

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2023-198; *Filing Title:* USPS Notice of Amendment to Priority Mail Contract 782, Filed Under Seal; *Filing Acceptance Date:* May 22, 2024; *Filing Authority:* 39 CFR 3035.105; *Public Representative:*

Jennaca D. Upperman; *Comments Due:* May 31, 2024.

2. *Docket No(s):* MC2024-310 and CP2024-318; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 71 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 22, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 31, 2024.

3. *Docket No(s):* MC2024-311 and CP2024-319; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 22, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* May 31, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024-11754 Filed 5-28-24; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100129; File No. SR-CboeBZX-2024-032]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 11.28(a) To Add Four Additional Market-on-Close Cut-off Times to Cboe Market Close

May 14, 2024.

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 April 29, 2024, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") 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. On May 13, 2024, the Exchange filed Amendment No. 1, which supersedes the original filing in its entirety.³ The Commission is

publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to amend Rule 11.28(a) to add four additional market-on-close ("MOC") cut-off times (each a "MOC Cut-Off Time" and collectively "MOC Cut-Off Times") To Cboe Market Close ("CMC").

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, 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

BZX proposes to amend Rule 11.28(a) to add four additional CMC MOC Cut-Off times. These MOC Cut-Off times would be in addition to the existing MOC Cut-Off time of 3:49 p.m. ET, for a total of five matching sessions: 3:15 p.m. ET (new), 3:30 p.m. ET (new), 3:49 p.m. ET (current), 3:54 p.m. ET (new), and 3:58 p.m. ET (new).⁴ These proposed MOC Cut-Off Times are based on Member feedback. Specifically, in response to CMC's noticeable increase in executed volume (discussed below), there has been heightened interest in CMC from both existing users, as well

procedures with the proposed additional MOC Cut-Off times and (2) provided additional justification and support for the proposal. The full text of Amendment No. 1 is available on the Commission's website at https://www.sec.gov/rules/sro/national-securities-exchanges?aid=&sro_organization=192731.

⁴ Hereinafter, all times referenced are in Eastern Time.

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange (1) amended paragraph (b) of Rule 11.28 and Interpretations and Policies .02 of Rule 11.28 to conform the CMC

as potential new users of CMC (collectively “Members”). Collectively, these Members have requested certain enhancements to CMC that would encourage existing users to increase their utilization of CMC, as well as encourage prospective users to begin using CMC. Namely, Members have expressed a desire for: (1) MOC Cut-Off Times earlier in the trading day, and prior to the current MOC Cut-Off Time of 3:49 p.m.; (2) a MOC Cut-Off Time closer to Nasdaq’s MOC cut-off time of 3:55 p.m.; (3) a MOC Cut-Off Time Closer to the New York Stock Exchange’s (“NYSE”) Closing-D Order cut-off time of 3:59:50; and (4) a MOC Cut-Off Time that is subsequent to the MOC cut-off times of the NYSE’s and Nasdaq’s MOC cut-off times, and just prior to the NYSE’s Closing-D Order⁵ cut-off time of 3:59:50 p.m.

Both the Exchange and its Members believe that these enhancements will help to position CMC as more viable alternative to the primary exchanges’ closing auctions, NYSE’s Closing D Order, and off-exchange closing price services. Additionally, multiple MOC Cut-Off Times will make CMC more appealing to a larger segment of market participants by providing Members with different trading strategies and technical and operational capabilities more flexibility in how they manage their market-on-close (“MOC”) and closing price orders.

Procedural Background

On May 5, 2017, the Exchange filed a proposed rule change to adopt CMC, a match process for MOC orders in non-BZX listed securities and on December 1, 2017, filed Amendment No. 1⁶ to that proposal (the “Original Proposal”).⁷ On

⁵ See NYSE Rule 7.31 (c)(2) (“Closing-D Order”); see also “The Floor Broker’s Modern Trading Tool”, available at: <https://www.nyse.com/article/trading/d-order> (“While D-Orders are available for use throughout the trading day, most executions occur in the closing auction, where they’re known as Closing D Orders. At 3:55 p.m., Closing D Order interest eligible to participate in the closing auction is added to the order imbalance feed at their discretionary price range. Closing D Orders can also be submitted, modified or cancelled up to 3:59:50 p.m. These distinct features of Closing D Orders are designed to facilitate the Floor Broker’s traditional agency role on behalf of larger institutional interest, allowing Floor Brokers to work in conjunction with their customer to find larger liquidity opportunities.”).

⁶ The only change in Amendment No. 1 was to rename the proposed closing match process as Cboe Market Close. Per the Commission, because Amendment No. 1 was a technical amendment and did not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 was not subject to notice and comment.

⁷ See Securities Exchange Act Release No. 34–80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR–Bats–BZX–2017–34) (Notice of Filing of a

January 17, 2018, the Commission, acting through authority delegated to the Division of Trading and Markets,⁸ approved the Original Proposal (“Approval Order”).⁹ On January 31, 2018, NYSE Group, Inc. (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”) filed petitions for review of the Approval Order (“Petitions for Review”). Pursuant to Commission Rule of Practice 431(e),¹⁰ the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.¹¹ On March 1, 2018, pursuant to Commission Rule of Practice 431, the Commission issued a scheduling order granting the Petitions of Review of the Approval Order, and provided until March 22, 2018, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.¹² On April 12, 2018, NYSE and Nasdaq submitted written statements opposing the Approval Order and BZX submitted a statement in support of the Approval Order.¹³ On October 4, 2018, BZX filed Amendment No. 2¹⁴ to the Original Proposal.

Proposed Rule Change to Introduce Bats Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

⁸ 17 CFR 200.30–3(a)(12).

⁹ See Securities Exchange Act Release No. 34–82522 (January 17, 2018), 83 FR 3205 (January 23, 2018) (SR–BatsBZX–2017–34) (Notice of Filing of Amendment No. 1 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

¹⁰ 17 CFR 201.431(e).

¹¹ See Letter to Christopher Solgan, Assistant General Counsel, Cboe Global Markets, Inc. (Jan. 24, 2018) (providing notice of receipt of notices of intention to petition for review of delegated action and stay of order), available at: <https://www.sec.gov/rules/sro/batsbzx/2018/sr-batsbzx-2017-34-letter-from-secretary-to-cboe.pdf>.

¹² See Securities Exchange Act Release No. 82794, 83 FR 9561 (Mar. 6, 2018). On March 16, 2018, the Office of the Secretary, acting by delegated authority, issued an order on behalf of the Commission granting a motion for an extension of time to file statements on or before April 12, 2018. See Securities Exchange Act Release No. 82896, 83 FR 12633 (Mar. 22, 2018).

¹³ See Statement of NYSE Group, Inc., in Opposition to the Division’s Order Approving a Rule to Introduce Cboe Market Close (“NYSE Statement”); Statement of the Nasdaq Stock Market LLC in Opposition to Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Introduce Cboe Market Close (“Nasdaq Statement”); and Statement of Cboe BZX Exchange, Inc., in support of Commission Staff’s Approval Order (“BZX Statement”), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm>.

¹⁴ See Securities Exchange Act Release No. 34–84670 (November 28, 2018), 83 FR 62646 (December 4, 2018) (SR–BatsBZX–2017–34) (“Notice of Filing of Amendment No. 2 to Proposed Rule Change to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28”).

The Commission conducted a de novo review of the CMC proposal and associated public record, including Amendment No. 2, the Petitions for Review, and all comments and statements submitted by certain exchanges, issuers, and other market participants,¹⁵ to determine whether the proposal was consistent with the requirements of the Act and the rules and regulations issued thereunder that are applicable to a national securities exchange.¹⁶ The Commission noted that under Rule 700(b)(3) of the Commission’s Rule of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder. . . is on the self-regulatory organization that proposed the rule change.”¹⁷

Importantly, after reviewing the entire record, the Commission concluded that BZX met its burden to show that the proposed rule change was consistent with the Act, and pursuant to its January 21, 2020, order, set aside the Approval Order and approved BZX’s CMC proposal, as amended (“Final Approval Order”).¹⁸ Notably, the Commission stated that the record “demonstrate[d] that Cboe Market Close should introduce and promote competitive forces among national securities exchanges for the execution of MOC orders”¹⁹ and that “the record demonstrate[d] that Cboe Market Close should not disrupt the closing auction price discovery process nor should it materially increase the risk of manipulation of official closing prices”.²⁰

Subsequently, on August 5, 2022, the Exchange filed a proposed rule change to amend Rule 11.28(a) to extend CMC’s MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. (“CMC Amendment”).²¹ On October 4, 2022, the Commission, acting through authority delegated to the Division of Trading and Markets, designated a longer period within which to take action on the Exchange’s CMC

¹⁵ See “Statements on File No. SR–BatsBZX–2017–34”, available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm>.

¹⁶ See Securities Exchange Act Release No. 34–88008 (January 21, 2020), 85 FR 4726 (January 27, 2020) (SR–BatsBZX–2017–34) (“Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28”).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Securities Exchange Act Release No. 34–95529 (August 17, 2020), 87 FR 52092 (August 24, 2022) (SR–CboeBZX–2022–038).

Amendment.²² Later, on November 11, 2022, BZX filed Amendment No. 1 to its CMC Amendment, and the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change as modified by Amendment No. 1.²³ Finally, on February 9, 2023, the Commission approved the proposed CMC Amendment (“CMC Amendment Approval Order”).²⁴

In approving the CMC Amendment, the Commission stated that the proposal was consistent with Section 6(b)(5) of the Act,²⁵ 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 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; as well as Section 6(b)(8) of the Act,²⁶ which requires that the rules of a national securities exchange not impose any burden on competition not

necessary or appropriate in furtherance of the purposes of the Act.

For the reasons discussed more fully below, the Exchange believes that when applying the Commission’s analysis in the Final Approval Order and the CMC Amendment Approval Order to the current proposal, such review would similarly conclude that this proposal is consistent with the Act.

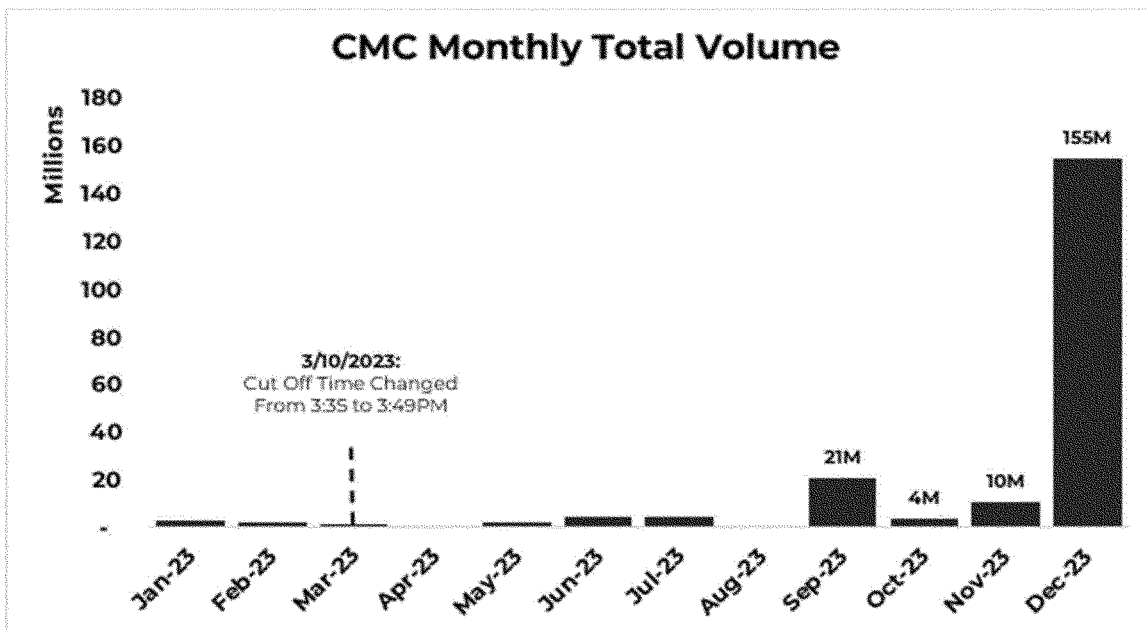
Increased Volume and New Demand for CMC

On March 10, 2023, the Exchange moved its MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. As illustrated in Figure 1 below, since implementing the 3:49 p.m. MOC Cut-Off Time CMC has experienced noticeable growth in its trading volume, rising modestly beginning in May 2023 and more remarkably between September 2023 and November 2023, ultimately reaching a record-high of 155 million shares traded in December 2023. Based on CMC’s growing usage, the Exchange has received various feedback from both existing CMC users and prospective CMC users. Collectively, these Members have requested certain enhancements to CMC that would encourage existing users to increase their utilization of

CMC, as well encourage prospective users to begin using CMC. Namely, Members have expressed a desire for: (1) MOC Cut-Off Times earlier in the trading day, including prior to the current MOC Cut-Off Time of 3:49 p.m.; (2) a MOC Cut-Off Time closer to Nasdaq’s MOC cut-off time of 3:55 p.m.; (3) a MOC Cut-Off Time Closer to NYSE’s Closing-D Order cut-off time of 3:59:50; and (4) a MOC Cut-Off Time that is subsequent to the MOC cut-off times of the NYSE’s and Nasdaq’s MOC cut-off times, and just prior to NYSE’s Closing-D Order cut-off time of 3:59:50 p.m.

As noted, both the Exchange and its Members believe that these enhancements will help to position CMC as more viable alternative to the primary exchanges’ closing auctions, NYSE’s Closing-D Order, and off-exchange closing price services. Additionally, multiple MOC Cut-Off Times will make CMC more appealing to a larger segment of Members by providing Members with different trading strategies and technical and operational capabilities more flexibility in how they manage their MOC and closing price orders.

Figure 1 (Source: Internal Exchange Data)



²² See Securities Exchange Act Release No. 34–95967 (October 4, 2022), 87 FR 61425 (October 11, 2022) (SR–CboeBZX–2022–038).

²³ See Securities Exchange Act Release No. 34–96359 (November 18, 2022), 87 FR 72537 (November 25, 2022) (SR–CboeBZX–2022–038).

²⁴ See Securities Exchange Act Release No. 34–96861 (February 9, 2023), 88 FR 9940 (February 15, 2023) (SR–CboeBZX–2022–038).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(8).

Proposed Functionality

Accordingly, BZX proposes to amend Rule 11.28(a) to add four CMC MOC Cut-Off times. These MOC Cut-Off times would be in addition to the existing MOC Cut-Off time of 3:49 p.m., for a total of five matching sessions: 3:15 p.m. (new), 3:30 p.m. (new), 3:49 p.m. (current), 3:54 p.m. (new), and 3:58 p.m. (new). MOC orders may be entered for each matching session up to the relevant MOC Cut-Off Time, beginning each day at 6:00 a.m.²⁷ Members will have the ability to specify on their order instructions which CMC session(s) they wish to participate in. For orders that specify they are willing to match in multiple matching sessions, any unfilled quantity from an earlier session will carry forward to the next session(s). Any unfilled quantity remaining after a Member's specified final matching session will be canceled back to the Member. To illustrate the proposed functionality, consider the following examples.

Example 1: Order indicates matching in a single session

Order 1: Buy 100 @ MKT—CMC
Session: 3:49 p.m., Timestamp: 3:00:00 p.m.

Order 2: Sell 100 @ MKT—CMC
Session: 3:15 p.m., 3:30 p.m., 3:49 p.m., Timestamp: 3:01:00 p.m.

Results:

- Order 1 will not match with Order 2 in the 3:15 p.m. or 3:30 p.m. session. Order 2's unfilled quantity of 100 shares will first carry forward from the 3:15 session, then again from the 3:30 session, and finally to the 3:49 session.
- Order 1 and Order 2 match in the 3:49 p.m. session for 100 shares at the closing price.

Example 2: Order indicates matching in multiple sessions

Order 1: Buy 500 @ MKT—CMC
Session: 3:15 p.m., 3:30 p.m., 3:49 p.m., Timestamp: 3:00:00 p.m.

Order 2: Sell 100 @ MKT—CMC
Session: 3:30 p.m., Timestamp: 3:01:00 p.m.

Order 3: Sell 100 @ MKT—CMC
Session: 3:15 p.m., Timestamp: 3:02:00 p.m.

Order 4: Sell 100 @ MKT—CMC
Session: 3:49 p.m., Timestamp: 3:03:00 p.m.

Results:

²⁷ For instance, an MOC order specifying that it wishes to participate in the 3:15 MOC Cut-Off Time must be entered, cancelled, or replaced prior to 3:15 p.m. Similarly, a MOC order specified to participate in the 3:30 MOC Cut-Off Time may be entered, cancelled, or replaced anytime between 6:00 a.m. and 3:29:59 p.m.

- Order 1 and Order 3 match in the 3:15 p.m. session for 100 shares at the closing price and Order 1's 400 remaining shares are carried over to the next session.
- Order 1 and Order 2 match in the 3:30 p.m. session for 100 shares at the closing price and Order 1's 300 remaining shares are carried over to the next session.
- Order 1 and Order 4 match in the 3:49 p.m. session for 100 shares at the closing price and Order 1's 200 remaining shares are canceled back.

Example 3: Order's unfilled quantity retains its original timestamp for priority purposes

Order 1: Buy 500 @MKT—CMC Session: 3:15 p.m., 3:30 p.m., Timestamp: 3:00:00 p.m.

Order 2: Buy 100 @MKT—CMC Session: 3:30 p.m., Timestamp: 3:01:00 p.m.

Order 3: Sell 100 @MKT—CMC Session: 3:15 p.m., Timestamp: 3:02:00 p.m.

Order 4: Sell 100 @MKT—CMC Session: 3:30 p.m., Timestamp: 3:03:00 p.m.

Results:

- Order 1 and Order 3 match in the 3:15 p.m. session for 100 shares at the closing price and Order 1's 400 remaining shares are carried over to the next session.
- Order 1²⁸ and Order 4 match in the 3:30 p.m. session for 100 shares at the closing price and Order 1's 300 remaining shares are canceled back.
- Order 2's 100 shares are unfilled and canceled back at 3:30 p.m.

The Proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times

Members requesting MOC Cut-Off Times earlier in the trading day have expressed that these additional MOC Cut-Off Times will provide them more flexibility in managing their MOC and closing price order flow. For instance, some Members maintain multiple internal trading desks, each managing different types of order flow and trading strategies. One trading desk may manage orders that its traders actively trade throughout the trading day leading up to the close, making MOC Cut-Off Times closer to 4:00 p.m. more valuable for that trading desk. Separately, one of the Member's other trading desks may typically execute orders guaranteeing the closing price or perhaps manage orders on behalf of index funds or ETF providers, that are often benchmarked to

²⁸ Note that Order 1 in this scenario retains its priority over Order 2. Because Order 1 and Order 2 are both un-priced MOC orders, time priority takes precedent, with Order 1 maintaining its queue priority versus Order 2. See Rule 11.12, Priority of Orders, which provides that orders are ranked based on price, then time.

the official closing price. For this workflow, a Member may be agnostic as to when it commits MOC orders to CMC, a primary exchange's closing auction, or an off-exchange closing price service, and may view the ability to commit such order flow to CMC earlier in the trading day at 3:15 p.m. or 3:30 p.m. as a valuable tool to help them execute orders and de-risk their trading risk earlier in the trading day.

Additionally, Members have indicated the proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times will also assist them in managing any technological and operational risk associated with managing high volumes of order flow. Notional trading and trading volatility are typically at their highest towards the end of Regular Trading Hours. During this time, Members systems may be managing a significant number of MOC or closing price orders. Unless the Member is attempting to beat the closing price by trading such orders for as long as possible heading into the close, committing such orders to CMC earlier in the trading day will enable them to reduce the number of MOC and closing price orders their trading systems must manage. Notably, the Exchange noted in its CMC Amendment that today's market participants, including CMC's existing users, were technologically equipped²⁹ to handle CMC's current 3:49 p.m. MOC Cut-Off Time. While this remains the case today, the recent growth in CMC's executed volume has attracted potential new users with trading strategies, and technological and operational capabilities, that have presented new use cases for CMC.

²⁹ As a general matter, today's market participants, including CMC users, rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically often measured in microseconds. See generally "Staff Report on Algorithmic Trading in U.S. Capital Markets" (August 5, 2020), available at https://www.sec.gov/tm/reports-and-publications/special-studies/algo_t_report_2020 ("Algorithmic Trading Report") ("Over the past decade, the manual handling of institutional orders is increasingly rare and has been replaced by sophisticated institutional order execution algorithms and smart order routing systems.") ("The secondary market for U.S.-listed equity securities that has developed within this structure is now primarily automated. The process of trading has changed dramatically primarily as a result of developments in technologies for generating, routing, and executing orders, as well as by the requirement imposed by law and regulation.") ("Modern equity markets are connected in part by the data flowing between market centers. An enormous volume of data is available to market participants. In recent years, there has been an exponential growth in the amount of market data available, the speed with which it is disseminated, and the computer power used to analyze and react to price movements.")

Overall, by having the ability to submit orders to the proposed 3:15 p.m., 3:30 p.m., and 3:49 p.m. MOC Cut-Off Times, Members will have a greater opportunity of being matched earlier in the trading day before potentially needing to re-route their unmatched MOC orders to the primary exchanges or off-exchange closing price offerings. On high-volume order days—e.g. Russell Rebalance Days where trading volume is high—the utility of being able to de-risk closing cross order volume earlier in the trading day is both a rational trading decision and a prudent way for Members to manage their operational and technological risk as such event days are marked by high volume and volatility that may utilize a significant portion of some Members’ systems capacity.

The Proposed 3:54 p.m. and 3:58 p.m. MOC Cut-Off Times

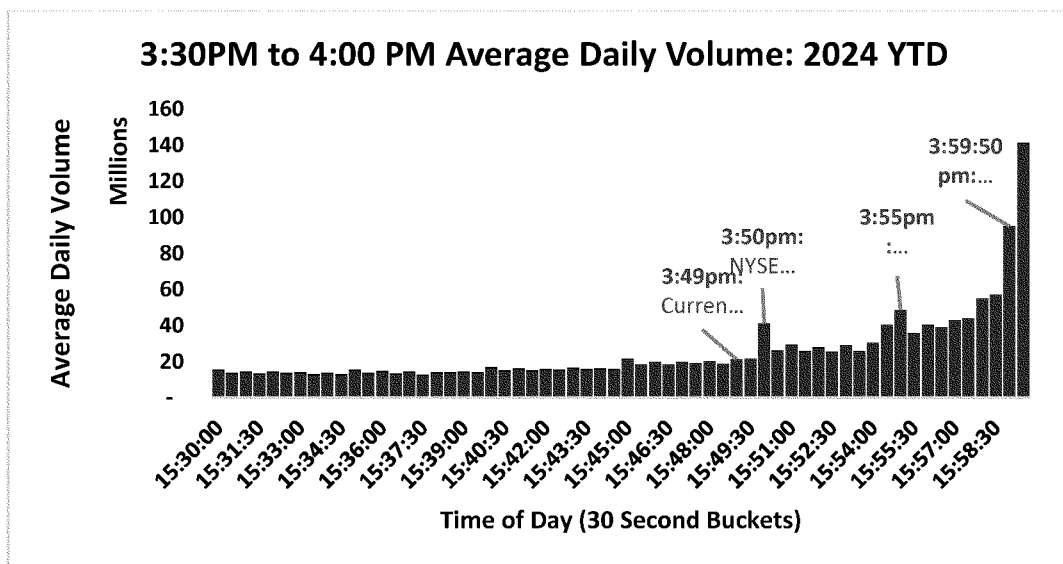
Members requesting the later MOC Cut-Off Time of 3:54 p.m. have indicated that these MOC Cut-Off Times will help to better align CMC with Nasdaq’s MOC cut-off time of 3:55 p.m., thereby helping to make CMC a more viable alternative to Nasdaq’s closing auction. Members requesting the later MOC Cut-Off Time of 3:58 p.m. have indicated that this MOC Cut-Off Time would provide Members with another option similar to NYSE’s Closing D-

Order, thereby enabling Members to achieve the official closing price where they may have traded beyond the primary exchanges’ closing auction cut-off times as they attempt to trade as close to 4:00 p.m. as possible.

Similar to the rationale for extending CMC’s MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., Members desire MOC Cut-Off Times that are closer to the end of Regular Trading Hours³⁰ so that they may retain control of their trading for a longer period of time. By being able to trade closer to the end of Regular Trading Hours, Members have more opportunities to seek better priced liquidity for their orders in a variety of ways and reducing the size of their outstanding orders they may need to commit to CMC or the primary auctions, including but not limited to, finding contra-side liquidity in the marketplace and trading directly against such interest, or guaranteeing a customer order at a price better than the national best bid or offer by committing capital to an order and filling it in a principal capacity, as well as continuing to trade algorithmically into the close. By adding the MOC Cut-Off Times of 3:54 p.m. and 3:58 p.m., CMC will be better positioned to serve as a viable option for market participants to consider when deciding which venues to route their MOC orders or Closing-D Orders, thus enhancing intermarket competition.

In support of the above, Figure 2 shows the total average *daily* volume across all market centers, from 3:30 p.m. to 4:00 p.m. in 30-second intervals, and includes labels for the different MOC cut-off times for CMC, NYSE, and Nasdaq. As illustrated, at NYSE’s 3:50 p.m. MOC cut-off time, NYSE’s 3:59:50 Closing-D Order cut-off time, Nasdaq’s 3:55 p.m. MOC cut-off time, and 4:00 p.m. market close, there is a noticeable increase in traded volume in the overall marketplace, with volume relatively flat in the overall marketplace prior to those times. This analysis supports the Exchange’s assertion that certain market participants do indeed prefer cut-off times later in the trading day. Therefore, the Exchange now seeks to implement the MOC Cut-Off Times of 3:54 p.m., and 3:58 p.m., to better align CMC with Nasdaq’s 3:55 p.m. MOC cut-off time and NYSE’s Closing-D Order cut-off time of 3:59:50. In doing so, the Exchange believes that CMC will be better positioned as a viable alternative to Nasdaq’s closing auction, and as another option to NYSE’s Closing D-Order, enabling Members to achieve the official closing price where they may have traded beyond the primary exchanges’ closing auction cut-off times as they attempt to trade as close to 4:00 p.m., thereby “foster[ing] price competition and. . .decreas[ing] costs for market participants.”³¹

Figure 2 (Source: Internal Exchange Data)



³⁰ The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

See Rule 1.2 (w), definition of, “Regular Trading Hours.”

³¹ *Supra* note 15.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³³ requirements that the rules of an 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the addition of the proposed MOC Cut-Off Times would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed times would offer CMC users increased flexibility in how to manage their MOC and closing price order flow and their associated trading, and their technological and operational risk, as well help to better position CMC to serve as a viable alternative to the primary exchanges’ closing auctions, and off-exchange closing price mechanism. For instance, by having the option to allocate their MOC order flow across various MOC Cut-Off Times, Members will have the opportunity to receive matches earlier in the trading day, thereby reducing their trading risk, as well as the volume of orders their systems may need to handle at once, thereby reducing operational and technology risk. Furthermore, the proposed 3:54 p.m. MOC Cut-Off time will enable Members to actively trade orders in Nasdaq-listed securities for a longer period as they will no longer have to submit their MOC orders to CMC at 3:49 p.m.—*i.e.*, six-minutes prior to Nasdaq’s cut-off time. As discussed above, if a Member’s MOC orders are not matched in CMC they

will still have ample time to reroute any unmatched to CMC MOC orders to Nasdaq’s closing auction, thereby making CMC a more comparable alternative to Nasdaq’s closing auction.

Additionally, the Exchange has received feedback from Members that while moving the single MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. (six-minutes prior to Nasdaq’s cut-off time, and nearly eleven-minutes prior to NYSE’s Closing-D Order cut-off time) has been helpful in managing their MOC and closing price order flow, Members desire later cut-off times that more closely align with the current Nasdaq cut-off time of 3:55 p.m., and a cut-off time closer to 4:00 p.m. As noted, the proposed 3:54 p.m. MOC Cut-Off Time will help make CMC a more practical alternative to the Nasdaq closing auction. Furthermore, the proposed MOC Cut-Off Time of 3:58 p.m. (*i.e.*, closer to 4:00 p.m.) would be of great value to Members because it would enable them to trade closer to 4:00 p.m.—*i.e.*, past the primary exchanges’ cut-off times—giving them control of their orders for a longer period of time and providing them with an option similar to NYSE’s Closing-D Order. The Exchange notes that the market participants that would primarily use the later MOC Cut-Off Times are technologically equipped³⁵ to handle the proposed 3:54 p.m. and 3:58 p.m. MOC Cut-Off Times. Specifically, CMC’s current users utilize third-party providers or broker-dealers³⁶ that provide them with electronic trading technology enabling them to quickly react to market conditions and messages, such as the Cboe Auction

³⁵ *Supra* note 28.

³⁶ As a general matter, third-party technology providers and broker-dealers with electronic trading offerings provide automated trading and routing products and services to market participants that may not possess their own proprietary technology, or simply choose to leverage third party solutions they deem superior to their own internal technology. By way of example, portfolio managers responsible for reweighting their managed funds may not possess internal automated routing and algorithmic trading capabilities, and instead utilize third-party solutions enabling them to trade on an automated basis. As such, the proposed MOC Cut-Off Times of 3:54 p.m. and 3:58 p.m. are not likely to negatively impact market participants who may not possess the internal capabilities to reroute unmatched CMC MOC orders to the primary exchanges’ closing auctions. The Exchange further notes that the utilization of third parties and broker-dealers for technological trading solutions was even noted by the Commission in its Algorithmic Trading Report. *Supra* note 28 (“Institutions that do not create their own algorithms generally use algorithms provided to them by institutional brokers.”) (“Brokers are tasked by their customers with finding liquidity in a complex, fragmented market, achieving best execution, and minimizing information leakage and other implicit costs. To try to meet these goals, brokers use, and offer to their customers, a wide range of execution algorithms.”).

Feed.³⁷ Moreover, many market participants, including non-users of CMC, utilize electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis in times often measured in microseconds. Therefore, the Exchange believes that both current users of CMC, as well as those that may utilize CMC following approval of this proposal, will be technologically equipped to efficiently respond to CMC’s publication of matched shares and, should they so choose, reroute any unmatched MOC orders to Nasdaq’s closing auction, utilize NYSE’s Closing-D Order,³⁸ or reroute to an off-exchange closing price offering.

The Exchange also notes that as CMC volume has increased, prospective new users³⁹ with different trading strategies and different technological and operational capabilities have expressed interest in utilizing CMC. This segment of Members has expressed a desire for earlier MOC Cut-Off Times, which they note will assist them in more efficiently managing their workflows and trading risk. For instance, some of these Members would prefer to commit certain of their closing price orders—*e.g.*, guaranteed close orders—to a closing auction mechanism earlier in the trading day. By submitting such orders to CMC and potentially receiving a match, a Member can reduce its trading risk. Additionally, by having the ability to allocate MOC orders across

³⁷ Per Rule 11.22(i), The Cboe Auction Feed is an uncompressed data product that provides information regarding the current status of price and size information related to auctions conducted by the Exchange as well as the total size of all buy and sell orders matched via Cboe Market Close described in Rule 11.28

³⁸ By way of background, CMC calculates the matched shares at the MOC Cut-Off Time (currently 3:49 p.m.) Importantly, the matching process happens quickly, and while the duration may vary, the total matching process typically takes a fraction of second (*e.g.*, ~948 microseconds), with the maximum being around 1-second. With these timeframes in mind, a user should in most instances, currently knows the paired CMC quantity no later than 3:49:01 p.m., leaving the user at least fifty-nine-seconds (59) to reroute any unpaired CMC MOC orders to the primary exchanges’ closing auctions. Similarly, applying these timeframes to the proposed MOC Cut-Off Times, a user should in most instances know the pair paired CMC quantities no later than 3:15.01, 3:30.01, 3:54.01, and 3:58.01. As noted by the Exchange throughout this filing, the speed of today’s trading technology is typically measured in microseconds, making fifty-nine-seconds (59) a significant amount of time for a user to make an automated trading decision. For reference, a microsecond is 1-millionth of a second.

³⁹ Prospective new users of CMC include both Members expressing interest in utilizing CMC for the first time, as well as new end-clients of Members that currently utilize CMC, and have inquired as to CMC’s functionality, and the proposed enhancements.

³² 15 U.S.C. 78f(b).

³³ *Supra* note 25.

³⁴ *Id.*

various MOC Cut-Off Times, Members can more capably manage their order volume and reduce the number of messages that their systems must manage and process heading into market close, where trading volume and volatility are typically highest. As such, Members will be better able to manage any operational or technology risk⁴⁰ associated with a high order volume day such as index rebalance days (e.g., Russell or MSCI index rebalance days) or unexpected high volatility trading days, as well as better manage the number of MOC orders a Member may need to send to an exchange or off-exchange venue at any one time.⁴¹

As noted in its CMC Amendment, the Exchange continues to believe that the extension of cut-off times by the primary exchanges since CMC's approval in 2020 as well as the growth of off-exchange venues⁴² with cut-off

times in such close proximity to the end of Regular Trading Hours is indicative of Members' desires for such offerings. Logically, such a change in market structure would not have occurred if market participants did not already possess the operational and technological capabilities to effectively manage the multitude of cut-off times offered by the exchanges and off-exchange venues.

The Exchange also believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because adding the MOC Cut-Off Times of 3:54 p.m. and 3:58 p.m. would more closely align the CMC with the cut-off time in place for the Nasdaq closing auction, as well as provide market participants with a tool similar to NYSE's Closing D-Order that enables them to trade closer to 4:00 p.m.⁴³ By adding the 3:54 p.m. and 3:58 p.m. MOC Cut-Off Times, CMC has the ability to become a more comparable alternative to Nasdaq's closing auction and another option similar to NYSE's Closing D Orders, thereby "foster[ing] price competition and . . . decreas[ing] costs for market participants."⁴⁴

The primary exchanges' cut-off times are beneficial to market participants because of their proximity to the closing auctions, which occur at 4:00 p.m. Trading later into the day provides market participants with more time to seek better-priced liquidity for their orders in a variety of ways and provides additional time to determine the size of their outstanding orders that they may decide to commit to CMC, the primary auctions, or services offered by off-exchange venues such as ATSs. In this regard, by having the option to trade past the primary exchanges' cut-off times and still potentially receive the official closing price by participating in CMC at 3:58 p.m., Members will have had additional time to actively trade orders and attempt to access better priced liquidity for their orders or their client orders.

Importantly, even with the addition of the proposed MOC Cut-Off Times, CMC will remove any perceived impact on Nasdaq's or NYSE's closing auction by publishing the number of matched order shares, by security, in advance of

Nasdaq's cut-off time and NYSE's Closing-D Order cut-off time. The total matched shares would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at each of the newly proposed MOC Cut-Off Times. Because of the speeds and widespread use of market technology the market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information (including information about total matched shares in CMC) into their closing processes.⁴⁵ Additionally, as discussed above, because of the market technology utilized by market participants in today's markets, those who choose to participate in CMC will still have ample time⁴⁶ to reroute any MOC orders not matched via CMC to reach Nasdaq's closing auction or NYSE's Closing-D Order offering, to be included in the primary exchanges' closing auctions. Notably, market participants that do not possess internal high-speed trading and routing capabilities often rely on third-party providers or broker-dealers⁴⁷ to handle and execute their orders electronically. Moreover, if market participants do not possess internal high-speed routing and trading technology, and do not utilize third-party solutions, the addition of the proposed MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. would allow such participants to try and receive CMC matches earlier in the day at 3:15 p.m.

⁴⁰ The Exchange notes that there are market participants that may not currently possess internal high-speed routing and trading technology. However, such market participants may, and likely already do, utilize routing and trading services offered by third-party providers or broker-dealers to handle and execute their orders electronically. Additionally, CMC is entirely voluntary and Members that do not possess internal high-speed trading and routing technology, or utilize third-party broker-dealers, are not required to use CMC. Accordingly, the Exchange believes that the proposed MOC Cut-Off Time is not likely to result in disparate treatment amongst CMC users and other market participants.

⁴¹ In this regard, the Exchange notes that some Members have expressed that while they have ample time to redirect any unmatched CMC orders to the primary exchanges, internal or external message rate checks (e.g., SEC Rule 15c3-5 risk checks or market center checks) may prohibit them from doing so if the Member is submitting a large volume of unmatched MOC orders at one time. In this regard, the proposed additional MOC Cut-Off Times may assist Members in allocating MOC orders across multiple CMC sessions, and should they be matched, reduce the volume of unmatched MOC orders the Member may have to submit to another market center.

⁴² For example, JP Morgan Securities' ATS, JPB-X, offers Close Price Match. This functionality utilizes a conditional order process to match orders and crosses them at the security's official closing prices, as determined by the closing auction at the primary exchange for a security. The Close Price Match time for an NMS stock is currently 30-seconds before the MOC cut-off time for that stock's primary exchange. Additionally, Instinet, LLC's ATS, CBX provides for three MOC Crossing Sessions, which consist of: a cross for securities where the primary listing exchange is the Nasdaq ("Nasdaq Cross"), a cross for securities where the primary listing exchange is the NYSE Arca ("Arca Cross"), and a cross for securities where the primary listing exchange is the NYSE ("NYSE Cross") (collectively, "MOC Crosses"). Each MOC Cross occurs two minutes prior to the relevant exchange's cut-off time; i.e., the Nasdaq Cross currently occurs at or near 3:53 p.m., the NYSE Cross at or near 3:48 p.m., and the Arca Cross at or near 3:57 p.m. See Form ATS-N, JPB-X, available at: https://www.sec.gov/Archives/edgar/data/782124/000001961722000459/xslATS-N_X01/primary_doc.xml; see also Form ATS-N, Instinet, LLC's ATS, CBX, available at: <https://www.sec.gov/>

Archives/edgar/data/310607/000031060722000009/xslATS-N_X01/primary_doc.xml . . . should.

⁴³ As noted above, NYSE's Closing-D Order cut-off time is 3:50 p.m., and Nasdaq's cut-off time is 3:55 p.m. Additionally, the Exchange notes that NYSE Arca's cut-off time for MOC orders is 3:59 p.m. See "Trading Information—Closing Auctions", available at: <https://www.nyse.com/markets/nyse-arca/trading-info>.

⁴⁴ *Supra* note 15.

⁴⁵ In connection with its CMC Amendment filing, the Exchange spoke with four (4) designated market makers for the primary exchanges and confirmed that while they do not currently monitor the Cboe Auction Feed, they are technically equipped to do so.

⁴⁶ *Supra* note 28.

⁴⁷ As a general matter, third-party technology providers and broker-dealers with electronic trading offerings provide automated trading and routing products and services to market participants that may not possess their own proprietary technology, or simply choose to leverage third party solutions they deem superior to their own internal technology. By way of example, portfolio managers responsible for reweighting their managed funds may not possess internal automated routing and algorithmic trading capabilities, and instead utilize third-party solutions enabling them to trade on an automated basis. As such, the proposed MOC Cut-Off Times of 3:54 p.m. and 3:58 p.m. are not likely to negatively impact market participants who may not possess the internal capabilities to reroute unmatched CMC MOC orders to the primary exchanges' closing auctions. The Exchange further notes that the utilization of third parties and broker-dealers for technological trading solutions was even noted by the Commission in its Algorithmic Trading Report. *Supra* note 28 ("Institutions that do not create their own algorithms generally use algorithms provided to them by institutional brokers.") ("Brokers are tasked by their customers with finding liquidity in a complex, fragmented market, achieving best execution, and minimizing information leakage and other implicit costs. To try to meet these goals, brokers use, and offer to their customers, a wide range of execution algorithms.")

or 3:30 p.m., rather than limiting themselves to the later MOC Cut-Off Times of 3:49 p.m., 3:54 p.m., and 3:58 p.m., and having less time to re-route their unmatched MOC orders to the primary exchanges or off-exchange closing price mechanisms. Accordingly, the Exchange believes that the proposed MOC Cut-Off Times are not likely to result in disparate treatment amongst CMC users.

The proposed 3:58 p.m. MOC Cut-Off Time would also help to further align CMC's MOC Cut-Off Times with that of off-exchange venues that offer cut-off times that correspond with those currently offered by the primary exchanges, and as little as 30 seconds prior to market close.⁴⁸ As such, the Exchange believes that the proposed rule change is supported by both ample precedent as well as current market structure, and should not present any new or novel issues that market participants must consider when managing their trading and determining which exchange or off-exchange venue to route their MOC orders.

Price Discovery⁴⁹

As was the case with its CMC Amendment, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirements.⁵⁰ As previously noted by the Exchange,⁵¹ CMC accepts and matches only unpriced MOC orders. By matching only

unpriced MOC orders, and not priced Limit-On-Close ("LOC") orders and executing those matched MOC orders that naturally pair off with each other and effectively cancel each other out, CMC is designed to avoid impacting price discovery. The proposed rule change—*i.e.*, the addition of additional MOC Cut-Off Times—does not change CMC's underlying functionality. As previously noted by the Exchange,⁵² matched MOC orders are merely recipients of price formation and do not directly contribute to the price formation process. Indeed, in its Final Approval Order for CMC, even the Commission noted that unpriced, paired-off MOC orders do not directly contribute to setting the official closing price of securities on the primary listing exchanges but, rather, are inherently the recipients of price formation information.⁵³

Moreover, the Exchange believes that even if the addition of MOC Cut-Off Times reduces the number of MOC orders routed to a security's primary listing market, CMC is still designed to remove any perceived adverse impact on the primary listing markets' close because the total matched shares for each CMC session would still be disseminated by the Exchange free of charge via the Cboe Auction Feed prior to the primary exchanges' cut-off times. Additionally, even with the addition of the new MOC Cut-Off Times, because of the technological capabilities of today's market participants discussed more fully above, the market makers on the primary exchanges would still have the ability to incorporate the Cboe Auction Feed information, including information about total matched shares in CMC, into their closing processes.

Furthermore, current users of CMC are either technologically equipped to manage the proposed CMC MOC-Cut Off Times or rely on third-party solutions that provide them with the technological capability to appropriately manage the proposed MOC Cut-Off Times and timely re-route unmatched CMC orders participate in the primary exchanges' closing auctions. Similarly, given the widespread use of routing and trading technology in today's markets, it is likely that potential new CMC users already possess the technological capabilities to manage the proposed

MOC Cut-Off Times, and if they do not, similarly rely on third-party providers with high-speed technology offerings. Alternatively, CMC users lacking high-speed trading and routing technology can simply utilize the earlier MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m., providing themselves more flexibility to reroute unmatched CMC orders to the primary exchanges.

Fragmentation⁵⁴

Another matter addressed by the Commission in its review of the Original Proposal was fragmentation, and whether CMC would fragment the markets beyond what currently occurs through off-exchange close price matching venues offered by broker-dealers.⁵⁵ While comparisons to off-exchange MOC activity may not be a perfect measure of the potential resulting effect of CMC market fragmentation,⁵⁶ the proposed MOC Cut-Off Times are designed to enable CMC to better compete with off-exchange venues and for closing volume that is *already* executed away from the primary listing venues.

As illustrated in the first two charts below, a growing proportion of trading volume at the close occurs on off-exchange venues, where the TRF close volume, as a percent of Exchange close volume, has risen steadily since Q1 2019.⁵⁷ In the third chart the Exchange also studied the top ten most actively traded securities during the same time period and found that a significant portion of the total closing volume is executed off-exchange, following the dissemination of the official closing price.

⁵⁴ *Supra* note 49.

⁵⁵ *Supra* note 15.

⁵⁶ Id ("... [C]omparisons to off-exchange activity are not a perfect measure of the potential resulting effect of the [CMC] proposal because the structures of the many off-exchange mechanisms differ from the structure of Cboe Market Close.").

⁵⁷ The Exchange conducted an analysis of off-exchange/Trade Reporting Facility ("TRF") closing volume that occurs after market close, 4:00 p.m. Eastern Time, where the price is equal to the closing price and for which such trades are reported with a Prior Reference Price ("PRP") trade reporting modifier. The TRF is a trade reporting facility where FINRA members may report trades in Nasdaq-listed and other exchange-listed securities, that were executed otherwise than on an exchange. The first two charts represent TRF executed volume at the close with the "PRP" flag that equals the closing auction price, divided by total on exchange auction volume.

⁴⁸ *Supra* note 41.

⁴⁹ As part of this proposed amendment, the Exchange is addressing several questions considered by the Commission in connection with the Exchange's Original Proposal, including price discovery and fragmentation, market complexity and operational risk, and manipulation. Importantly, in considering these questions, the Commission found that based on CMC's design and the record before the Commission, that the proposal was consistent with Section 6(b)(5) of the Act. *Supra* note 15.

⁵⁰ The Exchange notes that the Commission, in its Final Approval Order, carefully analyzed and considered CMC and its potential effects, if any, on the primary listing exchanges' closing auctions, including their price discovery functions. Importantly, the Commission found that, based on CMC's design, CMC should not disrupt the price discovery process in the closing auctions of the primary listing exchanges. *Supra* note 15.

⁵¹ See Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc. (August 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-2162452-157801.pdf>; see also Letter from Joanne Moffic-Silver (October 11, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-2634580-161229.pdf>.

⁵² Id.

⁵³ *Supra* note 15.

Figure 2 (Source: Internal Exchange Data)

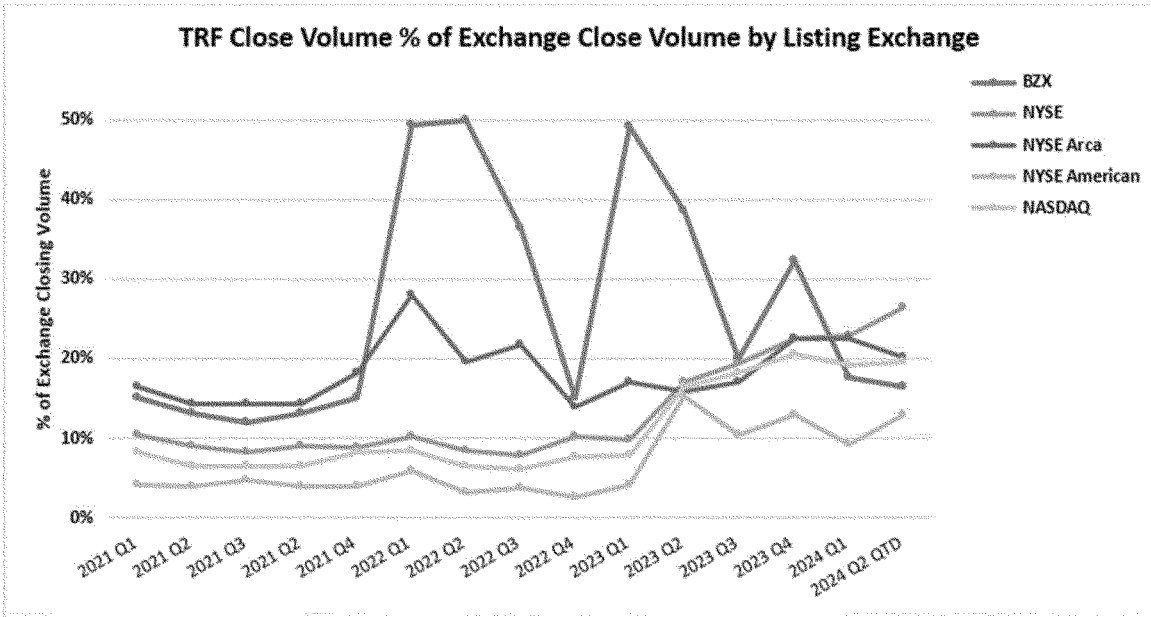


Figure 3 (Source: Internal Exchange Data)

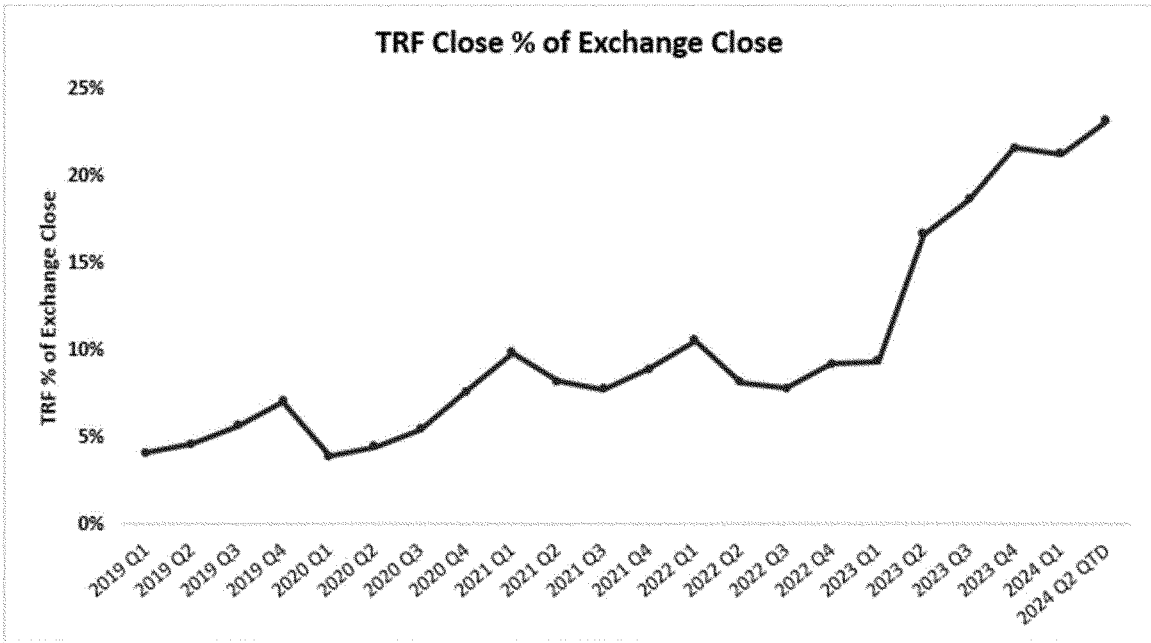


Figure 4 (Source: Internal Exchange Data)

	Symbol	Total ADV	Primary Listing Exchange	TRF Close % inc. PRP
1	TSLA	129,423,964	Nasdaq	12%
2	SQQQ	129,161,658	Nasdaq	21%
3	BBBY	122,763,238	Nasdaq	5%
4	SPY	80,346,142	NYSE Arca	13%
5	SOXS	73,944,691	NYSE Arca	16%
6	NKLA	67,493,708	Nasdaq	8%
7	AMD	64,632,893	Nasdaq	15%
8	PLTR	60,699,921	NYSE	15%
9	AAPL	59,750,017	Nasdaq	17%
10	PRTY	57,838,421	NYSE	7%

Given the significant volume of off-exchange MOC activity already occurring, the Exchange believes that there is still ample opportunity for the proposed MOC Cut-Off Times to attract existing MOC volume that is already being executed away from CMC and the primary listing venues. As discussed above, market participants have expressed the value of being able to trade closer to 4:00 p.m. In this regard, the proposed MOC Cut-Off Times of 3:55 p.m. and 3:58 p.m. satisfy the needs of today's market participants, and enable CMC to better compete with off-exchange venues, thereby "foster[ing] price competition and . . . decreas[ing] costs for market participants."⁵⁸ Members may prefer to execute their MOC orders via CMC rather than off-exchange venues for reasons such as the increased

transparency and reliability that exists when investors execute their orders on public, well-regulated exchanges. Moreover, by attracting such order flow, CMC can help to increase the amount of volume at the close executed on systems subject to the resiliency requirements of Regulation SCI.⁵⁹

Moreover, the Exchange's observations in Figure 5 below show that the closing auction volume on both NYSE and Nasdaq has increased despite the launch of CMC on March 6, 2020, and the subsequent implementation of the 3:49 p.m. MOC Cut-Off Time in 2023. Therefore, while the proposed amendment may lead to additional orders being routed to CMC rather than the primary exchanges' closing auctions, it cannot be said with certainty that such a change will cause additional fragmentation in the marketplace as it is

possible that existing MOC order flow that already executes on off-exchange venues may in fact migrate to CMC. In other words, MOC orders that are already being executed and matched away from the primary exchanges will continue to match and execute on away venues, but rather would match and execute pursuant to CMC rather than on an unregulated, non-transparent venue. In fact, the Exchange believes the proposed additional MOC Cut-Off Times are not likely to materially increase market fragmentation and therefore have a negative impact on the market because data shows that even with the implementation of CMC, there is still a significant amount of volume executed on the primary exchanges' suggesting that market participants continue to utilize the primary closing auctions.

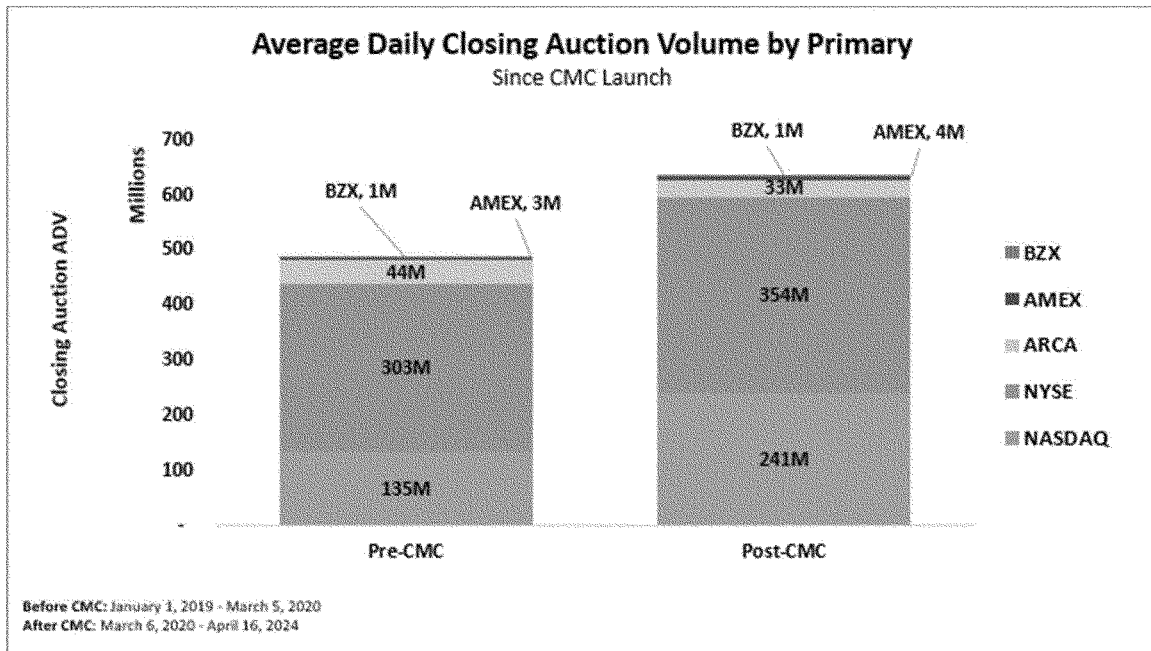
⁵⁸ *Supra* note 15.

⁵⁹ See Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc., a Cboe Company (Oct. 11, 2017) ("Furthermore, [CMC]

would operate on the Exchange's reliable SCI systems . . . significant MOC liquidity is conducted today by off-exchange venues. These venues are not SCI systems and, therefore, not subject to Regulation SCI's enhanced resiliency

requirements. [CMC] could attract MOC orders from these off-exchange venues to the Exchange and its reliable SCI system, furthering the Commission's presumed desire for liquidity at the close to be conducted on SCI systems.")

Figure 5 (Source: Internal Exchange Data)



Market Complexity and Operational Risk⁶⁰

The Exchange believes that the proposed rule change is simple and straightforward, and as such will not significantly increase market complexity or operational risk. The Exchange already received approval to change its MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., which resulted in no increase in market complexity and operational risk. The Exchange now seeks only to offer additional MOC Cut-Off Times, none of which will increase market complexity or operational risk. Indeed, the 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times are designed to help aid Members in managing their MOC order flow, and actually *mitigate* their operational and technological risk. The proposed 3:54 p.m. and 3:58 p.m. MOC Cut-Off Times—like the approved 3:49 p.m. MOC Cut-Off Time—are intended only to help better align CMC with the cut-off times utilized by NYSE and Nasdaq for their Closing-D Orders and closing auction, respectively. While Members will now have the option to designate orders for participation in multiple MOC Cut-Off Times, and any unmatched quantities for such orders will carry forward to the next CMC session, the Exchange believes that Members are well equipped to manage any new workflow associated with these proposed enhancements. Indeed, the Exchange conferred with Members to

discuss the proposed workflow prior to submitting this proposal, and Members indicated that such changes did not present new or novel issues for them to consider. In addition, as previously noted,⁶¹ both current CMC users and market participants in general, possess high-speed routing and order handling technology, that will enable them to efficiently manage the proposed changes to CMC. Members continuing to only participate in a single CMC session will not have to consider new operational requirements of monitoring and consuming a new data feed or consider the utilization of a new order type or implementation of new Exchange code, other than perhaps needing to monitor the Cboe Auction Feed for the publication of CMC information at a different MOC Cut-Off Time. While Members electing to participate in multiple CMC sessions will need to monitor the Cboe Auction Feed for CMC information at multiple MOC Cut-Off Times, Members have indicated that the operational and technological requirements to do so are not complex, and do not present any new or novel issues. In addition, as previously noted,⁶² market participants today utilize high-speed technology that enables to receive and process market data in sub-second latencies. As such, given that the proposed MOC Cut-Off Times are multiple *minutes* apart, the proposed MOC Cut-Off Times should

not present any new or novel issues for Members.

Additionally, just as the Exchange did prior to proposing the 3:49 p.m. MOC Cut-Off Time, the Exchange discussed this current proposal with CMC users and learned that CMC's current users are technologically equipped⁶³ to manage the proposed 3:54 p.m. and 3:58 p.m. MOC Cut-Off Times, and that they can respond to CMC's publication of matched shares and quickly reroute any unmatched MOC orders to the respective primary closing auction. Furthermore, the Exchange again notes that both off-exchange venues and other exchanges already offer MOC cut-off times that are closer in time to the end of Regular Trading Hours. Specifically, in 2018 Nasdaq received approval to move the cut-off times for the entry of MOC and Limit-On-Close ("LOC") orders from 3:50 to 3:55 p.m.⁶⁴ Similarly, in 2018 NYSE received approval from the SEC to extend cut-off times for order entry and cancellation

⁶³ *Id.*

⁶⁴ See Securities Exchange Act Release No. 34-84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR-Nasdaq-2018-068) (Order approving a rule change by Nasdaq) (The Commission approved a rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC orders from 3:50 p.m. to 3:55 p.m.); see also Securities Exchange Act Release No. 34-85021 (January 31, 2019) (SR-NYSE-2018-58) (Order approving a rule change by NYSE) (The Commission approved a rule change by the NYSE to amend Rule 123C to extend the cut-off times for order entry and cancellation for participation in the closing auction, from 3:45 p.m. to 3:50 p.m.).

⁶⁰ *Supra* note 49.

⁶¹ *Supra*. note 28.

⁶² *Id.*

for participation in its closing auction, from 3:45 p.m. to 3:50 p.m.⁶⁵ NYSE also offers discretionary-orders, which unlike MOC/LOC orders subject to NYSE's 3:50 p.m. cut-off, may be entered for participation in the closing auction until 3:59:50.⁶⁶ Additionally, market participants may enter MOC orders for participation in NYSE Arca's closing auction up to 3:59 p.m.⁶⁷ Finally, various off-exchange venues offer closing match processes with cut-off times aligned with those of the primary exchanges, and even as close to 30-seconds before market close, 4:00 p.m.⁶⁸

Moreover, the proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times will also enable new and existing CMC users that may not have high-speed trading and routing infrastructure, to still utilize CMC and not rely on high-speed technology to reroute unmatched CMC orders from the 3:49 p.m., 3:54 p.m., or 3:58 p.m. MOC Cut-Off Times. The Exchange also notes that CMC is a voluntary offering, and Members may freely decide whether to participate.

Accordingly, the Exchange believes that market participants are well accustomed to managing the various cut-off times in today's marketplace, and in incorporating these timelines into their trading decisions. The number of exchanges and off-exchange venues with extended cut-off times indicates that market participants find value in their ability to retain control of their trading heading into the end of Regular Trading Hours, and the primary exchanges and off-exchange venues have responded to such demand. Certainly, market participants would not desire cut-off times closer to the end of Regular Trading Hours if they could not technologically and operationally manage their trading accordingly. Therefore, the additional, later CMC MOC Cut-Off Times should not present market participants with any novel operational or technological complexities.

Manipulation ⁶⁹

In its CMC Amendment the Exchange noted that the value of the 3:49 p.m. MOC Cut-Off Time was not the proximity of CMC's matched share message to the cut-off times of the primary exchanges, but rather the ability of users to trade their orders for a longer period of time before deciding whether

to commit their MOC orders to CMC. The Exchange further stated that it did not expect that the proposed extension of the MOC Cut-Off Time to 3:49 p.m. would result in an increase in manipulative activity due to information asymmetries, or that it raised any unique manipulation concerns relative to how CMC existed with a MOC Cut-Off Time of 3:35 p.m. Importantly, the Exchange believes that this rationale also applies to the current proposal, and that the SEC should dismiss any manipulation concerns regarding this proposal, just as it did with the Original Proposal and CMC Amendment.

Here, the Exchange notes that the mere existence of multiple MOC Cut-Off Times does not make any information CMC participants may be able to glean from their paired-off MOC orders any more valuable. Rather, the value of any information learned by CMC participants is still limited in nature. For instance, any information that CMC participants may learn from receiving match MOC order messages is indeed limited in nature because the CMC participant would still only know the unexecuted size of its own order.⁷⁰ Even if a Member participated in all five CMC sessions—3:15 p.m., 3:30 p.m., 3:49 p.m., 3:54 p.m., and 3:58 p.m.—and received messages regarding matched MOC orders, the proposed MOC Cut-Off Times are many minutes apart, during which time new MOC orders may be entered, rendering useless any information a Member may have gleaned regarding an imbalance in the prior session. Moreover, even if a Member chose to participate in CMC only to gather information about the direction of an imbalance and use such information to manipulate the closing price, the Member's orders were still eligible for execution subjecting the Member to economic risk.

While this proposal would result in the total shares for buy and sell orders in CMC being disseminated several times during the last hour of trading, and with three MOC Cut-Off Times in close proximity to the primary exchanges' cut-off times, these changes

⁷⁰ The Exchange notes that in its Final Approval Order, even the Commission noted that, "In particular, a market participant would only be able to determine the direction of the imbalance and would have difficulty determining the magnitude of any imbalance, as it would only know the unexecuted size of its own order. In addition, the information would only be with regard to the pool of liquidity on BZX and would provide no insight into imbalances on the primary listing exchange, competing auctions, ATSS, or other off-exchange matching services which, as described above, can represent a significant portion of trading volume at the close." *Supra* note 15.

do not suddenly make such information more valuable or useful in terms of enhancing opportunities for gaming and manipulating the official closing price. The 3:49 p.m. and 3:54 p.m. MOC Cut-Off Times are one-minute prior to NYSE's and Nasdaq's MOC cut-off times, and the 3:58 p.m. MOC Cut-Off Time is one-minute prior to NYSE's Closing-D Order cut-off time. As noted throughout, today's markets are marked by technological solutions which typically operate in durations of microseconds. In this context, the separation between the CMC MOC Cut-Off Times and that of NYSE's and Nasdaq's is a substantial duration of time, during which much can change in the marketplace, thus limiting the value of information, if any, that can be gleaned from CMC's dissemination of matched shares at these times.

Moreover, the 3:15 p.m. MOC Cut-Off Time is thirty-five-minutes prior to NYSE's MOC cut-off time, forty-four-minutes and fifty-seconds prior to NYSE's Closing-D Order cut-off time, and forty-minutes prior to Nasdaq's MOC cut-off time. Similarly, the 3:30 p.m. MOC Cut-Off Time is twenty-minutes prior to the NYSE's MOC cut-off time, twenty-nine-minutes and fifty-seconds prior to NYSE's Closing-D Order cut-off time, and twenty-five-minutes prior to the Nasdaq MOC cut-off time. These proposed MOC Cut-Off Times are even further from the primary exchanges' cut-off times than the current CMC MOC Cut-Off Time, during which the marketplace and CMC will experience significant change, even further limiting the value of information, if any, that a Member may glean from the dissemination of matched shares.

Furthermore, as with the current MOC Cut-Off Time, the proposed MOC Cut-off Times do not present any information asymmetries that do not already exist in today's markets, as the very nature of trading creates short term asymmetries of information to those who are parties to a trade.⁷¹ Indeed, as noted by the Commission, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed.⁷² Additionally, NYSE imbalance information is already disseminated to

⁷¹ The Exchange also notes that in its Final Approval Order, even the Commission noted that, "Further, the Commission believes information asymmetries as those described by commenters exist today and are inherent in trading, including with respect to closing auctions. For example, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed." *Id.*

⁷² *Id.*

⁶⁵ *Id.*

⁶⁶ *Supra* note 4.

⁶⁷ See "Closing Auction Timeline", available at: <https://www.nyse.com/markets/nyse-arca/trading-info>.

⁶⁸ *Supra* note 14.

⁶⁹ *Supra* note 49.

NYSE floor brokers, who are permitted to share with their customers specific data from the imbalance feed.⁷³ Even in this case, though, the Commission stated that the value of such information is limited because the imbalance information does not represent overall supply and demand for a security, is subject to change, and is only one relevant piece of information.⁷⁴ Similarly, because any information gleaned by a CMC participant is limited only to the unexecuted size of their order, and relative to the depth of only the BZX pool of liquidity, the Exchange believes that the proposed extension of the MOC Cut-Off Time does not create an increased risk of manipulative trading activity.

Moreover, there are currently controls and processes in place to monitor for manipulative trading activity, such as the supervisory responsibilities and capabilities of exchanges and the expansive cross market surveillance conducted by FINRA. Following approval of this proposal, the Exchange, FINRA and others will continue to surveil for potential manipulative activity and when appropriate, bring enforcement actions against market participants engaged in manipulative trading activity.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment applies equally to all Members, and is intended to offer additional MOC Cut-Off Times, enabling a broader segment of Members to utilize CMC at times that better accommodate different trading strategies, and Members' technological and operational capabilities. Similar to how current CMC users are technologically equipped to participate in CMC at 3:49 p.m. and timely reroute any unmatched CMC MOC orders to the NYSE or Nasdaq closing auction, today's CMC users will be able to utilize the 3:54 p.m. MOC Cut-Off Time and still have time to reroute any unmatched MOC orders to the Nasdaq closing auction. Similarly, Members are also technologically equipped to utilize the 3:58 p.m. MOC Cut-Off Times and still have time to reroute their orders as NYSE Closing-D Orders. Members that may lack internal high-speed routing and trading technology may utilize third-party providers (discussed above) should they

desire to make use of the 3:54 p.m. and 3:58 p.m. MOC Cut-Off Times.

Alternatively, the proposed MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. will allow CMC users that may lack high-speed trading and routing infrastructure to utilize CMC without having to quickly re-route unmatched CMC orders to the primary exchanges just prior to their cut-off times, as well as attract new users who may desire a mechanism that allows them to match their MOC orders earlier in the trading day. Moreover, CMC is a voluntary closing match process, and Members are not required to participate in CMC.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed rule change more closely aligns the CMC MOC Cut-Off Times to the cut-off times of other exchanges, while still providing CMC participants with an opportunity to reroute any of their unpaired MOC orders to the primary exchanges. In this regard, the proposed rule change may make CMC a more viable alternative to the primary auctions and "should foster price competition and thereby decrease costs for market participants."⁷⁵

Additionally, the proposed MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. will help make CMC a more attractive alternative to market participants that may not feel comfortable attempting to match in CMC at 3:49 p.m. and still have time to re-route unmatched CMC orders to NYSE and Nasdaq, as well as market participants that simply wish to reduce their MOC trading obligations earlier in the trading day by attempting to match in CMC. Collectively, the proposed MOC Cut-Off Times will enable the Exchange to compete with the primary exchanges more effectively, as well as with off-exchange venues that have cut-off times much closer in time to the market close and comprise a growing percentage of closing volume.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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 Exchange consents, the Commission will:

A. By Order Approve or Disapprove Such Proposed Rule Change, as Modified by Amendment No. 1, or

B. Institute proceedings to determine whether the proposed rule change, as modified by Amendment No. 1, 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, as modified by 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-032 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-CboeBZX-2024-032. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions;

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Supra* note 15.

you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-032 and should be submitted on or before June 20, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁶

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100217; File No. SR-NYSEARCA-2023-70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Trust

May 22, 2024.

On October 10, 2023, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 list and trade shares of the Grayscale Ethereum Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on October 27, 2023.³ On December 5, 2023, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ On January 25, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On March 15, 2024, the

Exchange filed Amendment No. 1, which replaced and superseded the proposed rule change in its entirety. On April 2, 2024, the Commission published notice of Amendment No. 1 to the proposed rule change.⁸ On April 23, 2024, the Commission designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.⁹ On May 21, 2024, the Exchange filed Amendment No. 2 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 2 replaced and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

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

The Exchange proposes to list and trade shares of the following under NYSE Arca Rule 8.201-E: Grayscale Ethereum Trust (ETH) (the “Trust”).¹⁰ This Amendment No. 2 to SR-NYSEARCA-2023-70 replaces Amendment No. 1 to SR-NYSEARCA-2023-70 and supersedes such filing in its entirety. The proposed rule change is available on the Exchange’s website at 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

Under NYSE Arca Rule 8.201-E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges “Commodity-Based Trust Shares.”¹¹ The Exchange proposes to list and trade shares (“Shares”)¹² of the Trust pursuant to NYSE Arca Rule 8.201-E.¹³

¹¹ Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

¹² The Shares are expected to be listed under the ticker symbol “ETHE.”

¹³ On April 17, 2020, the Trust confidentially filed its draft registration statement on Form 10 under the “34 Act” (File No. 377-03131) (the “Draft Registration Statement on Form 10”). On June 16, 2020, the Trust confidentially filed Amendment No. 1 to the Draft Registration Statement on Form 10. The Jumpstart Our Business Startups Act (the “JOBS Act”), enacted on April 5, 2012, added Section 6(e) to the Securities Act of 1933 (the “Securities Act” or “‘33 Act”). Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently submitted its Draft Registration Statement on Form 10 to the Commission on a confidential basis. On August 6, 2020, the Trust filed its registration statement on Form 10 under the Securities Act (File No. 000-56193) (the “Registration Statement on Form 10”). On October 2, 2020, the Trust filed Amendment No. 1 to the Registration Statement on Form 10. On October 5, 2020, the Registration Statement on Form 10 was automatically deemed effective. On March 5, 2021, February 25, 2022, March 1, 2023, and February 23, 2024, the Trust filed its annual report on Form 10-K under the Securities Act (File No. 000-56193) (the “Annual Reports”). On November 6, 2020, May 7, 2021, August 6, 2021, November 5, 2021, May 6, 2022, August 5, 2022, November 4, 2022, May 5, 2023, August 4, 2023, and November 3, 2023, the Trust filed its quarterly reports on Form 10-Q under the Securities Act (File No. 000-56193) (the “Quarterly Reports”). The descriptions of the Trust, the Shares, and Ether contained herein are based, in part, on the Annual Reports and Quarterly Reports. On January 17, 2019, the Trust submitted to the Commission an amended Form D as a business trust. Shares of the Trust have been quoted on OTC Market’s OTCQX Best Marketplace under the symbol “ETHE” since June 20, 2019. On May 23, 2019 and March 20, 2020, the Trust published annual reports for ETHE for the periods ended December 31, 2018 and December 31, 2019, respectively. On May 23, 2019, August 8, 2019, November 11, 2019, May 8, 2020, and August 6, 2020, the Trust published quarterly reports for ETHE for the periods ended March 31, 2019, June 30, 2019, September 30, 2019, March 31,

Continued

⁷⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98780 (Oct. 23, 2023), 88 FR 73892. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99082, 88 FR 85962 (Dec. 11, 2023).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 99428, 89 FR 6155 (Jan. 31, 2024).

⁸ See Securities Exchange Act Release No. 99887, 89 FR 24534 (Apr. 8, 2024).

⁹ See Securities Exchange Act Release No. 100014, 89 FR 33414 (Apr. 29, 2024).

¹⁰ The Trust was previously named Ethereum Investment Trust, whose name was changed pursuant to a Certificate of Amendment to the Certificate of Trust of Ethereum Investment Trust filed with the Delaware Secretary of State on January 11, 2019.