

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77309; File No. SR-NASDAQ-2016-035)

March 7, 2016

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish a Secondary Contingency Procedure to Enable the Exchange to Report an Official Closing Price on Behalf of an Impaired Primary Listing Exchange

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 March 2, 2016, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 establish a Secondary Contingency Procedure that would enable the Exchange to report an Official Closing Price on behalf of an impaired primary listing exchange.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Nasdaq has robust and resilient systems that are designed to ensure fair and orderly markets, including multiple redundancies and back-up systems. For the critical Nasdaq Official Closing Price (“NOCP”), Nasdaq currently has three systems that are designed to ensure the orderly execution and dissemination of the NOCP: (1) the Nasdaq Closing Cross set forth in Rule 4754(b)(1); Auxiliary Procedures described in Rule 4754(b)(5); and Contingency Procedures contained in Rule 4754(b)(7).

Here, Nasdaq is proposing to establish Secondary Contingency Procedures in proposed new Rule 4754(b)(8). This proposal is made in conjunction with the New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc., and the exclusive securities information processors for the Nasdaq UTP Plan and the Consolidated Quote/Consolidated Tape Plan (“SIPs”).

Overview of Secondary Contingency Procedures.

Procedurally, Nasdaq, as a primary listing market, will designate a back-up exchange to provide an official closing price in the event that Nasdaq’s market is impaired and unable to execute a closing auction for all or a subset of listed securities. Nasdaq would invoke the Secondary Contingency Procedures by announcing publicly that its market is impaired and unable to execute a closing auction. If Nasdaq makes that announcement prior to 3:00 p.m., Eastern Standard Time (“EST”), the official closing price from Nasdaq’s designated back-up exchange would serve as the NOCP. If Nasdaq makes that announcement after 3:00 p.m., EST,

the SIP would calculate a Volume Weighted Average Price (“VWAP”), described in more detail below. Whether the announcement is made before or after 3:00 p.m., EST, the SIP would publish the NOCP on Nasdaq’s behalf either: (1) based on a message from Nasdaq’s back-up exchange or (2) based on the VWAP calculation.

Designation of Back-Up Exchange.

Nasdaq proposes to designate NYSE Arca as its official back-up exchange. Nasdaq believes that NYSE Arca is best positioned to serve as Nasdaq’s back-up for two primary reasons: (1) NYSE Arca and Nasdaq membership substantially overlaps; (2) NYSE Arca already operates an effective closing cross that it can use to execute a closing cross in Nasdaq-listed securities. In the event Nasdaq is unable to execute a closing cross, Nasdaq members that are also NYSE Arca members should be technically prepared to transfer liquidity to NYSE Arca to ensure a deeply liquid closing cross.

Nasdaq expects NYSE Arca will designate Nasdaq as its back-up exchange for the same reasons. Again, the two exchanges’ memberships substantially overlap, meaning that liquidity can and already does flow smoothly from one exchange to the other. Also, Nasdaq already operates a closing cross for securities listed on NYSE Arca, as well as all other securities for which consolidated information is disseminated via Tapes A and B.

The Role of the SIPs.

The Operating Committees for the Nasdaq and CQ/CT Plans have already voted to modify the SIPs to support this proposal. Specifically, each exchange that is designated as a back-up exchange (Nasdaq and NYSE Arca), will disseminate via the SIPs an official closing price in every listed security marked with the .M sale condition code.

The SIPs will apply the following procedures:

1. Each primary listing exchange would print a standardized Official Closing Price (“OCP”), with a sale condition ‘M,’ in each security it trades, whether as primary or on a UTP basis.
2. Each primary listing exchange would include in its rules that, in the event that it is impaired and cannot conduct a closing auction, the exchange’s contingency OCP would be the OCP of a specified “back-up exchange” or, if the impairment is announced after 3:00 p.m., EST, a VWAP calculation.
3. In the event that a primary listing exchange publicly announces that it is impaired and unable to conduct a closing auction for all or a subset of its primary symbols, the SIP would print the primary listing exchange’s contingency OCP as the OCP of the primary listing exchange, including calculation of the VWAP. The advantages of the SIP reprinting the contingency OCP as the OCP of the primary listing exchange, rather than the back-up exchange separately sending to the SIP its OCP as the OCP of the primary exchange are that:

 - a. The SIP provides a centralized service of which each primary listing exchange can take advantage
 - b. Participant – line validations are retained
 - c. There is assurance of full symbol coverage
 - d. The SIP provides a single location for future updates or configuration changes or new primary listing exchanges
 - e. A single source and method for VWAP calculations

**this is so with either proposal
4. The primary listing exchange’s contingency OCP would differ depending on what

time the impaired primary market announces that it will be using the closing contingency plan.

a. If announced prior to 3:00 p.m., EST, the primary listing exchange's contingency

OCP would be based on the following hierarchy:

- i. Official Closing Price (sale condition 'M') of a pre-designated back-up exchange(s). An exchange that has more than 1 back-up exchange as part of its hierarchy of contingency OCPs, will announce publicly the exchange(s) that will be relied on for the contingency OCP.
- ii. If no such contingency OCP exists, then a VWAP calculated by the SIP of the final 5 minute regular trading session. The VWAP calculations would include all last sale eligible trades in the last 5 minutes of the normal trading day, including the closing auctions prints of all markets.
- iii. If no last sale eligible trades printed in the last 5 minutes, then the consolidated last sale during regular trading hours.
- iv. If no such same day consolidated last sale eligible trades exist, then the primary listing exchange's prior trading day's Official Closing Price.

b. If announced after 3:00 p.m., EST, the primary listing exchange's contingency

OCP would be determined by the following hierarchy:

- i. Final 5 minute VWAP of regular trading session (same calculation as described above).
- ii. If no last sale eligible trades printed in the last 5 minutes, then the consolidated last sale during regular trading hours.
- iii. If no such same day consolidated last sale eligible trades exist, then the

primary listing exchange's prior trading day's Official Closing Price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴ 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 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide transparency in how the Exchange would determine the Nasdaq Official Closing Price in Exchange-listed securities when the Exchange is unable to conduct a closing transaction due to a systems or technical issue. The Exchange believes that the proposed amendments would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed determination of a Nasdaq Official Closing Price was crafted in response to input from industry participants and would:

- provide a pre-determined, consistent solution that would result in a closing print to the SIP within a reasonable time frame from the normal closing time;
- minimize the need for industry participants to modify their processing of data from the SIP; and

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

- provide advance notification of the applicable closing contingency plan to provide sufficient time for industry participants to route any closing interest to an alternate venue to participate in that venue's closing auction

More specifically, the Exchange believes the proposed hierarchy for determining the Nasdaq Official Closing Price if the Exchange determines that it is impaired before 3:00 p.m., EST, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal, which is based on input from market participants, would provide sufficient time for market participants to direct closing-only interest to a designated alternate exchange in time for such interest to participate in a closing auction on such alternate venue in a meaningful manner.

The Exchange further believes that relying on the official closing price of a designated alternate exchange would provide for an established hierarchy for determining an Official Closing Price for an Exchange-listed security if there is insufficient interest to conduct a closing auction on the alternate exchange. In such case, the rules of NYSE Arca and Nasdaq already provide a mechanism for determining an official closing price for securities that trade on those markets.

The Exchange further believes that if the Exchange determines after 3:00 p.m., EST, that it is impaired and unable to conduct a closing transaction, the proposed VWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a mechanism to determine the value of an affected security for purposes of determining a Nasdaq Official Closing Price. By using a volume-weighted calculation that would include the closing transactions on an affected security on alternate exchanges as well as any busts or corrections that were reported up to the time that

the SIP calculates the value, the Exchange believes that the proposed calculation would reflect the correct price of a security. In addition, by using a VWAP calculation rather than the last consolidated last-sale eligible price as of the end of regular trading hours, the Exchange would reduce the potential for an anomalous trade that may not reflect the true price of a security from being set as the Nasdaq Official Closing Price for a security.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would have minimal impact on market participants. As proposed, from the perspective of market participants, even if the Exchange were impaired, the SIP would publish a Nasdaq Official Closing Price for Exchange-listed securities on behalf of the Exchange in a manner that would be no different than if the Exchange were not impaired. If the Exchange determines that it is impaired after 3:00 p.m., market participants would not have to make any system changes. If the Exchange determines that it is impaired before 3:00 p.m., EST, and designates an alternate exchange, market participants may have to do systems work to re-direct closing-only orders to the alternate exchange. However, the Exchange understands, based on input from market participants, that such changes would be feasible based on the amount of advance notice.

In addition, the Exchange believes that designating an alternate exchange when there is sufficient time to do so would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow for the price-discovery mechanism of a closing auction to be available for impacted Exchange-listed securities

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 not designed to address any competitive issues, but rather to provide for how the Exchange would determine an Official Closing Price for Exchange-listed securities if it is impaired and cannot conduct a closing transaction due to a systems or technical issue. The proposal has been crafted with input from market participants, Nasdaq, and the SIPs, and is designed to reduce the burden on competition by having similar back-up procedures across all primary listing exchanges if such exchange is impaired and cannot conduct a closing transaction.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date 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 shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change 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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-

2016-035 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NASDAQ-2016-035 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Robert W. Errett
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).