to delete references to ''Pegging Attribute'' in this provision, such that going forward, a LOO Order with Pegging (and no Routing Attribute) entered between 9:29:30 a.m. and the time of the Opening Cross will no longer be held and entered into the System after the completion of the Opening Cross. Instead, if the LOO with Pegging is entered through RASH, QIX, or FIX, it will be treated as an Opening Imbalance Only Order and entered into the System after the Opening Cross occurs, and if it is entered through OUCH or FLITE, it will be treated as an Opening Imbalance Only Order and cancelled after the Opening Cross.[28]

The Exchange intends to implement the foregoing changes during the Third Quarter of 2021. The Exchange will issue an Equity Trader Alert at least 7 days in advance of implementing the changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[29] in general, and furthers the objectives of Section 6(b)(5) of the Act,[30] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that its proposed amendments to the Pegging Order Attribute, at Rule 4703(d), are consistent with the Act. The proposals to eliminate rule text that provides for the System to reject certain Pegged Orders that lack a permissible pegging price, or to post the Orders at their limit price, are consistent with the Act because they eliminate unwarranted inefficiencies that arise when participants must repeatedly re-enter rejected Pegged Orders until a permissible price becomes available.[31] [32]

[25] As set forth in Rule 4702(b)(8)(A), a MOO is an Order Type entered without a price that may be executed only during the Nasdaq Opening Cross. Subject to the qualifications provided below, MOO Orders may be entered between 4 a.m. ET and immediately prior to 9:28 a.m. ET. An MOO Order may be cancelled or modified until immediately prior to 9:25 a.m. ET. An MOO Order shall execute only at the price determined by the Nasdaq Opening Cross.

[26] As set forth in Rule 4702(b)(9)(A), a LOO is an Order Type entered with a price that may be executed only in the Nasdaq Opening Cross, and only if the price determined by the Nasdaq Opening Cross is equal to or better than the price at which the LOO Order was entered. Subject to the qualifications provided below, LOO Orders may be entered between 4 a.m. ET and immediately prior to 9:28 a.m. ET but may not be cancelled or modified at or after 9:25 a.m. ET. Between 9:28 a.m. ET and 9:29:30 a.m. ET, an LOO Order may be entered, provided that there is a First Opening Reference Price or a Second Opening Reference Price. An LOO Order entered after 9:29:30 a.m. ET that is designated as an IOC will be rejected. An LOO Order entered between 9:28 a.m. ET and 9:29:30 a.m. ET will be accepted at its limit price, unless its limit price is higher (lower) than the higher (lower) of the First Opening Reference Price and the Second Opening Reference Price for an LOO Order to buy (sell), in which case the LOO Order will be handled consistent with the Participant's instruction that the LOO Order is to be: (1) Rejected; or (2) re-priced to the higher (lower) of the First Opening Reference Price and the Second Opening Reference Price, provided that if either the First Opening Reference Price or the Second Opening Reference Price is not at a permissible minimum increment, the First Opening Reference Price or the Second Opening 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 be to have such LOO Orders re-priced rather than rejected.

[27] *See* Rule 4702(b)(9)(B).

[28] The Exchange notes that it plans future order handling enhancements that may further reduce or eliminate the circumstances in which it holds late submitted MOO and LOO Orders. The Exchange will submit rule filing proposals to the Commission before implementing such enhancements.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] The Exchange notes that as part of this proposed change, if there is no Pegging Price upon entry for a Displayed Order that has Market Pegging, or an Order with a Non-Display Attribute that has Primary Pegging or Market Pegging, then it will no longer accept such Orders at their limit price. The Exchange believes that this proposed change is consistent with the Act because it better aligns with customer intentions for Pegged Orders to post at a Pegging Price. That is, the Exchange believes that participants prefer for Pegged Orders to be entered at a Pegging Price, rather than its entered limit price, even if that means that the Order must wait for a Pegging Price to become

Continued

It is also consistent with the Act to maintain the existing practice in the Rule of rejecting a Pegged Order without a permissible pegging price where the Order has been assigned a Routing Attribute. The Exchange is not yet prepared to hold such Orders in the same way that it proposes to do so for Pegged Orders without Routing Attributes, although it contemplates doing so in the near future.

Moreover, the proposal to amend Rule 4703(d) to state expressly that Midpoint Pegging Orders are subject to price collars, like Orders with Primary and Market Pegging, will correct an unintended omission and ensure that the Rule is consistent with existing Exchange practice and with customer expectations. The application of these collars will prevent Pegged Orders from having prices that deviate too far away from where the security was trading when the Order was first entered.[33]

The Exchange's proposals to amend its rules governing the Trade Now and Midpoint Trade Now Order Attributes, at Rule 4703(m) and (n), respectively, are consistent with the Act. The proposal to combine these two related Order Attributes will streamline and simplify the instructions that participants must enter to address the handling of their orders in various locking or crossing scenarios. Rather than having to enable both Trade Now and Midpoint Trade Now separately, participants will only have to enable one Order Attribute to address both functionalities. Additionally, rather than require a participant to manually send a Trade Now instruction whenever an Order entered through OUCH or FLITE becomes locked, the proposed amended Rule will allow for a participant to enable Trade Now functionality on a port-level basis for all Order entry protocols and for all Order Types that support Trade Now, as well as on an order-by-order basis, for the Non-Displayed Order Type, when entered through OUCH and FLITE.[34] The proposal will also make conforming changes to Rule 4702 to delete references to Midpoint Trade Now, which is consistent with the Act because the changes will ensure that the Rules remain current and accurate.

Furthermore, it is consistent with the Act to add language to Rule 4703(m) to state that Trade Now allows a resting Order that becomes locked ''or crossed, as applicable,'' at its non-displayed price by the ''posted price'' of an incoming Displayed Order or a Midpoint Peg Post-Only Order to execute against a locking or crossing Order(s) automatically. The Exchange proposes to add the phrase ''or crossed, as applicable,'' for completeness. The Exchange also proposes to add the phrase ''posted price'' for purposes of clarity. It merely communicates that the incoming Displayed Order or Midpoint Peg Post-Only Order first posts to the Nasdaq Book, thereby locking or crossing the resting Order at its non-displayed price.

Finally, it is consistent with the Act to amend Rule 4702(b)(8) and (9) to limit the circumstances in which the Exchange will hold MOO and LOO Orders with Pegging Attributes that are submitted just prior to the Nasdaq Opening Cross. As discussed above, these changes will streamline the handling of such Orders, by rejecting them in the case of MOO Orders or allowing them to participate as Opening Imbalance Orders in the case of LOO Orders, thereby reducing the potential for confusion about the Exchange's practice for holding these Order Types in these circumstances. Again, the Exchange proposes to maintain its existing practice of holding Market Pegged MOO Orders with Routing Attributes and LOO Orders with Routing Attributes entered near the time of the Opening Cross because the Exchange is not yet prepared to handle such Orders similarly to how it proposes to handle such Orders without Routing Attributes, although it contemplates submitting a rule filing proposal to do so in the near future.

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. As a general principle, the proposed changes are reflective of the significant competition among exchanges and non-exchange venues for order flow. In this regard, proposed changes that facilitate enhancements to the Exchange's System and order entry protocols as well as those that amend and clarify the Exchange's Rules regarding its Order Attributes, are pro-competitive because they bolster the efficiency, integrity, and overall attractiveness of the Exchange in an absolute sense and relative to its peers.

Moreover, none of the proposed changes will unduly burden intra-market competition among various Exchange participants. Participants will experience no competitive impact from its proposals to hold (up to one second), rather than reject (or accept at their limit price), Pegging Orders (other than those with Routing Attributes) in circumstances in which no permissible pegging price is available, as these proposals will merely eliminate unwarranted inefficiencies that ensue from the System requiring participants to repeatedly re-enter Pegged Orders until a price becomes available, or the System posting Pegged Orders at their limit prices, if there is no pegging price. Moreover, the proposal to amend Rule 4703(d) to state expressly that Midpoint Pegging Orders are subject to price collars, like Orders with Primary and Market Pegging, will have no competitive impact as the proposal is consistent with existing Exchange practice and with customer expectations.

The Exchange's proposals to amend its rules governing the Trade Now and Midpoint Trade Now Order Attributes will have no competitive impact on participants other than by rendering these Order Attributes more efficient and easier for participants to utilize.[35]

Lastly, the Exchange perceives no burden on competition arising from its proposed changes to the circumstances in which it will hold late-submitted LOO and MOO Orders with Pegging Attributes (other than those Orders with

available. As discussed above, the Exchange does not propose this change for Pegged Orders with Routing Attributes.

[32] It is also consistent with the Act to limit the time period for which the Exchange will hold, without canceling, Pegged Orders for which there is no pegging price or permissible pegging price because the Exchange does not believe that customers would want the Exchange to hold their orders indefinitely. Moreover, holding such orders indefinitely would encumber the Exchange's System. The Exchange believes that a one second holding period for such orders is long enough to provide the above-stated efficiencies for participants, but not too long as to encumber them. However, the Exchange believes that it is reasonable to reserve discretion to alter the holding period, from time to time, should it determine that doing so better meets the needs of customers or its System resources.

[33] Additionally, the Exchange believes that it is consistent with the Act to replace the word ''would'' with ''could'' in this provision, because doing so would clarify that collars apply in circumstances in which Pegged Orders might execute, but do not necessarily do so. *See supra,* n.20.

[34] As noted above, for Orders entered through RASH or FIX, Trade Now will be available on an order-by-order basis for all Order Types that support Trade Now.

[35] The proposal to combine the Trade Now and Midpoint Trade Now Order Attributes also will not burden competition because participants that choose to utilize these Order Attributes are seeking opportunities to remove liquidity, and they are less fee sensitive in their choices. Allowing participants to remove liquidity through one instruction will enhance the efficiency of their activities.

Routing Attributes assigned to them). The proposed changes will streamline the handling of such Orders, thereby reducing the potential for confusion about the Exchange's practice for holding these Order Types in these circumstances. The Exchange proposes to maintain its existing practice of holding Market Pegged MOO Orders with Routing Attributes and LOO Orders with Routing Attributes [36] entered near the time of the Opening Cross because the Exchange is not yet prepared to handle such Orders similarly to how it proposes to handle such Orders without Routing Attributes, although it contemplates submitting a rule filing proposal to do so in the near future. Moreover, any impact of the proposed changes is expected to be minimal, as very few MOO and LOO Orders have historically been subject to holding.

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

No written comments were either solicited or received.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [37] and Rule 19b–4(f)(6) thereunder.[38]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2021–044 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–2021–044. 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–2021–044, and should be submitted on or before July 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

J. Matthew DeLesDernier,

Assistant Secretary.

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[36] The Exchange's proposal to add the word ''Routing'' to the rule text will merely clarify that the existing holding practice will continue for certain MOO and LOO Orders.

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92203; File No. SR–CBOE–2021–025]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Cboe Rules 5.37 and 5.38 in Connection With Allocations at the Conclusion of the Exchange's Automated Improvement Mechanism (''AIM'') and Complex AIM (''C–AIM'') Auctions

June 17, 2021.

I. Introduction

On April 14, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a Priority Order Plus status in connection with the allocation of exclusively listed index option classes at the conclusion of the Exchange's Automated Improvement Mechanism (''AIM'' or ''AIM Auction'') and Complex AIM (''C–AIM'' or ''C–AIM Auction'') auctions. The proposed rule change was published for comment in the **Federal Register** on May 3, 2021.[3] The Commission received no comments regarding the proposal. On June 8, 2021, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91689 (April 27, 2021), 86 FR 23453 (''Notice'').

[4] In Amendment No. 1, the Exchange updated Exhibit 5 of the proposed rule change to reflect another proposed rule change unrelated to this proposed rule change. Because Amendment No. 1 is a technical amendment that does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 to the proposed rule change is available on the Commission's website at: *https://www.sec.gov/rules/sro/cboe.htm#SR-CBOE-2021-025.*