

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the proposal would correctly identify and publicly state on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, execution and routing of orders, and for performing the regulatory compliance checks to each of those functions. Further, the Exchange represents that the proposal would enhance the clarity and transparency in Exchange Rules surrounding the inbound routing function performed by Arca Securities for the Exchange's affiliate, NYSE Chicago. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and hereby waives the operative delay and designates the

proposed rule change as operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2019-79 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-NYSEArca-2019-79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-79 and should be submitted on or before December 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-24696 Filed 11-13-19; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-87486; File No. SR-NASDAQ-2019-061]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Nasdaq Official Closing Price for Nasdaq-Listed Exchange-Traded Products**

November 7, 2019.

**I. Introduction**

On August 8, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change relating to how the Nasdaq Official Closing Price ("NOCP") will be determined for a Nasdaq-listed security that is an exchange-traded product ("ETP"). The proposed rule change was published for comment in the **Federal Register** on August 23, 2019.<sup>3</sup> On October 4, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 86705 (August 19, 2019), 84 FR 44343 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission received one comment letter from the Exchange on the proposed rule change.<sup>6</sup> On October 25, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>7</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposed Rule Change

Currently, for a Nasdaq-listed ETP that participates in the Nasdaq closing cross, the closing cross price will be the NOCP.<sup>8</sup> For a Nasdaq-listed ETP that does not have a closing cross, the Nasdaq last sale price will be the NOCP.<sup>9</sup> According to the Exchange, thinly-traded ETPs are less likely to have a closing cross, which can result in a closing price that is based on a stale price that is no longer reflective of the value of the security.<sup>10</sup> Specifically, if an ETP is thinly-traded, it is possible that the NOCP would be based on a Nasdaq last sale price that may not necessarily reflect the current value of the security.<sup>11</sup> The Exchange now proposes to amend Nasdaq Rule 4754(b)(4) to amend how it would determine the NOCP for a Nasdaq-listed

ETP<sup>12</sup> that does not have a closing cross.<sup>13</sup>

Under proposed Nasdaq Rule 4754(b)(4)(A), the NOCP for a Nasdaq-listed ETP that does not have a closing cross would be the time-weighted average midpoint (“T-WAM”) of the national best bid and national best offer (“NBBO”), with certain parameters. Specifically, the T-WAM price would be a time-weighted average midpoint value calculation that uses eligible quotes during the time period of 3:58:00 p.m. to 3:59:55 p.m., based on quotes observed every second.<sup>14</sup> The T-WAM calculation would only use eligible quotes, and an eligible quote would be defined as a quote whose spread is no greater than a value of 10% of the midpoint price. Quoted spreads within the T-WAM time period that are greater than 10% of the midpoint price would be excluded from the T-WAM calculation. Crossed NBBO markets would also be excluded from the T-WAM calculation.

As proposed, if there are no eligible quotes to use in the T-WAM calculation or if the ETP is halted, the Exchange would use the consolidated last sale price prior to 4:00:00 p.m. as the NOCP. For an ETP that is already listed on Nasdaq, if there are no eligible quotes to

use in the T-WAM calculation and no consolidated last sale prices that day, the NOCP would be the previous day’s NOCP. For an ETP that transferred its listing to Nasdaq, if there are no eligible quotes to use in the T-WAM calculation and no consolidated last sale prices that day, the NOCP would be the previous day’s closing price as disseminated by the primary listing market that previously listed the ETP. For an ETP that is a new Nasdaq listing, if there are no eligible quotes to use in the T-WAM calculation and no consolidated last sale prices that day, the NOCP would not be disseminated.

The Exchange proposes to implement the proposed rule change within 30 calendar days following Commission approval and will announce the implementation date via Nasdaq Equity Trader Alert.<sup>15</sup>

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(8) of the Act,<sup>18</sup> which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

As noted above, the proposal would amend how the Exchange would determine the NOCP for a Nasdaq-listed

<sup>5</sup> See Securities Exchange Act Release No. 87230, 84 FR 54714 (October 10, 2019). The Commission designated November 21, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> See letter from Phil Mackintosh, Chief Economist, Nasdaq, Inc., dated October 10, 2019, available at <https://www.sec.gov/comments/sr-nasdaq-2019-061/srnasdaq2019061-6293523-193399.pdf> (“Nasdaq Letter”).

<sup>7</sup> In Amendment No. 1, the Exchange provided additional justification for its proposed methodology for determining the NOCP for Nasdaq-listed ETPs and specified that it will implement the proposed rule change within 30 calendar days following Commission approval. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2019-061/srnasdaq2019061-6353201-195587.pdf>.

<sup>8</sup> See Nasdaq Rule 4754(b)(4).

<sup>9</sup> See Notice, *supra* note 3, at 44344–45.

<sup>10</sup> See *id.* at 44344.

<sup>11</sup> See *id.*

<sup>12</sup> As used in proposed Nasdaq Rule 4754(b)(4), an ETP would mean a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, or Trust Issued Receipts (as defined in Nasdaq Rules 5705(a), 5705(b), 5735, and 5720, respectively); securities linked to the performance of indexes and commodities (including currencies) (as defined in Nasdaq Rule 5710); Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, or Currency Warrants (as defined in Nasdaq Rule 5711(a)–(k)). The proposal would not apply to NextShares (as defined in Nasdaq Rule 5745) and corporate securities. See Notice, *supra* note 3, at 44344 n.4.

<sup>13</sup> The Exchange is not proposing to change the process for determining the price level at which the closing cross will occur. See *id.* at 44344 n.9. Nasdaq-listed ETPs that have closing crosses will continue to be priced using the current process for calculating the closing cross price. See *id.* at 44344.

<sup>14</sup> The Exchange states that it has considered using the last sale for an ETP that does not have a closing cross, but determined that even if the last sale occurs during the last two minutes leading into the closing cross, it is not necessarily reflective of the best price to use for the NOCP (*e.g.*, a wide quote and a last sale that is based on either the bid or the offer would not be as accurate as the midpoint of the prevailing quotes at that time). See Amendment No. 1, *supra* note 7, at 3. According to the Exchange, using the proposed T-WAM methodology would eliminate a valuation based on a last sale transaction occurring against an excessively wide NBBO, and even when spreads are wide, the midpoint of the spread is usually close to the fair value of the underlying basket of the ETP. See *id.* The Exchange also states that this rationale is based, in part, on conversations with issuers, who are supportive of the proposal. See *id.*

<sup>15</sup> See Notice, *supra* note 3, at 44345 and Amendment No. 1, *supra* note 7, at 4.

<sup>16</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78f(b)(8).

ETP that does not have a closing cross. The Commission notes that the primary listing market's closing price for a security is relied upon by market participants for a variety of reasons, including, but not limited to, calculation of index values, calculation of the net asset value of mutual funds and exchange-traded products, the price of derivatives that are based on the security, and certain types of trading benchmarks such as volume weighted average price strategies. The Commission believes that the proposed methodology for determining the NOCP for a Nasdaq-listed ETP that does not have a closing cross could provide a NOCP that is more reflective of the current value of the ETP than a potentially stale last sale price, especially for a thinly-traded ETP.<sup>19</sup> In particular, the Nasdaq last sale trade for an ETP that occurred earlier in a trading day or even from a prior trading day may no longer be reflective of the value of the ETP, which should be priced relative to the value of its components.<sup>20</sup> The Commission therefore believes that the Exchange's proposal is reasonably designed to achieve the Act's objectives to protect investors and the public interest. Accordingly, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act.

#### IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>19</sup> See Notice, *supra* note 3, at 44344–45. Moreover, according to the Exchange, when there is no closing cross at 4:00:00 p.m., the Exchange's internal research has shown that using the T–WAM of the time period between 3:58:00 p.m. and 3:59:55 p.m. results in a price that reflects a fair current valuation and is reflective of the price that was calculated by the closing cross. See *id.* at 44344 n.12 and 44345. See also Nasdaq Letter, *supra* note 6 (providing more details regarding the Exchange's internal research relating to this proposal).

<sup>20</sup> See Notice, *supra* note 3, 44345. According to the Exchange, the proposal would not apply to NextShares because its reference trading price is reset to 100 every day for quoting purposes and the actual net asset value does not correspond to this reference price, and therefore the midpoints are not applicable in determining a more accurate fair value of the basket. See *id.* at 44344 n.4. The proposal also would not apply to corporate securities because, unlike ETPs, they do not have a net asset value along with an arbitrage component that keeps the prices in line. See *id.*

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NASDAQ–2019–061 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2019–061. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–061, and should be submitted on or before December 5, 2019.

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

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. As discussed above, in Amendment No. 1, the Exchange provided additional justification for its proposed methodology for determining

the NOCP for Nasdaq-listed ETPs and specified that it will implement the proposed rule change within 30 calendar days following Commission approval. The Commission notes that Amendment No. 1 does not materially alter the substance of the proposal and provides additional clarity and justification to the proposal.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR–NASDAQ–2019–061), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Jill M. Peterson,  
Assistant Secretary.

[FR Doc. 2019–24694 Filed 11–13–19; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87490; File No. SR–NYSENAT–2019–25]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.37 To Specify in Exchange Rules the Exchange's Use of Data Feeds From NYSE Chicago, Inc.

November 7, 2019.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”) <sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on October 31, 2019, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> *Id.*

<sup>23</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.