

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103341; File No. SR-NASDAQ-2025-047]

## **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 4, Rule 4754(b)(4) to Modify How the Nasdaq Official Closing Price Will be Determined for a Nasdaq-Listed ETP**

June 27, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 24, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Equity 4, Rule 4754(b)(4) to modify how the Nasdaq Official Closing Price (“NOCP”) will be determined for a Nasdaq-listed exchange-traded product (“ETP”) with a closing cross (“Closing Cross”) trade of less than one round lot.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Equity 4, Rule 4754(b)(4) to modify how the NOCP<sup>3</sup> will be determined for a Nasdaq-listed ETP with a Closing Cross trade of less than one round lot (*i.e.*, an odd lot). The proposal is substantively identical to the process described in Cboe BZX Exchange, Inc. (“BZX”) Rule 11.23(c)(2)(B) for BZX-listed ETPs<sup>4</sup> and NYSE Arca, Inc. (“Arca”) Rule 1.1 for Arca-listed ETPs.<sup>5</sup>

Nasdaq Rule 4754(b) specifies the processing of the Closing Cross, including how the Exchange determines the NOCP for a Nasdaq-listed ETP if the Exchange does not conduct a Closing Cross. Today, as set forth in Rule 4754(b)(4), for stocks that participate in the Closing Cross (including ETPs), the Closing Cross price is the NOCP. Rule 4754(b)(4)(A) provides that

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<sup>3</sup> As set forth in Rule 4754(b)(4), the NOCP is the Closing Cross price for stocks that participate in the Closing Cross.

<sup>4</sup> See also Securities Exchange Act Release Nos. 84738 (Dec. 6, 2018), 83 FR 63932 (Dec. 12, 2018) (SR-CboeBZX-2018-079); and 93616 (November 19, 2021), 86 FR 67524 (November 26, 2021) (SR-CboeBZX-2021-073) (collectively, “BZX Filings”).

<sup>5</sup> See Arca Rule 1.1, “Official Closing Price.” See also Securities Exchange Act Release Nos. 82907 (March 20, 2018), 83 FR 12980 (March 26, 2018) (SR-NYSEArca-2018-08); and 84471 (October 23, 2018) 83 FR 54384 (October 29, 2018) (SR-NYSEArca-2018-63) (collectively, “Arca Filings”).

if the ETP does not have a Closing Cross, then the time-weighted average midpoint (“T-WAM”) of the national best bid and offer (“NBBO”) is used as the NOCP. Rule 4754(b)(4)(A)(i) and (ii) go into detail of how T-WAM is calculated based on the spreads from the last two minutes of the day for ETPs.<sup>6</sup> The Exchange adopted the T-WAM method for deriving the NOCP for ETPs so that the NOCP would be more indicative of the actual value of the ETPs, in particular for ETPs that are thinly traded.<sup>7</sup>

The Exchange now proposes to expand the use of T-WAM to one other scenario, specifically when there is less than one round lot executed in the Closing Cross. Accordingly, Rule 4754(b)(A) will be amended to provide that if a Nasdaq-listed ETP does not have a Closing Cross, or if a closing cross trade is less than one round lot, then the T-WAM of the NBBO will be used as the NOCP. The proposed rule change is intended to make the NOCP more reflective of the value of the Nasdaq-listed ETP, particularly ones that are less actively traded and do not have consistent order interest on a daily basis to have a round lot trade in the Closing Cross. Today, if an odd lot is executed in the Closing Cross for a Nasdaq-listed ETP, the Exchange determines the Closing Cross price pursuant to the methodology set out in Rule 4754(b)(2) and that Closing Cross price would be published as the NOCP for the ETP. Instead of the current methodology, the Exchange believes that using the T-WAM of the NBBO would be more indicative of the actual value of the ETP, which in turn will provide investors and issuers with a more accurate price to mark performance of their funds and portfolios. As noted above, both Arca and BZX currently have substantively identical processes.<sup>8</sup>

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<sup>6</sup> See also <https://www.nasdaq.com/docs/enhanced-closing-price-for-ETPs>.

<sup>7</sup> See Securities Exchange Act Release No. 87486 (November 7, 2019), 84 FR 61952 (November 14, 2019) (SR-NASDAQ-2019-061) (“T-WAM Rule Change”).

<sup>8</sup> See *supra* notes 4 and 5. As stated in the BZX Filings and Arca Filings, the exchanges use the time-weighted average price of the midpoint of the NBBO to determine the official closing price if there is no

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the Act because it would apply the T-WAM method described above to determine the NOCP in a Nasdaq-listed ETP if its Closing Cross trade is less than one round lot, which will result in a NOCP that is more indicative of the actual value of the ETP. By using the T-WAM of the NBBO (i.e., a more accurate representation of the value of the ETP), the Exchange believes this will provide investors and issuers with a more accurate price to mark performance of their funds and portfolios. As noted above, the proposed rule change is substantively identical to the processes at Arca and BZX.<sup>11</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is substantively identical to the processes currently in place at other exchanges, and is designed to provide for how the Exchange would determine the NOCP for a Nasdaq-listed

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closing auction or if a closing auction trade is less than a round lot.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See supra note 8.

ETP if there was less than one round lot trade in the Closing Cross. The Exchange believes that its proposal to align with other exchanges will help it better compete as a listing venue.

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

No written comments were either solicited or received.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that it may implement the proposed rule change by July 12, 2025. As the Exchange explains above, its proposal to utilize a time-weighted average to derive the closing price for an ETP under certain circumstances is not novel. Furthermore, the

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange argues that a T-WAM NOCP would be more indicative of the actual value of an ETP when that ETP closes with an odd-lot execution. As such, the Commission believes that it is consistent with the protection of investors and the public interest for the Exchange to implement this proposal prior to 30-days from the date of filing. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2025-047 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.

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to file number SR-NASDAQ-2025-047. 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; 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-NASDAQ-2025-047 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>17</sup> 17 CFR 200.30-3(a)(12), (59).