September 9, 2021

VIA ELECTRONIC MAIL

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish the "Extended Trading Close" and a New "Extended Trading Close" Order Type (Release No. 34-92466; File No. SR-NASDAQ-2021-040)

Dear Ms. Countryman:

In connection with the above-referenced matter, Nasdaq, Inc. ("Nasdaq") writes in response to an August 18, 2021 comment letter that T. Rowe Price filed with the Securities and Exchange Commission ("SEC" or "Commission").[1] In the Letter, T. Rowe Price expressed concerns that Nasdaq's proposals to establish the Extended Trading Close ("ETC") and a related ETC Order Type (the "Proposals") would "diminish the quality of the [Nasdaq] Closing Cross process, encourage harmful arbitrage behavior, and negatively impact aspects of the continuous markets."[2] Although Nasdaq appreciates T. Rowe Price's recognition of the importance of the Closing Cross to the efficient operation of the equity markets – a fact that many seem to take for granted or overlook – Nasdaq respectfully disagrees with T. Rowe Price that the ETC threatens the integrity of the Nasdaq Closing Cross.

As a practical matter, Nasdaq proposes to establish the ETC to compete with other venues that already offer mechanisms that enable their customers to execute orders at the Nasdaq Closing Cross price after the Closing Cross concludes. T. Rowe Price acknowledges that "a number of off-exchange trading venues already offer their participants the ability to receive the Nasdaq Official Closing Price for their orders after the Closing Cross occurs, and that such functionality has grown popular with certain participants."

Nasdaq has made and it continues to make significant investments in its Closing Cross process. Nasdaq recognizes the importance and value of a robust closing auction to foster price discovery and conclude regular hours trading each day. Nasdaq has raised in the past and continues to have concerns about mechanisms that copy or echo the closing price produced by the Nasdaq Closing Cross rather than participating in the Closing Cross directly. Nonetheless, the fact of the matter is that these mechanisms that copy or echo the official closing price

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1 See Letter from M. Kinak and J. Siegel to V. Countryman, dated August 18, 2021 (the "Comment Letter").

2 See id.

currently exist and are not insignificant. Given this reality, Nasdaq believes it must compete for on close orders that other venues are trying to siphon away from it.

Nasdaq does not believe the ETC would introduce any new or novel risk that would harm participation and price discovery in the Nasdaq Closing Cross. Nasdaq believes the risk that a significant number of Nasdaq members would choose to forgo participation in the Closing Cross (to the extent that they do not already do so) in favor of participating only in the ETC is overstated. Based on its design, Nasdaq does not believe the Extended Trading Close will siphon orders away from the Closing Cross.[3] In Nasdaq's experience, its Closing Cross is popular among Nasdaq members and preeminent among exchange closing auctions because it is robust, efficient, and it affords Nasdaq members a reasonable assurance that their orders will execute. Moreover, Nasdaq publishes indicative price and order imbalance information prior to the commencement of the Closing Cross, which enable its members to mitigate their risks of participating in the Nasdaq Closing Cross. The availability of the ETC should not significantly alter the behavior of members for which such execution assurance is important. If anything, the ability of members to automatically roll-over unexecuted Limit-On-Close ("LOC") orders into the ETC should only bolster their willingness to participate in the Nasdaq Closing Cross, as the ETC will provide added opportunity for their LOC orders to execute at the Nasdaq Closing Cross price, if not in the Closing Cross itself, then in the ETC.

For those members that seek to execute large volumes of shares at the Nasdaq Closing Cross price, exclusive participation in the ETC is unlikely to meet their needs, as ETC-only orders will execute only to the extent that there exists matching share volume in the ETC that is sufficient to do so. Although Nasdaq also proposes to publish imbalance information about the ETC to inform decisions as to whether and to what extent to participate in it, Nasdaq will disseminate that information only after the ETC commences, rather than beforehand, as it does with the Nasdaq Closing Cross. Thus, participants in the ETC will have less assurance about the outcome of their participation than they do when they participate in the Nasdaq Closing Cross, or in the Nasdaq Closing Cross and the ETC together.

As T. Rowe Price's letter suggests, Nasdaq expects that market participants will utilize the ETC, not as a substitute for participation in the Nasdaq Closing Cross, but instead as a "clean-up" mechanism for executing orders that they do not complete in an auction or to facilitate other specific client needs.[4] Assertions that the market for this service is already saturated and that there is no new room for competition should be determined by market forces rather than regulatory intervention. Nasdaq believes that offering a neutral venue on which to execute one's orders is a valuable service in general, which is also applicable to ETC.

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3 See Securities Exchange Act Release No. 34-92466 (July 22, 2021), 86 FR 40667 (July 28, 2021) (SR-NASDAQ-2021-040) ("Nasdaq does that the vast majority of Participants looking to trade at the closing price participate in the primary listing market's closing auction and do not route orders to non-primary market listing destinations.").

4 See id. (describing the ETC as allowing participants to execute orders "as a complement to the Closing Cross and as an alternative to After Hours Trading that can be less liquid than Market Hours trading.").

To be clear, Nasdaq has a strong interest in maintaining the integrity and robustness of its Closing Cross. To the extent that Nasdaq assesses that the ETC has become too large relative to the Nasdaq Closing Cross, or that members are indeed utilizing the ETC as a regular substitute for the Nasdaq Closing Cross, then Nasdaq will propose such actions as are necessary to mitigate any threat to the Closing Cross or its price discovery function.

As to the concern expressed about the slippery slope effect associated with the Commission approving additional echo print mechanisms, Nasdaq submits that the markets have already slid down that slope. In that regard, Nasdaq would support a Commission review of echo prints and of their effects on market efficiency. But again, unless or until the Commission so acts, there is no reasonable basis to allow off-exchange venues to offer echo prints of the Nasdaq Closing Cross price, while denying Nasdaq the ability to do the same. If a line needs to be drawn, Nasdaq's proposal is not the place to draw it.

Meanwhile, Nasdaq does not share the concern that the design of ETC "would be an open invitation to engage in arbitrage by quickly identifying price differences between the Closing Cross price and the prevailing after hours market price before other participants." Nasdaq notes that any risk that ETC participants would face harm from arbitrageurs is likely to be considerably less than the risks that market participants presently face when they trade after-hours. During after-hours trading, the Order Protection Rule does not apply, sourcing liquidity can be difficult, and prices can be volatile. By contrast, the ETC would provide an orderly and an efficient after-hours mechanism to locate and access liquidity at a single, fair price. And if that single price ceases to be fair because significant deviations emerge between the Nasdaq Closing Cross Price and the after-hours market price of a security, then Nasdaq will suspend ETC executions unless and until the deviation diminishes. Suspending executions in the ETC while significant price deviations persist should serve to limit instances in which egregious arbitrage occurs.

That said, participation in the ETC is entirely voluntary, and members are free to cancel their orders while the ETC is occurring. Thus, any member that is concerned that arbitrageurs will exploit their orders in the ETC are free to either sidestep the ETC entirely or to cancel their orders in the ETC before such exploitation occurs.

In conclusion, the Comment Letter fails to present any cognizable or compelling reasons for the Commission to disapprove the ETC proposal.

Sincerely,

Brett Kitt

Brett M. Kitt
Associate Vice President &
Principal Associate General Counsel