

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 010 Amendment No. (req. for Amendments *)
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Filing by The Nasdaq Stock Market LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

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

A proposal to disseminate abbreviated order imbalance information prior to the dissemination of the Order Imbalance Indicator.

**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 \* Brett Last Name \* Kitt  
 Title \* Senior Associate General Counsel  
 E-mail \* Brett.Kitt@Nasdaq.com  
 Telephone \* (301) 978-8132 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.

(Title \*)  
Global Chief Regulatory and Policy Officer

Date 02/27/2019  
By Edward S. Knight  
(Name \*)

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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 \***

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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**

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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**

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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**

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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**

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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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to disseminate abbreviated order imbalance information prior to the dissemination of the Order Imbalance Indicator.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(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 Exchange (the “Board”) on September 26, 2018. 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:

Brett Kitt  
Senior Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8132

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

<sup>2</sup> 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

Nasdaq provides transparency into its Closing Cross auction via the "Order Imbalance Indicator" (also known as the "Net Order Imbalance Indicator" or "NOII"). The NOII is a message disseminated by electronic means containing information about MOC,<sup>3</sup> LOC,<sup>4</sup> IO,<sup>5</sup> and Close Eligible Interest<sup>6</sup> and the price at which those orders would

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<sup>3</sup> A "Market on Close Order" or "MOC" is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. MOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, an MOC Order can be cancelled and/or modified only if the Participant requests that Nasdaq correct a legitimate error in the Order. MOC Orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. An MOC Order executes only at the price determined by the Nasdaq Closing Cross. See Rule 4702(b)(11).

<sup>4</sup> Pursuant to Rule 4702(b)(12), a "Limit on Close Order" or "LOC" is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. LOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, an LOC Order may be entered provided that there is a "First Reference Price," *i.e.*, the "Current Reference Price" (*infra* n.8 below) that Nasdaq disseminates in the first NOII at or after 3:55 p.m. ET. See Rule 4754(a)(9). Also between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, an LOC Order can be cancelled but not modified, and only if the Participant requests that Nasdaq correct a legitimate error in the Order. An LOC Order entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET is accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for an LOC Order to buy (sell), in which case the LOC Order is handled consistent with the Participant's instruction that the LOC Order is to be: (1) rejected; or (2) re-priced to the First Reference Price, provided that if the First Reference Price is not at a permissible minimum increment, the First Reference Price will be rounded (i) to the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii) down if there is a sell imbalance. The default configuration for Participants that do not specify otherwise is to have such LOC Orders re-priced rather than rejected.

<sup>5</sup> An "Imbalance Only Order" or "IO" is an Order entered with a price that may be executed only in the Nasdaq Closing Cross and only against MOC Orders or LOC

execute at the time of dissemination.<sup>7</sup> Specifically, the NOII consists of: (1) the “Current Reference Price”<sup>8</sup>; (2) the number of shares represented by MOC, LOC, and IO Orders that are paired at the Current Reference Price; (3) the size of any “Imbalance”<sup>9</sup>; (4) the buy/sell direction of any Imbalance; and (5) indicative prices at which the Nasdaq Closing Cross would occur if it occurred at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The NOII is useful because it helps Participants to identify at what price and size the Closing Cross will commence, as well as number of shares required to offset any order imbalances to optimize an auction.

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Orders. IO Orders may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross, but may not be cancelled or modified at or after 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, however, an IO Order can be cancelled and/or modified if the Participant requests that Nasdaq correct a legitimate error in the Order. IO Orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. See Rule 4702(b)(13).

<sup>6</sup> “Close Eligible Interest” means “any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC.” Rule 4754(a)(1).

<sup>7</sup> See Rule 4754(a)(7).

<sup>8</sup> Pursuant to Rule 4754(a)(7)(A), the “Current Reference Price” means the following: (i) the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired; (ii) if more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance; (iii) if more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross; or (iv) if more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination.

<sup>9</sup> An “Imbalance” means the number of shares of buy or sell MOC, or LOC Orders that cannot be matched with other MOC or LOC, or IO Order shares at a particular price at any given time. See Rule 4754(a)(2).

Prior to October 2018, Nasdaq disseminated the NOII beginning at 3:50 p.m. ET, which was also the cutoff time (the “Cutoff”) for entering MOC and certain LOC Orders into the Closing Cross, and it disseminated the NOII at five second intervals thereafter until market close. In October 2018, Nasdaq amended the Closing Cross process by moving both the Closing Cross Cutoff time and the commencement time of the NOII to 3:55 pm ET.<sup>10</sup> Also in October, the Exchange also began disseminating the NOII in one second intervals until market close.<sup>11</sup>

When the Exchange proposed these changes to the timing of the NOII, it did so with the belief that “continuing to disseminate the Order Imbalance Indicator starting at the Closing Cross Cutoff ... will ensure that market participants receive a more complete picture of on close interest when such interest is relatively settled.”<sup>12</sup> The Exchange furthermore asserted that synching the NOII to the new Closing Cross Cutoff time was appropriate because the Closing Cross Cutoff “is when the Exchange believes it is possible to disseminate meaningful information about the Nasdaq Closing Cross” and “any information disseminated before the Closing Cross Cutoff has the potential to be misleading to some market Participants” (given that Participants may freely submit additional, cancel, or modify on close interest prior to the Cutoff and frequently do so immediately prior to the Cutoff).<sup>13</sup>

Likewise, in proposing to increase the frequency of the NOII from five to one second intervals, the Exchange asserted that “more frequent dissemination will be

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<sup>10</sup> See Securities Exchange Act Release No. 34-84454 (Oct. 19, 2018), 83 Fed. Reg. 53923 (Oct. 25, 2018).

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

<sup>12</sup> SR-NASDAQ-2018-068 Amendment No. 1, at 9 (filed Oct. 15, 2018).

<sup>13</sup> *Id.* at 14.

beneficial to market participants that use this information.”<sup>14</sup> Specifically, the Exchange noted that “the increased automation and efficiency in the equities markets that spurred the changed cutoff times ... also justify increasing the frequency for disseminating information to the market.”<sup>15</sup>

Subsequent to October 2018, the Exchange has revisited its thinking regarding the utility and effect of an early dissemination of the NOII. The Exchange believes, based upon Participant feedback, that an early release of a subset of the NOII would be useful to Participants and improve price discovery in the Closing Cross.

Specifically, Nasdaq believes that an early release of NOII data comprising the Current Reference Price, the number of paired shares, the imbalance size, and the imbalance direction would offer Participants additional time and flexibility to react to imbalance information in advance of the Closing Cross Cutoff and also aid them in making informed decisions about whether and how to participate in the Closing Cross. In other words, early dissemination of this data will help Participants to make educated decisions as to whether, how, and at what likely prices they may interact with paired and imbalanced shares – and do so at a point in time when their decisions do not present a risk of adverse consequences because the Participant’s orders can still be freely modified or cancelled prior to the Closing Cross Cutoff time. For example, if Nasdaq was to release an early NOII indicating that a buy imbalance exists for a particular symbol, a Participant could act on that information in advance of the Closing Cross Cutoff to offset the imbalance, while also providing additional liquidity in the Closing Cross.

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<sup>14</sup> Id. at 10.

<sup>15</sup> Id. at 15.

However, the Exchange believes that an early release of the NOII should exclude indicative prices, including Near and Far Closing Prices. Because Participants may freely enter new orders or cancel or modify existing orders prior to the Closing Cross Cutoff, indicative prices may change dramatically during this time.<sup>16</sup> The Exchange believes that early dissemination of indicative price information would be less useful during the pre-Cutoff period than it is during the period between 3:55:00-4:00:00, when Participants are restricted from entering, modifying, or canceling orders.

Likewise, Nasdaq believes that a second-by-second dissemination of NOII information prior to the Closing Cross Cutoff time would not be necessary or helpful, and that less frequent dissemination would suffice. Whereas after the Closing Cross Cutoff time, Participants face order restrictions and time pressures that render rapid refreshes of the NOII critical to guiding their decisions, such order restrictions and time pressures do not exist, or are less acute, prior to the Closing Cross Cutoff.

Accordingly, Nasdaq now proposes to amend its Closing Cross procedures to provide for an early dissemination of a subset of NOII information at a lower frequency. Specifically, Nasdaq proposes to amend Rule 4754 to begin disseminating an “Early Order Imbalance Indicator” or “EOII” at 3:50 p.m. ET (or 10 minutes prior to the early closing time on a day when Nasdaq closes early).<sup>17</sup> The Exchange proposes, in proposed

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<sup>16</sup> Unlike the Current Reference Price, which represents only the current price that maximizes the number of paired shares of on-close orders slated to participate in the Closing Cross, the Near and Far Indicative Prices are likely to be more volatile prior to the Closing Cross Cutoff because they also account for orders that exist on the continuous book.

<sup>17</sup> On certain days during the calendar year, Nasdaq may close the market early, in accordance with Rules 4701(g) (defining the term “Market Hours” to mean 9:30 a.m. ET - 4:00 p.m. ET “or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early”) and 4617 (stating that the Nasdaq trading system



Rule 4754(a)(10), that the EOII will consist of the same information as the full NOII (the Current Reference Price, the number of paired shares, the imbalance size, and the imbalance direction) except that it will not include the indicative price information set forth in Rule 4754(a)(7)(E), such as the Near Clearing Price or the Far Clearing Price. Unlike the full NOII, which disseminates in one second intervals, Nasdaq proposes to disseminate the EOII in 10 second intervals. At 3:55 p.m. ET or five minutes prior to the early closing time on a day when Nasdaq closes early, Nasdaq will cease disseminating the EOII and instead it will begin disseminating the full NOII at one second intervals, with the full complement of information forth in Rule 4754(a)(7).

The Exchange notes that the New York Stock Exchange (“NYSE”) similarly disseminates limited imbalance information prior to its 3:45 p.m. closing auction cutoff time.<sup>18</sup>

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operates from 4:00 a.m. to 8:00 p.m. Eastern. Time on each business day “unless modified by Nasdaq”). In such instances, the Exchange proposes to disseminate the EOII beginning 10 minutes prior to the early market closing time. For example, if Nasdaq closes the market at 1 p.m. ET, Nasdaq would begin disseminating the EOII at 12:50 p.m. ET and the NOII at 12:55 p.m. ET. The Exchange notes that it proposes to add clarifying language to Rule 4754(b) that addresses the possibility of early dissemination, not only of the EOII, but also of the NOII. The existing Rule does not specify that the NOII may disseminate earlier than 3:55 p.m. ET in the event of an early market close.

<sup>18</sup> See NYSE Rule 123C(1)(b) (providing for the dissemination of an “Informational Imbalance Publication” between 3:00 p.m. and 3:45 p.m. that “indicates a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell of any size in any security that is not a Mandatory MOC/LOC Imbalance Publication”), NYSE Rule 123C(1)(d) (providing for dissemination of a “Mandatory MOC/LOC Imbalance Publication” that “indicates a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell, measured at 3:45 p.m. ...”), NYSE Rule 123C(5), and NYSE Rule 123C(6)(providing for the dissemination of imbalance information to Floor brokers between 2:00 p.m. and 3:45 p.m.).

The Exchange proposes to implement this proposed rule change in Q2 2019. The Exchange will announce the implementation date of the EOII in an Equity Trader Alert issued to Participants prior to implementing the change.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>20</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, disseminating an EOII for the Nasdaq Closing Cross earlier than the Closing Cross Cutoff time will increase the transparency of the Closing Cross process and facilitate price discovery. That is, the Exchange will offer Participants more information about the Closing Cross than they currently receive and the Exchange will provide this information to Participants at a time when Participants have more flexibility to act on it than they do when the full NOII disseminates after the Closing Cross Cutoff time. Participants may use the information gleaned from the EOII to offset imbalances or to otherwise enter, cancel, or modify orders in advance of the Closing Cross.

Moreover, Nasdaq believes it is in the best interests of Participants to exclude indicative pricing information from the EOII because the Near and Far Clearing Prices may change significantly prior to the Cutoff time as on close orders are added, cancelled, or modified. As noted above, the Near and Far Indicative Prices are more likely than the

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<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

Current Reference Price to be volatile prior to the Closing Cross Cutoff because they account for orders that exist on the continuous book. Indicative prices may be misleading to Participants if provided at a time when additional order activity is apt to occur and closing interest remains unsettled.

The Exchange believes that disseminating the EOII at 10 second intervals strikes the right balance between conveying material changes in imbalance information prior to the Closing Cross Cutoff time and avoiding excessive messaging traffic. As noted above, Participants do not require more frequent refreshes of EOII data given that, prior to the Closing Cross Cutoff time, they do not face the same order restrictions and time pressures that they do afterwards. The Exchange notes that the full NOII will continue to disseminate at one second intervals as of the Cutoff time.

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. Rather, the Exchange believes that the proposed rule change is evidence of the competitive forces in the equities markets insofar as the establishment of the EOII is designed to render the Nasdaq Closing Cross more transparent and more attractive to Participants, both in an absolute sense and relative to the NYSE, which publishes similar imbalance information prior to the cutoff time for its closing auction. The proposed EOII will be equally available to Participants.

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)<sup>21</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>22</sup> 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 proposal does not significantly affect the protection of investors or the public interest insofar as it will provide them with additional and earlier information about order imbalances than the Exchange presently provides. Moreover, the proposed dissemination of the EOII is similar to the practice of the NYSE, which also publishes imbalance information prior to its closing auction cutoff time. The proposal does not impose any significant burden on competition; to the contrary, it is an effort to enhance the relative attractiveness and overall utility of the Nasdaq Closing Cross process.

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.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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 based, in part, on NYSE Rule 123C, which also provides for the early dissemination of limited imbalance information prior to the NYSE closing auction.

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-2019-010)

March \_\_, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Disseminate Abbreviated Order Imbalance Information Prior to Dissemination of the Order Imbalance Indicator

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2019, 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 disseminate abbreviated order imbalance information prior to the dissemination of the Order Imbalance Indicator. 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

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

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

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

Nasdaq provides transparency into its Closing Cross auction via the "Order Imbalance Indicator" (also known as the "Net Order Imbalance Indicator" or "NOII"). The NOII is a message disseminated by electronic means containing information about MOC,<sup>3</sup> LOC,<sup>4</sup> IO,<sup>5</sup> and Close Eligible Interest<sup>6</sup> and the price at which those orders would

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<sup>3</sup> A "Market on Close Order" or "MOC" is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. MOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, an MOC Order can be cancelled and/or modified only if the Participant requests that Nasdaq correct a legitimate error in the Order. MOC Orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. An MOC Order executes only at the price determined by the Nasdaq Closing Cross. See Rule 4702(b)(11).

<sup>4</sup> Pursuant to Rule 4702(b)(12), a "Limit on Close Order" or "LOC" is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. LOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, an LOC Order may be entered provided that there is a "First Reference Price," i.e., the "Current Reference Price" (infra n.8 below) that Nasdaq disseminates in the first NOII at or after 3:55 p.m. ET. See Rule 4754(a)(9). Also between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, an LOC Order can be cancelled but not modified, and only if the Participant requests that Nasdaq correct a legitimate error in the Order. An LOC Order entered between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET is accepted at its limit price, unless its limit price is higher (lower) than the First Reference Price for an LOC Order to buy (sell), in which case the LOC Order is handled consistent with the Participant's instruction that the LOC Order is to be: (1) rejected; or (2) re-priced to the First Reference Price, provided that if the First Reference Price is not at a permissible minimum increment, the First Reference Price will be rounded (i) to the nearest permitted

execute at the time of dissemination.<sup>7</sup> Specifically, the NOII consists of: (1) the “Current Reference Price”<sup>8</sup>; (2) the number of shares represented by MOC, LOC, and IO Orders that are paired at the Current Reference Price; (3) the size of any “Imbalance”<sup>9</sup>; (4) the buy/sell direction of any Imbalance; and (5) indicative prices at which the Nasdaq Closing Cross would occur if it occurred at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer,

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minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii) down if there is a sell imbalance. The default configuration for Participants that do not specify otherwise is to have such LOC Orders re-priced rather than rejected.

<sup>5</sup> An “Imbalance Only Order” or “IO” is an Order entered with a price that may be executed only in the Nasdaq Closing Cross and only against MOC Orders or LOC Orders. IO Orders may be entered between 4:00 a.m. ET until the time of execution of the Nasdaq Closing Cross, but may not be cancelled or modified at or after 3:55 p.m. ET. Between 3:55 p.m. ET and immediately prior to 3:58 p.m. ET, however, an IO Order can be cancelled and/or modified if the Participant requests that Nasdaq correct a legitimate error in the Order. IO Orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. See Rule 4702(b)(13).

<sup>6</sup> “Close Eligible Interest” means “any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC.” Rule 4754(a)(1).

<sup>7</sup> See Rule 4754(a)(7).

<sup>8</sup> Pursuant to Rule 4754(a)(7)(A), the “Current Reference Price” means the following: (i) the single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired; (ii) if more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance; (iii) if more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross; or (iv) if more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination.

<sup>9</sup> An “Imbalance” means the number of shares of buy or sell MOC, or LOC Orders that cannot be matched with other MOC or LOC, or IO Order shares at a particular price at any given time. See Rule 4754(a)(2).



whichever is closer. The NOII is useful because it helps Participants to identify at what price and size the Closing Cross will commence, as well as number of shares required to offset any order imbalances to optimize an auction.

Prior to October 2018, Nasdaq disseminated the NOII beginning at 3:50 p.m. ET, which was also the cutoff time (the “Cutoff”) for entering MOC and certain LOC Orders into the Closing Cross, and it disseminated the NOII at five second intervals thereafter until market close. In October 2018, Nasdaq amended the Closing Cross process by moving both the Closing Cross Cutoff time and the commencement time of the NOII to 3:55 pm ET.<sup>10</sup> Also in October, the Exchange also began disseminating the NOII in one second intervals until market close.<sup>11</sup>

When the Exchange proposed these changes to the timing of the NOII, it did so with the belief that “continuing to disseminate the Order Imbalance Indicator starting at the Closing Cross Cutoff ... will ensure that market participants receive a more complete picture of on close interest when such interest is relatively settled.”<sup>12</sup> The Exchange furthermore asserted that synching the NOII to the new Closing Cross Cutoff time was appropriate because the Closing Cross Cutoff “is when the Exchange believes it is possible to disseminate meaningful information about the Nasdaq Closing Cross” and “any information disseminated before the Closing Cross Cutoff has the potential to be misleading to some market Participants” (given that Participants may freely submit

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<sup>10</sup> See Securities Exchange Act Release No. 34-84454 (Oct. 19, 2018), 83 Fed. Reg. 53923 (Oct. 25, 2018).

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

<sup>12</sup> SR-NASDAQ-2018-068 Amendment No. 1, at 9 (filed Oct. 15, 2018).

additional, cancel, or modify on close interest prior to the Cutoff and frequently do so immediately prior to the Cutoff).<sup>13</sup>

Likewise, in proposing to increase the frequency of the NOII from five to one second intervals, the Exchange asserted that “more frequent dissemination will be beneficial to market participants that use this information.”<sup>14</sup> Specifically, the Exchange noted that “the increased automation and efficiency in the equities markets that spurred the changed cutoff times ... also justify increasing the frequency for disseminating information to the market.”<sup>15</sup>

Subsequent to October 2018, the Exchange has revisited its thinking regarding the utility and effect of an early dissemination of the NOII. The Exchange believes, based upon Participant feedback, that an early release of a subset of the NOII would be useful to Participants and improve price discovery in the Closing Cross.

Specifically, Nasdaq believes that an early release of NOII data comprising the Current Reference Price, the number of paired shares, the imbalance size, and the imbalance direction would offer Participants additional time and flexibility to react to imbalance information in advance of the Closing Cross Cutoff and also aid them in making informed decisions about whether and how to participate in the Closing Cross. In other words, early dissemination of this data will help Participants to make educated decisions as to whether, how, and at what likely prices they may interact with paired and imbalanced shares – and do so at a point in time when their decisions do not present a risk of adverse consequences because the Participant’s orders can still be freely modified

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<sup>13</sup> Id. at 14.

<sup>14</sup> Id. at 10.

<sup>15</sup> Id. at 15.

or cancelled prior to the Closing Cross Cutoff time. For example, if Nasdaq was to release an early NOII indicating that a buy imbalance exists for a particular symbol, a Participant could act on that information in advance of the Closing Cross Cutoff to offset the imbalance, while also providing additional liquidity in the Closing Cross.

However, the Exchange believes that an early release of the NOII should exclude indicative prices, including Near and Far Closing Prices. Because Participants may freely enter new orders or cancel or modify existing orders prior to the Closing Cross Cutoff, indicative prices may change dramatically during this time.<sup>16</sup> The Exchange believes that early dissemination of indicative price information would be less useful during the pre-Cutoff period than it is during the period between 3:55:00-4:00:00, when Participants are restricted from entering, modifying, or canceling orders.

Likewise, Nasdaq believes that a second-by-second dissemination of NOII information prior to the Closing Cross Cutoff time would not be necessary or helpful, and that less frequent dissemination would suffice. Whereas after the Closing Cross Cutoff time, Participants face order restrictions and time pressures that render rapid refreshes of the NOII critical to guiding their decisions, such order restrictions and time pressures do not exist, or are less acute, prior to the Closing Cross Cutoff.

Accordingly, Nasdaq now proposes to amend its Closing Cross procedures to provide for an early dissemination of a subset of NOII information at a lower frequency.

Specifically, Nasdaq proposes to amend Rule 4754 to begin disseminating an “Early

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<sup>16</sup> Unlike the Current Reference Price, which represents only the current price that maximizes the number of paired shares of on-close orders slated to participate in the Closing Cross, the Near and Far Indicative Prices are likely to be more volatile prior to the Closing Cross Cutoff because they also account for orders that exist on the continuous book.

Order Imbalance Indicator” or “EOII” at 3:50 p.m. ET (or 10 minutes prior to the early closing time on a day when Nasdaq closes early).<sup>17</sup> The Exchange proposes, in proposed Rule 4754(a)(10), that the EOII will consist of the same information as the full NOII (the Current Reference Price, the number of paired shares, the imbalance size, and the imbalance direction) except that it will not include the indicative price information set forth in Rule 4754(a)(7)(E), such as the Near Clearing Price or the Far Clearing Price. Unlike the full NOII, which disseminates in one second intervals, Nasdaq proposes to disseminate the EOII in 10 second intervals. At 3:55 p.m. ET or five minutes prior to the early closing time on a day when Nasdaq closes early, Nasdaq will cease disseminating the EOII and instead it will begin disseminating the full NOII at one second intervals, with the full complement of information forth in Rule 4754(a)(7).

The Exchange notes that the New York Stock Exchange (“NYSE”) similarly disseminates limited imbalance information prior to its 3:45 p.m. closing auction cutoff time.<sup>18</sup>

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<sup>17</sup> On certain days during the calendar year, Nasdaq may close the market early, in accordance with Rules 4701(g) (defining the term “Market Hours” to mean 9:30 a.m. ET - 4:00 p.m. ET “or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early”) and 4617 (stating that the Nasdaq trading system operates from 4:00 a.m. to 8:00 p.m. Eastern. Time on each business day “unless modified by Nasdaq”). In such instances, the Exchange proposes to disseminate the EOII beginning 10 minutes prior to the early market closing time. For example, if Nasdaq closes the market at 1 p.m. ET, Nasdaq would begin disseminating the EOII at 12:50 p.m. ET and the NOII at 12:55 p.m. ET. The Exchange notes that it proposes to add clarifying language to Rule 4754(b) that addresses the possibility of early dissemination, not only of the EOII, but also of the NOII. The existing Rule does not specify that the NOII may disseminate earlier than 3:55 p.m. ET in the event of an early market close.

<sup>18</sup> See NYSE Rule 123C(1)(b) (providing for the dissemination of an “Informational Imbalance Publication” between 3:00 p.m. and 3:45 p.m. that “indicates a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell of any size in any security that is not a Mandatory

The Exchange proposes to implement this proposed rule change in Q2 2019. The Exchange will announce the implementation date of the EOII in an Equity Trader Alert issued to Participants prior to implementing the change.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>20</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, disseminating an EOII for the Nasdaq Closing Cross earlier than the Closing Cross Cutoff time will increase the transparency of the Closing Cross process and facilitate price discovery. That is, the Exchange will offer Participants more information about the Closing Cross than they currently receive and the Exchange will provide this information to Participants at a time when Participants have more flexibility to act on it than they do when the full NOII disseminates after the Closing Cross Cutoff time. Participants may use the information gleaned from the EOII to offset imbalances or to otherwise enter, cancel, or modify orders in advance of the Closing Cross.

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MOC/LOC Imbalance Publication”), NYSE Rule 123C(1)(d) (providing for dissemination of a “Mandatory MOC/LOC Imbalance Publication” that “indicates a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell, measured at 3:45 p.m. ...”), NYSE Rule 123C(5), and NYSE Rule 123C(6)(providing for the dissemination of imbalance information to Floor brokers between 2:00 p.m. and 3:45 p.m.).

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

Moreover, Nasdaq believes it is in the best interests of Participants to exclude indicative pricing information from the EOII because the Near and Far Clearing Prices may change significantly prior to the Cutoff time as on close orders are added, cancelled, or modified. As noted above, the Near and Far Indicative Prices are more likely than the Current Reference Price to be volatile prior to the Closing Cross Cutoff because they account for orders that exist on the continuous book. Indicative prices may be misleading to Participants if provided at a time when additional order activity is apt to occur and closing interest remains unsettled.

The Exchange believes that disseminating the EOII at 10 second intervals strikes the right balance between conveying material changes in imbalance information prior to the Closing Cross Cutoff time and avoiding excessive messaging traffic. As noted above, Participants do not require more frequent refreshes of EOII data given that, prior to the Closing Cross Cutoff time, they do not face the same order restrictions and time pressures that they do afterwards. The Exchange notes that the full NOII will continue to disseminate at one second intervals as of the Cutoff time.

**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. Rather, the Exchange believes that the proposed rule change is evidence of the competitive forces in the equities markets insofar as the establishment of the EOII is designed to render the Nasdaq Closing Cross more transparent and more attractive to Participants, both in an absolute sense and relative to the NYSE, which publishes similar imbalance information prior to the cutoff time for its closing auction. The proposed EOII will be equally available to Participants.

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<sup>21</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>22</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2019-010 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-2019-010. 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-2019-010 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.<sup>23</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**The Nasdaq Stock Market Rules  
Equity Rules**

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**4754. Nasdaq Closing Cross**

**(a)** Definitions. For the purposes of this rule the term:

- (1)** "Close Eligible Interest" shall mean any quotation or any order that may be entered into the system and designated with a time-in-force of SDAY, SGTC, MDAY, MGTC, SHEX, or GTMC.
- (2)** "Imbalance" shall mean the number of shares of buy or sell MOC or LOC orders that cannot be matched with other MOC or LOC, or IO order shares at a particular price at any given time.
- (3)** "Imbalance Only Order" or "IO" shall have the meaning provided in Rule 4702.
- (4)** "Limit On Close Order" or "LOC" shall have the meaning provided in Rule 4702.
- (5)** "Market on Close Order or MOC" shall have the meaning provided in Rule 4702.
- (6)** "Nasdaq Closing Cross" shall mean the process for determining the price at which orders shall be executed at the close and for executing those orders.
- (7)** "Order Imbalance Indicator" shall mean a message disseminated by electronic means containing information about MOC, LOC, IO, and Close Eligible Interest and the price at which those orders would execute at the time of dissemination. The Order Imbalance Indicator shall disseminate the following information:
  - (A)** "Current Reference Price" shall mean:
    - (i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOC, LOC, and IO orders can be paired.
    - (ii) If more than one price exists under subparagraph (i), the Current Reference Price shall mean the price that minimizes any Imbalance.
    - (iii) If more than one price exists under subparagraph (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross.
    - (iv) If more than one price exists under subparagraph (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the

inside quotation prevailing at the time of the order imbalance indicator dissemination.

**(B)** the number of shares represented by MOC, LOC, and IO orders that are paired at the Current Reference Price;

**(C)** the size of any Imbalance;

**(D)** the buy/sell direction of any Imbalance; and

**(E)** indicative prices at which the Nasdaq Closing Cross would occur if the Nasdaq Closing Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer. The indicative prices shall be:

(i) "Far Clearing Price" which shall mean the price at which [both ]the MOC, LOC, and IO[,] orders would execute, and

(ii) "Near Clearing Price" which shall mean the price at which the MOC, LOC, IO, and Eligible Interest would execute.

(iii) If marketable buy (sell) shares would remain unexecuted above (below) the Near Clearing Price or Far Clearing Price, Nasdaq shall disseminate an indicator for "market buy" or "market sell".

**(8)** "Nasdaq Order Imbalance Snapshot" shall mean a message disseminated by electronic means containing a subset of information contained in the Order Imbalance Indicator using a format optimized for newswire services.

**(9)** "First Reference Price" shall mean the Current Reference Price in the first Order Imbalance Indicator disseminated at or after 3:55 p.m. ET.

**(10)** "Early Order Imbalance Indicator" shall mean a message disseminated by electronic means containing the same information as the Order Imbalance Indicator, except that it will exclude information about indicative prices, as set forth in subparagraph (a)(7)(E) herein.

**(b)** Processing of Nasdaq Closing Cross. The Nasdaq Closing Cross will begin at 4:00:00 p.m. EST, and post-market hours trading will commence when the Nasdaq Closing Cross concludes.

**(1)** Early Order Imbalance Indicator and Order Imbalance Indicator.[ Beginning at 3:55 p.m., Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every second until market close.]

(A) Beginning at 3:50 p.m., or 10 minutes prior to the early closing time on a day when Nasdaq closes early, Nasdaq shall disseminate by electronic means an Early Order Imbalance Indicator every 10 seconds until the Order Imbalance Indicator begins to disseminate.

(B) Beginning at 3:55 p.m., or five minutes prior to the early closing time on a day when Nasdaq closes early, Nasdaq shall disseminate by electronic means an Order Imbalance Indicator every second until market close.

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