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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2017 - * 085

Amendment No. (req. for Amendments *)

Filing by NASDAQ Stock Market

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☑ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposed rule change to amend Rule 4752(d)(2)(F)(i) to permit the Exchange to calculate a derived price for use in the Opening Cross Price Test A when a security is the subject of a corporate action.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Adrian Last Name * Griffiths

Title * Senior Associate General Counsel

E-mail * adrian.griffiths@nasdaq.com

Telephone * (212) 231-5176 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 08/18/2017

By Edward S. Knight

(Name *)

(Title *)

Executive Vice President and General Counsel

edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Rule 4752(d)(2)(F)(i) to permit the Exchange to calculate a derived price for use in the Opening Cross Price Test A when a security is the subject of a corporate action.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of The NASDAQ Stock Market (the "Board") on August 15, 2016. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change. Questions and comments on the proposed rule change may be directed to:

Adrian Griffiths
Senior Associate General Counsel
Nasdaq, Inc.
212-231-5176

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to amend Rule 4752(d)(2)(F)(i) to permit the Exchange to calculate a derived price for use in the Opening Cross Price Test A when a security is the subject of a corporate action. The Opening Price Tests are designed to avoid mispriced Opening Crosses, and the use of the clearly erroneous post-trade nullification process, by ensuring that the price established by the Opening Cross is reasonably related to the market and not the product of erroneous order entry. The Exchange believes that the proposed rule change will promote a more efficient Opening Cross by allowing the Exchange to base its Opening Price Tests on prices that are indicative of the value of the security after a corporate action.

Background

Nasdaq's Opening Cross provides an industry-leading, transparent auction process that determines a single price for the opening. Rule 4752(d)(2)(F) describes the Exchange's price protection for the Opening Cross. Once a security has an Opening Cross price set based on the process described in Rule 4752(d)(2)(A) – (E), the Exchange requires the security to pass at least one of three "tests" in order for the Opening Cross to occur. These tests are designed to make sure that the price computed pursuant to Rule 4752(d)(2)(A) – (E) is reasonably related to the market for the security.

Rule 4752(d)(2)(F)(i), i.e., Opening Price Test A, establishes a price test based on the closing price for the security. In particular, Rule 4752(d)(2)(F)(i) establishes a price range for the Opening Cross that is established by adding and subtracting the Opening Cross Price Test A threshold from the Nasdaq Official Closing Price (for Nasdsaq listed securities) or the consolidated closing price (for non-Nasdaq listed securities) of the security for the previous trading day. In addition, Rule 4752(d)(2)(F)(i) provides that the Opening Cross price range is established by adding and subtracting the Opening Cross Price Test A threshold from the offering price for new Exchange Traded Products that do not have a Nasdaq Official Closing Price. If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by Rule 4752(d)(2)(F)(i) or the security does not have a Nasdaq Official Closing Price or consolidated closing price for the previous trading day, Opening Cross Price Test B is performed.

Pursuant to Rule 4752(d)(2)(F)(ii), the Opening Cross price range for Test B is established by adding and subtracting the Opening Cross Price Test B threshold from the Nasdaq last sale (either round or odd lot) after 9:15 a.m. ET but prior to the Opening Cross. If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by this subparagraph or if there is no Nasdaq last sale, Opening Cross Price Test C is performed. Pursuant to Rule 4752(d)(2)(F)(iii), the Opening Cross price range for Test C is established by adding to and subtracting the Opening Cross Price Test C threshold from the Nasdaq best bid (for Opening Cross prices that would be higher than the closing price used for Opening Price Test A) or Nasdaq best offer (for Opening Cross prices that would be lower than the closing price used for Opening Price Test A). For purposes of this test, if a security does not have a Nasdaq Official Closing Price or consolidated closing price, as applicable, for the previous trading day Nasdaq will use a price of $0. If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by Opening Price Test C all Orders in the Opening Cross will be cancelled back to Participants, no Opening Cross will occur, and the security will open for regular market hours trading pursuant to Rule 4752(c).[3]

Derived Price for Corporate Actions

The Exchange now proposes to amend Rule 4752(d)(2)(F)(i) to permit the Exchange to calculate a derived price for use in the Opening Cross Price Test A when a security is the subject of a corporate action where the Exchange can calculate a derived price based on the terms of the corporate action.[4] The Exchange is able to mathematically calculate a derived price in the case of standard corporate actions, and does so today. The Exchange can also calculate a derived price for certain non-standard corporate actions as

3 Rule 4752(c) provides that system securities in which no Nasdaq Opening Cross occurs shall begin trading at 9:30 a.m. by integrating Market Hours orders into the book in time priority and executing in accordance with market hours rules.

4 As a conforming change, the Exchange also proposes to add references to the "derived price" where applicable in Rule 4752(d)(F)(i) and (iii). Furthermore, as a rule correction, the Exchange proposes to add references to the "offering price" in these rules, as the offering price is used in Opening Price Test A for new Exchange Traded Products that do not have a Nasdaq Official Closing Price. The Exchange believes that these changes are necessary so that these rules appropriately reference the prices used in Opening Price Test A. With the changes, the last sentence of Rule 4752(d)(F)(i) will state that "[i]f the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by this subparagraph or the security does not have a Nasdaq Official Closing Price or consolidated closing price for the previous trading day, offering price, or derived price, as applicable, Opening Cross Price Test B will be performed." In addition, the second sentence of Rule 4752(d)(F)(iii) will state that "[f]or purposes of this test, if a security does not have a Nasdaq Official Closing Price or consolidated closing price for the previous trading day, offering price, or derived price, as applicable, Nasdaq will use a price of $0." Furthermore, the Exchange proposes to remove the word "closing" when discussing these prices in the parentheticals in the first sentence of Rule 4752(d)(F)(iii), so that it is clear that this refers to the price used in Opening Price Test A, regardless of whether that price is a closing price, offering price, or derived price.

described in more detail later in this proposed rule change.[5] Initially, the Exchange intends to calculate a derived price for non-standard corporate actions only in cases that involve the issuance of a new class of securities with similar terms.[6] In the event the Exchange determines that it is capable of calculating a derived price for other non-standard corporate actions it will issue an Equity Trader Alert to inform members of the types of corporate actions where it will use derived prices in the Opening Price Tests pursuant to this proposed rule. The Exchange believes that using derived prices in the Opening Price Tests where possible will provide a more appropriate price test where closing and/or last sale prices are not available or reflective of the value of the security, and will therefore improve the experience for members and other market participants that trade in the Opening Cross.

Currently, for standard corporate actions (e.g., a stock split or reverse stock split) the Exchange adjusts the price of the security before applying the Opening Cross Price Tests contained in Rule 4752(d)(2)(F). Thus, for example if a Nasdaq listed security that closed at a Nasdaq Official Closing Price of $50 per share is subject to a 2 for 1 stock split, the Exchange would adjust the closing price to $25 per share prior to applying the Opening Cross Price Test A. This process ensures that the prices used for the Opening Price Test A accurately reflect the value of the security after the corporate action. The Exchange proposes to codify this practice in Rule 4752(d)(2)(F)(i) so that members and

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5 There may also be other non-standard corporate actions, such as in the case of a spinoff, where the Exchange is not capable of calculating a derived price.

6 If the Exchange is not capable of calculating a derived price, the Exchange will perform each of the Opening Price Tests A, B, and C without a derived price.

market participants are appropriately advised of how the Opening Price Tests are applied to securities that are subject to a standard corporate action.

In addition, securities traded on Nasdaq are infrequently subject to non-standard corporate actions that involve, for instance, a second class of shares with slightly different terms, such as a class of shares with different voting rights. An example of such a corporate action was the Google transaction in 2014 where owners of Google Class A stock received one share of Class C non-voting stock for every share of Class A stock held. Currently, the Exchange does not perform a similar adjustment for non-standard corporate actions. The Exchange believes, however, that it is appropriate to calculate a derived price in these situations too.

Importantly, in cases of non-standard corporate actions, if the Exchange does not have the flexibility to adjust the stock price such securities may fail the Exchange's Opening Cross Price Tests on the day following the corporate action. In particular, today, if a security is subject to a non-standard corporate action where a new class of security is issued, it is guaranteed to fail Opening Price Test A due to the lack of appropriate closing prices on which to base that test. In addition, such securities may fail Opening Price Test B if there is no pre-market trading after 9:15 a.m. ET to establish a last sale price, and may fail Opening Price Test C if the Nasdaq best bid or offer is sufficiently wide that the opening price calculated by the auction is outside the Opening Cross price range for Test C. Since there is no guarantee that there will be pre-market trading to establish a last sale price, or that there will be a sufficiently narrow best bid or offer, a security may fail the Opening Price Tests even when a proper price is determined by the Nasdaq Opening Cross. The Exchange does not believe that it is in the interest of a fair and orderly market to cancel an opening auction where the Nasdaq Opening Cross price is reflective of the market for the security as indicated by derived prices based on the terms of the corporate action.

The Google transaction described above pre-dates the Opening Price Tests, which Nasdaq adopted in 2016.[7] The Exchange believes, however, that if those tests were in place at the time of that transaction they could have interfered with the Exchange's ability to execute a successful opening auction. The proposed rule change is designed to prevent such a situation for future corporate actions. The Exchange believes that market participants value trading in the Opening Cross, and would therefore be better served by Nasdaq determining a derived price to be used in the Opening Price Tests that reflects the value of the security after the corporate action. Although in some cases a security may pass Opening Price Test B or C following a non-standard corporate action, the Exchange believes that members and other market participants are better served when the tests as a whole more closely relate to the market for the security subject to the corporate action.

The Exchange therefore proposes to amend its rules to allow it to calculate its Opening Price Test A for non-standard corporate actions by using a derived price calculated based on the terms of the corporate action, similar to the process described above for standard corporate actions today. This process will be used only for corporate actions where, similar to the Google transaction described above, the Exchange can calculate a derived price based on the terms of the corporate action. As previously discussed, the Exchange will initially use this authority only for non-standard corporate actions that involve the issuance of a new class of securities with similar terms; provided

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[7] See Securities Exchange Act Release No. 77235 (February 25, 2016), 81 FR 10935 (March 2, 2016) (SR-NASDAQ-2015-159) (Approval Order).

that if the Exchange determines that it is capable of calculating a derived price for other non-standard corporate actions it will issue an Equity Trader Alert to inform members of the types of corporate actions where it will use derived prices. Thus, for example, assume a Nasdaq listed security (Class A) is issuing a dividend of 2 shares of a new class of stock (Class C). If the Class A stock is trading at a price of $120 prior to the corporate action, the Exchange could derive a price for each share of Class A and new Class C stock that is $40 per share (i.e., $120 ÷ 3) for purposes of the Opening Price Tests. Although there may be differences in the trading characteristics between Class A and Class C stock, the Exchange believes that using this derived price for calculation of the Opening Price Tests will provide a more reasonable basis for determining the validity of prices determined by the Opening Cross.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] 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 protection of investors and the public interest as it will allow the Exchange to calculate a derived price for use in the Opening Cross Price Test A when a security is the subject of a non-standard corporate action. The Exchange also believes that the proposed rule change

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(5).

will promote just and equitable principles of trade by increasing transparency around the Exchange's current process for adjusting the prices used in Opening Cross Price Test A for securities that are subject to vanilla corporate actions. The Opening Cross provides an industry-leading, transparent price discovery process that aggregates a large pool of liquidity, across a variety of order types, in a single venue. Today, the Exchange may not be able to execute a successful Opening Cross for a security that is subject to a non-standard corporate action, as the prices used to compute the Opening Cross price ranges do not reflect the actual value of the security after the completion of the corporate action. Furthermore, in cases where a new class of securities is issued, there may be no applicable closing and/or last sale prices for the new class of securities to use to calculate the applicable Opening Cross price ranges. The proposed rule change would remedy this by allowing the Exchange to calculate an appropriate derived price to use for Opening Price Test A. The Exchange believes that this change will increase the likelihood that Nasdaq can execute a successful Opening Cross following a non-standard corporate action, and thereby promotes just and equitable principles of trade and perfects the mechanisms of a free and open market.

4. 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 designed to increase the likelihood that the Exchange can execute a successful Opening Cross in securities that are subject to a corporate action, and is not intended to have any significant impact on competition. To the contrary, the Exchange believes that the proposed rule change is evidence of the strong competition in the equities industry, where exchanges must continually improve their offerings to stay competitive.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[10] of the Act and Rule 19b-4(f)(6) thereunder[11] in that it 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.

The Exchange believes that the proposed rule change is consistent with the public interest and the protection of investors, and will not impose any significant burden on competition as it merely codifies the Exchange's practice for adjusting securities subject to a standard corporate action for purposes of the Opening Price Tests, which allows the Exchange to perform these tests based on prices that are reflective of the value of the security, and expands that practice to non-standard corporate actions where the Exchange

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[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b-4(f)(6).

can calculate a derived price based on the terms of the corporate action. The Exchange believes that it is important that derived prices be used in the Opening Price Tests for both standard and non-standard corporate actions so that the Exchange may successfully open securities following a corporate action. A derived price ensures that the Opening Price Test A is meaningful and related to the actual market for the security. Where the Exchange is capable of calculating a derived price the Exchange believes that members are better served by using that price as the basis for Opening Price Test A, as doing so would allow the Exchange to perform an opening auction where appropriate based on price tests that are reflective of the value of the security. In addition, with respect to non-standard corporate actions in particular, the Exchange notes that these types of corporate actions are rare. The Exchange therefore believes that it will only need to use the new authority granted in this rule on a relatively limited basis. When these corporate actions do occur, however, the Exchange believes that it is important to be able to utilize price tests that accurately reflect the market for the security consistent with the Exchange's original intent in adopting the Opening Price Tests.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-NASDAQ-2017-085)

August __, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4752(d)(2)(F)(i)

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 August 18, 2017, 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 amend Rule 4752(d)(2)(F)(i) to permit the Exchange to calculate a derived price for use in the Opening Cross Price Test A when a security is the subject of a corporate action.

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.

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1 15 U.S.C. 78s(b)(1).

2 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 4752(d)(2)(F)(i) to permit the Exchange to calculate a derived price for use in the Opening Cross Price Test A when a security is the subject of a corporate action. The Opening Price Tests are designed to avoid mispriced Opening Crosses, and the use of the clearly erroneous post-trade nullification process, by ensuring that the price established by the Opening Cross is reasonably related to the market and not the product of erroneous order entry. The Exchange believes that the proposed rule change will promote a more efficient Opening Cross by allowing the Exchange to base its Opening Price Tests on prices that are indicative of the value of the security after a corporate action.

Background

Nasdaq's Opening Cross provides an industry-leading, transparent auction process that determines a single price for the opening. Rule 4752(d)(2)(F) describes the Exchange's price protection for the Opening Cross. Once a security has an Opening Cross price set based on the process described in Rule 4752(d)(2)(A) – (E), the Exchange requires the security to pass at least one of three "tests" in order for the Opening Cross to occur. These tests are designed to make sure that the price computed pursuant to Rule 4752(d)(2)(A) – (E) is reasonably related to the market for the security.

Rule 4752(d)(2)(F)(i), i.e., Opening Price Test A, establishes a price test based on the closing price for the security. In particular, Rule 4752(d)(2)(F)(i) establishes a price range for the Opening Cross that is established by adding and subtracting the Opening Cross Price Test A threshold from the Nasdaq Official Closing Price (for Nasdsaq listed securities) or the consolidated closing price (for non-Nasdaq listed securities) of the security for the previous trading day. In addition, Rule 4752(d)(2)(F)(i) provides that the Opening Cross price range is established by adding and subtracting the Opening Cross Price Test A threshold from the offering price for new Exchange Traded Products that do not have a Nasdaq Official Closing Price. If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by Rule 4752(d)(2)(F)(i) or the security does not have a Nasdaq Official Closing Price or consolidated closing price for the previous trading day, Opening Cross Price Test B is performed.

Pursuant to Rule 4752(d)(2)(F)(ii), the Opening Cross price range for Test B is established by adding and subtracting the Opening Cross Price Test B threshold from the Nasdaq last sale (either round or odd lot) after 9:15 a.m. ET but prior to the Opening Cross. If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by this subparagraph or if there is no Nasdaq last sale, Opening Cross Price Test C is performed. Pursuant to Rule 4752(d)(2)(F)(iii), the Opening Cross price range for Test C is established by adding to and subtracting the Opening Cross Price Test C threshold from the Nasdaq best bid (for Opening Cross prices that would be higher than the closing price used for Opening Price Test A) or Nasdaq best offer (for Opening

Cross prices that would be lower than the closing price used for Opening Price Test A). For purposes of this test, if a security does not have a Nasdaq Official Closing Price or consolidated closing price, as applicable, for the previous trading day Nasdaq will use a price of $0. If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by Opening Price Test C all Orders in the Opening Cross will be cancelled back to Participants, no Opening Cross will occur, and the security will open for regular market hours trading pursuant to Rule 4752(c).[3]

Derived Price for Corporate Actions

The Exchange now proposes to amend Rule 4752(d)(2)(F)(i) to permit the Exchange to calculate a derived price for use in the Opening Cross Price Test A when a security is the subject of a corporate action where the Exchange can calculate a derived price based on the terms of the corporate action.[4] The Exchange is able to mathematically

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3 Rule 4752(c) provides that system securities in which no Nasdaq Opening Cross occurs shall begin trading at 9:30 a.m. by integrating Market Hours orders into the book in time priority and executing in accordance with market hours rules.

4 As a conforming change, the Exchange also proposes to add references to the "derived price" where applicable in Rule 4752(d)(F)(i) and (iii). Furthermore, as a rule correction, the Exchange proposes to add references to the "offering price" in these rules, as the offering price is used in Opening Price Test A for new Exchange Traded Products that do not have a Nasdaq Official Closing Price. The Exchange believes that these changes are necessary so that these rules appropriately reference the prices used in Opening Price Test A. With the changes, the last sentence of Rule 4752(d)(F)(i) will state that "[i]f the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by this subparagraph or the security does not have a Nasdaq Official Closing Price or consolidated closing price for the previous trading day, offering price, or derived price, as applicable, Opening Cross Price Test B will be performed." In addition, the second sentence of Rule 4752(d)(F)(iii) will state that "[f]or purposes of this test, if a security does not have a Nasdaq Official Closing Price or consolidated closing price for the previous trading day, offering price, or derived price, as applicable, Nasdaq will use a price of $0." Furthermore, the Exchange proposes to remove the word "closing" when discussing these prices in the parentheticals in the first sentence of Rule 4752(d)(F)(iii), so that it is clear

calculate a derived price in the case of standard corporate actions, and does so today. The Exchange can also calculate a derived price for certain non-standard corporate actions as described in more detail later in this proposed rule change.[5] Initially, the Exchange intends to calculate a derived price for non-standard corporate actions only in cases that involve the issuance of a new class of securities with similar terms.[6] In the event the Exchange determines that it is capable of calculating a derived price for other non-standard corporate actions it will issue an Equity Trader Alert to inform members of the types of corporate actions where it will use derived prices in the Opening Price Tests pursuant to this proposed rule. The Exchange believes that using derived prices in the Opening Price Tests where possible will provide a more appropriate price test where closing and/or last sale prices are not available or reflective of the value of the security, and will therefore improve the experience for members and other market participants that trade in the Opening Cross.

Currently, for standard corporate actions (e.g., a stock split or reverse stock split) the Exchange adjusts the price of the security before applying the Opening Cross Price Tests contained in Rule 4752(d)(2)(F). Thus, for example if a Nasdaq listed security that closed at a Nasdaq Official Closing Price of $50 per share is subject to a 2 for 1 stock split, the Exchange would adjust the closing price to $25 per share prior to applying the Opening Cross Price Test A. This process ensures that the prices used for the Opening

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that this refers to the price used in Opening Price Test A, regardless of whether that price is a closing price, offering price, or derived price.

5 There may also be other non-standard corporate actions, such as in the case of a spinoff, where the Exchange is not capable of calculating a derived price.

6 If the Exchange is not capable of calculating a derived price, the Exchange will perform each of the Opening Price Tests A, B, and C without a derived price.

Price Test A accurately reflect the value of the security after the corporate action. The Exchange proposes to codify this practice in Rule 4752(d)(2)(F)(i) so that members and market participants are appropriately advised of how the Opening Price Tests are applied to securities that are subject to a standard corporate action.

In addition, securities traded on Nasdaq are infrequently subject to non-standard corporate actions that involve, for instance, a second class of shares with slightly different terms, such as a class of shares with different voting rights. An example of such a corporate action was the Google transaction in 2014 where owners of Google Class A stock received one share of Class C non-voting stock for every share of Class A stock held. Currently, the Exchange does not perform a similar adjustment for non-standard corporate actions. The Exchange believes, however, that it is appropriate to calculate a derived price in these situations too.

Importantly, in cases of non-standard corporate actions, if the Exchange does not have the flexibility to adjust the stock price such securities may fail the Exchange's Opening Cross Price Tests on the day following the corporate action. In particular, today, if a security is subject to a non-standard corporate action where a new class of security is issued, it is guaranteed to fail Opening Price Test A due to the lack of appropriate closing prices on which to base that test. In addition, such securities may fail Opening Price Test B if there is no pre-market trading after 9:15 a.m. ET to establish a last sale price, and may fail Opening Price Test C if the Nasdaq best bid or offer is sufficiently wide that the opening price calculated by the auction is outside the Opening Cross price range for Test C. Since there is no guarantee that there will be pre-market trading to establish a last sale price, or that there will be a sufficiently narrow best bid or offer, a security may fail the

Opening Price Tests even when a proper price is determined by the Nasdaq Opening Cross. The Exchange does not believe that it is in the interest of a fair and orderly market to cancel an opening auction where the Nasdaq Opening Cross price is reflective of the market for the security as indicated by derived prices based on the terms of the corporate action.

The Google transaction described above pre-dates the Opening Price Tests, which Nasdaq adopted in 2016.[7] The Exchange believes, however, that if those tests were in place at the time of that transaction they could have interfered with the Exchange's ability to execute a successful opening auction. The proposed rule change is designed to prevent such a situation for future corporate actions. The Exchange believes that market participants value trading in the Opening Cross, and would therefore be better served by Nasdaq determining a derived price to be used in the Opening Price Tests that reflects the value of the security after the corporate action. Although in some cases a security may pass Opening Price Test B or C following a non-standard corporate action, the Exchange believes that members and other market participants are better served when the tests as a whole more closely relate to the market for the security subject to the corporate action.

The Exchange therefore proposes to amend its rules to allow it to calculate its Opening Price Test A for non-standard corporate actions by using a derived price calculated based on the terms of the corporate action, similar to the process described above for standard corporate actions today. This process will be used only for corporate actions where, similar to the Google transaction described above, the Exchange can calculate a derived price based on the terms of the corporate action. As previously

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[7] See Securities Exchange Act Release No. 77235 (February 25, 2016), 81 FR 10935 (March 2, 2016) (SR-NASDAQ-2015-159) (Approval Order).

discussed, the Exchange will initially use this authority only for non-standard corporate actions that involve the issuance of a new class of securities with similar terms; provided that if the Exchange determines that it is capable of calculating a derived price for other non-standard corporate actions it will issue an Equity Trader Alert to inform members of the types of corporate actions where it will use derived prices. Thus, for example, assume a Nasdaq listed security (Class A) is issuing a dividend of 2 shares of a new class of stock (Class C). If the Class A stock is trading at a price of $120 prior to the corporate action, the Exchange could derive a price for each share of Class A and new Class C stock that is $40 per share (i.e., $120 ÷ 3) for purposes of the Opening Price Tests. Although there may be differences in the trading characteristics between Class A and Class C stock, the Exchange believes that using this derived price for calculation of the Opening Price Tests will provide a more reasonable basis for determining the validity of prices determined by the Opening Cross.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] 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 protection of investors and the public interest as it will allow the Exchange to calculate a

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(5).

derived price for use in the Opening Cross Price Test A when a security is the subject of a non-standard corporate action. The Exchange also believes that the proposed rule change will promote just and equitable principles of trade by increasing transparency around the Exchange's current process for adjusting the prices used in Opening Cross Price Test A for securities that are subject to vanilla corporate actions. The Opening Cross provides an industry-leading, transparent price discovery process that aggregates a large pool of liquidity, across a variety of order types, in a single venue. Today, the Exchange may not be able to execute a successful Opening Cross for a security that is subject to a non-standard corporate action, as the prices used to compute the Opening Cross price ranges do not reflect the actual value of the security after the completion of the corporate action. Furthermore, in cases where a new class of securities is issued, there may be no applicable closing and/or last sale prices for the new class of securities to use to calculate the applicable Opening Cross price ranges. The proposed rule change would remedy this by allowing the Exchange to calculate an appropriate derived price to use for Opening Price Test A. The Exchange believes that this change will increase the likelihood that Nasdaq can execute a successful Opening Cross following a non-standard corporate action, and thereby promotes just and equitable principles of trade and perfects the mechanisms of a free and open market.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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 designed to increase the likelihood that the Exchange can execute a successful Opening Cross in securities that are subject to a corporate action, and is not intended to have any significant impact on competition. To the contrary, the Exchange believes that the proposed rule change is evidence of the strong competition in the equities industry, where exchanges must continually improve their offerings to stay competitive.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and subparagraph (f)(6) of Rule 19b-4 thereunder.[11]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b-4(f)(6). 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.

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-2017-085 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-2017-085. 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 Web site (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-2017-085 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.[12]

Eduardo A. Aleman
Assistant Secretary

[12] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is <u>underlined</u>.

NASDAQ Stock Market Rules

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4752. Opening Process

(a) – (c) No change.

(d) Processing of Nasdaq Opening Cross. For System securities, the Nasdaq Opening Cross shall occur at 9:30, and market hours trading shall commence when the Nasdaq Opening Cross concludes.

(1) No change.

(2) (A) – (E) No change.

(F) Opening Cross Eligibility: In addition to the Nasdaq Opening Cross price process of subparagraphs (A) through (E), each security in the Nasdaq Opening Cross must also pass one of the Opening Cross Price Tests in subparagraphs (i) through (iii) below or all MOO, LOO, OIO, and Early Market Hours orders in the Nasdaq Opening Cross in the security will be cancelled back to Participants, no Nasdaq Opening Cross in that security will occur, and the security will open for regular market hours trading consistent with paragraph (c) above. Each Opening Cross Price Test applies a price range within which the Opening Cross Price, as calculated by subparagraphs (A) through (E) above, must fall to pass the individual Opening Cross Price Test. For each Opening Cross Price Test, Nasdaq will calculate the price range by using a threshold applied to the unique measures under each test. Nasdaq will establish and publish the thresholds used in the Opening Cross Price Tests below. Nasdaq management shall set and modify the Opening Cross Price Test thresholds from time to time upon prior notice to market participants.

(i) Opening Cross Price Test A. For Nasdaq listed securities, the Opening Cross price range for Test A is established by adding and subtracting the Opening Cross Price Test A threshold from the Nasdaq Official Closing Price of the security for the previous trading day. For non-Nasdaq listed securities, the Opening Cross price range for Test A is established by adding and subtracting the Opening Cross Price Test A threshold from the consolidated closing price of the security for the previous trading day. For new Exchange Traded Products that do not have a Nasdaq Official Closing Price, the Opening Cross price range is established by adding and subtracting the Opening Cross Price Test A threshold from the offering price.<u> For securities subject to a corporate action where the Exchange can calculate a derived price based on the terms of the corporate action, the Opening Cross price range for Test A is established by adding and subtracting the Opening Cross Price Test A threshold from such derived price.</u> If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by this subparagraph or the security does not have a Nasdaq Official Closing Price or consolidated closing price for the previous trading day, offering price, or derived price, as applicable, Opening Cross Price Test B will be performed.

(ii) Opening Cross Price Test B. The Opening Cross price range for Test B is established by adding and subtracting the Opening Cross Price Test B threshold from the Nasdaq last sale (either round or odd lot) after 9:15 a.m. ET but prior to the Opening Cross. If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by this subparagraph or if there is no Nasdaq last sale, Opening Cross Price Test C will be performed.

(iii) Opening Cross Price Test C. The Opening Cross price range for Test C is established by adding to and subtracting the Opening Cross Price Test C threshold from the Nasdaq best bid (for Opening Cross prices that would be higher than the [closing] price used under subparagraph (i) above) or Nasdaq best offer (for Opening Cross prices that would be lower than the [closing] price used under subparagraph (i) above). For purposes of this test, if a security does not have a Nasdaq Official Closing Price or consolidated closing price[, as applicable,] for the previous trading day, offering price, or derived price, as applicable, Nasdaq will use a price of $0. If the Nasdaq Opening Cross price is higher or lower than the Opening Cross price range established by this subparagraph all Orders in the Opening Cross will be cancelled back to Participants, no Opening Cross will occur, and the security will open for regular market hours trading consistent with paragraph (c) above.

(3) – (4) No change.

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