

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2024 - * 032

Amendment No. (req. for Amendments *) 2

Filing by Cboe BZX Exchange, Inc.

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) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Pilot	Extension of Time Period for Commission Action *	Date Expires *	Rule		
<input type="checkbox"/>	<input type="checkbox"/>	<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 type="checkbox"/> 19b-4(f)(6)	

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 *).

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 * Matthew Last Name * Iwamaye

Title * VP, Associate General Counsel

E-mail * miwamaye@cboe.com

Telephone * (732) 687-9355 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BZX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 08/12/2024

(Title *)

By Matthew Iwamaye

VP, Associate General Counsel

(Name *)

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

Matthew Iwamaye Date: 2024.08.12
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Required fields are shown with yellow backgrounds and astericks.

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

24-032 19b-4 (Additional CMC Cut-Of

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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24-032 Exhibit 1 (Additional CMC Cut-

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 Advanced 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 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

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

Add Remove View

24-032 Exhibit 5 (Additional CMC Cut-

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.

Item 1. Text of the Proposed Rule Change

(a) Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (the “Commission” or “SEC”) a proposal to amend Rule 11.28(a) to add three additional market-on-close (“MOC”) cut-off times (each a “MOC Cut-Off Time” and collectively “MOC Cut-Off Times”) to Cboe Market Close (“CMC”). The proposed MOC Cut-Off Times are being proposed in response to Member feedback and are intended to better align CMC with the MOC cut-off times of Nasdaq and off-exchange venues’, as well as to provide Members with additional flexibility in managing their MOC and closing price orders. This Amendment No. 2 replaces SR-CboeBZX-2024-032 as originally filed and as amended by Amendment No. 1³ and supersedes such filings in their entirety. The text of the proposed rule change is provided below in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on August 12, 2024. The Exchange will announce via

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 34-100129 (May 13, 2024), 89 FR 46428 (May 29, 2024) (SR-BZX-2024-032) (Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 11.28(a) To Add Four Additional Market-on-Close Cut-off Times to Cboe Market Close).

Member Notice the implementation date of the proposed rule change no later than December 31st, 2024 after the approval date of this rule filing.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Matthew Iwamaye, (732) 687-9355, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

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

(a) Purpose

BZX proposes to amend Rule 11.28(a) to add three additional CMC MOC Cut-Off times. These proposed CMC MOC Cut-Off times would be in addition to the existing CMC MOC Cut-Off time of 3:49 p.m. ET, for a total of four matching sessions: 3:15 p.m. ET (new); 3:30 p.m. ET (new); 3:49 p.m. ET (current); and 3:54 p.m. ET (new).⁴ The 3:54 p.m. CMC MOC Cut-Off Time will be limited to only Nasdaq-listed securities. Additionally, the Exchange proposes to amend Interpretations and Policies .02 to Rule 11.28 in order to more accurately describe how the Exchange will handle orders designated for multiple CMC MOC Cut-Off Times in the event the Exchange experiences a matching impairment impacting the Exchange's ability to conduct CMC matching sessions. Finally, the Exchange proposes to amend Rule 11.28(c) to state that at the conclusion of each CMC MOC Cut-Off Time, the Cboe Auction Feed will disseminate the total size of all buy and sell orders matched in CMC, and that such information will only be for that particular CMC

⁴ Hereinafter, all times referenced are in Eastern Time.

matching session and would not include the total size of matched buy and sell orders from any prior CMC MOC Cut-Off Time.

The proposed CMC MOC Cut-Off Times are based on Member feedback.⁵ Specifically, in response to CMC's noticeable increase in executed volume (discussed *infra*), there has been heightened interest in CMC from both existing users, as well as potential new users of CMC (collectively "Members"). Collectively, these Members have requested certain enhancements to CMC that would encourage existing users to increase their utilization of CMC, as well encourage prospective users to begin using CMC. Namely, Members have expressed a desire for: (1) CMC MOC Cut-Off Times earlier in the trading day, and prior to the current CMC MOC Cut-Off Time of 3:49 p.m.; and (2) a CMC MOC Cut-Off Time closer to Nasdaq's MOC cut-off time of 3:55 p.m.⁶ Accordingly, both the Exchange and its Members believe that these additional CMC MOC Cut-Off Times will help to position CMC as more viable alternative to the primary exchanges' closing auctions and off-exchange closing price services. Additionally, multiple CMC MOC Cut-Off Times will make CMC more appealing to a larger segment of market participants by providing Members with different trading strategies and technical and

⁵ The Exchange notes that its Amendment No. 1 also proposed an MOC Cut-Off Time of 3:58 p.m. The Exchange, however, has removed the 3:58 MOC Cut-Off Time from its proposal reflected in this Amendment No. 2, and instead now proposes additional MOC Cut-Off Times of 3:15 p.m., 3:30 p.m., and 3:54 p.m. (the 3:54 p.m. ET session is limited to Nasdaq-listed securities only).

⁶ See Nasdaq Rule 4702(b)(11)(A), "A "Market On Close Order" or "MOC Order" is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. Subject to the qualifications provided below, MOC Orders may be entered between 4 a.m. ET and immediately prior to 3:55 p.m. ET. MOC Orders may be cancelled and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 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 (e.g., Side, Size, Symbol, or Price, or duplication of an Order). MOC Orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. An MOC Order shall execute only at the price determined by the Nasdaq Closing Cross."

operational capabilities more flexibility in how they manage their market-on-close (“MOC”) and closing price orders.

Procedural Background

On May 5, 2017, the Exchange filed a proposed rule change to adopt CMC, a match process for MOC orders in non-BZX listed securities and on December 1, 2017, filed Amendment No. 1⁷ to that proposal (the “Original Proposal”).⁸ On January 17, 2018, the Commission, acting through authority delegated to the Division of Trading and Markets,⁹ approved the Original Proposal (“Approval Order”).¹⁰ On January 31, 2018, NYSE Group, Inc. (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”) filed petitions for review of the Approval Order (“Petitions for Review”). Pursuant to Commission Rule of Practice 431(e),¹¹ the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.¹² On March 1, 2018, pursuant to Commission Rule of Practice 431, the Commission issued a scheduling order granting the Petitions of Review

⁷ The only change in Amendment No. 1 was to rename the proposed closing match process as Cboe Market Close. Per the Commission, because Amendment No. 1 was a technical amendment and did not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 was not subject to notice and comment.

⁸ See Securities Exchange Act Release No. 34-80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR-Bats-BZX-2017-34) (Notice of Filing of a Proposed Rule Change to Introduce Bats Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

⁹ 17 CFR 200.30-3(a)(12).

¹⁰ See Securities Exchange Act Release No. 34-82522 (January 17, 2018), 83 FR 3205 (January 23, 2018) (SR-BatsBZX-2017-34) (Notice of Filing of Amendment No. 1 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

¹¹ 17 CFR 201.431(e).

¹² See Letter to Christopher Solgan, Assistant General Counsel, Cboe Global Markets, Inc. (Jan. 24, 2018) (providing notice of receipt of notices of intention to petition for review of delegated action and stay of order), available at: <https://www.sec.gov/rules/sro/batsbzx/2018/sr-batsbzx-2017-34-letter-from-secretary-to-cboe.pdf>.

of the Approval Order, and provided until March 22, 2018, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.¹³ On April 12, 2018, NYSE and Nasdaq submitted written statements opposing the Approval Order and BZX submitted a statement in support of the Approval Order.¹⁴ On October 4, 2018, BZX filed Amendment No. 2¹⁵ to the Original Proposal.

The Commission conducted a de novo review of the CMC proposal and associated public record, including Amendment No. 2, the Petitions for Review, and all comments and statements submitted by certain exchanges, issuers, and other market participants,¹⁶ to determine whether the proposal was consistent with the requirements of the Act and the rules and regulations issued thereunder that are applicable to a national securities exchange.¹⁷ The Commission noted that under Rule 700(b)(3) of the Commission's Rule of Practice, the "burden to demonstrate that a proposed rule change is consistent with the

¹³ See Securities Exchange Act Release No. 82794, 83 FR 9561 (Mar. 6, 2018). On March 16, 2018, the Office of the Secretary, acting by delegated authority, issued an order on behalf of the Commission granting a motion for an extension of time to file statements on or before April 12, 2018. See Securities Exchange Act Release No. 82896, 83 FR 12633 (Mar. 22, 2018)

¹⁴ See Statement of NYSE Group, Inc., in Opposition to the Division's Order Approving a Rule to Introduce Cboe Market Close ("NYSE Statement"); Statement of the Nasdaq Stock Market LLC in Opposition to Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Introduce Cboe Market Close ("Nasdaq Statement"); and Statement of Cboe BZX Exchange, Inc., in support of Commission Staff's Approval Order ("BZX Statement"), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm>.

¹⁵ See Securities Exchange Act Release No. 34-84670 (November 28, 2018), 83 FR 62646 (December 4, 2018) (SR-BatsBZX-2017-34) ("Notice of Filing of Amendment No. 2 to Proposed Rule Change to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28").

¹⁶ See "Statements on File No. SR-BatsBZX-2017-34", available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm>.

¹⁷ See Securities Exchange Act Release No. 34-88008 (January 21, 2020), 85 FR 4726 (January 27, 2020) (SR-BatsBZX-2017-34) ("Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28").

Exchange Act and the rules and regulations issued thereunder...is on the self-regulatory organization that proposed the rule change.”¹⁸

Importantly, after reviewing the entire record, the Commission concluded that BZX met its burden to show that the proposed rule change was consistent with the Act, and pursuant to its January 21, 2020, order, set aside the Approval Order and approved BZX’s CMC proposal, as amended (“Final Approval Order”).¹⁹ Notably, the Commission stated that the record “demonstrate[d] that Cboe Market Close should introduce and promote competitive forces among national securities exchanges for the execution of MOC orders”²⁰ and that “the record demonstrate[d] that Cboe Market Close should not disrupt the closing auction price discovery process nor should it materially increase the risk of manipulation of official closing prices”.²¹

Subsequently, on August 5, 2022, the Exchange filed a proposed rule change to amend Rule 11.28(a) to extend CMC’s MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. (“CMC Amendment”).²² On October 4, 2022, the Commission, acting through authority delegated to the Division of Trading and Markets, designated a longer period within which to take action on the Exchange’s CMC Amendment.²³ Later, on November 11, 2022, BZX filed Amendment No. 1 to its CMC Amendment, and the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change as

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² See Securities Exchange Act Release No. 34-95529 (August 17, 2020), 87 FR 52092 (August 24, 2022) (SR-CboeBZX-2022-038).

²³ See Securities Exchange Act Release No. 34-95967 (October 4, 2022), 87 FR 61425 (October 11, 2022) (SR-CboeBZX-2022-038).

modified by Amendment No. 1.²⁴ Finally, on February, 9, 2023, the Commission, approved the proposed CMC Amendment (“CMC Amendment Approval Order”).²⁵

In approving the CMC Amendment, the Commission stated that the proposal was consistent with Section 6(b)(5) of the Act,²⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; as well as Section 6(b)(8) of the Act,²⁷ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons discussed more fully below, the Exchange believes that when applying the Commission’s analysis in the Final Approval Order and the CMC Amendment Approval Order, to the current proposal, such review would similarly conclude that this proposal is consistent with the Act.

Increased Volume and New Demand for CMC

On March 10, 2023, the Exchange moved its CMC MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. As illustrated in Figure 1 below, since implementing the 3:49 p.m. CMC

²⁴ See Securities Exchange Act Release No. 34-96359 (November 18, 2022), 87 FR 72537 (November 25, 2022) (SR-CboeBZX-2022-038).

²⁵ See Securities Exchange Act Release No. 34-96861 (February 9, 2023), 88 FR 9940 (February 15, 2023) (SR-CboeBZX-2022-038).

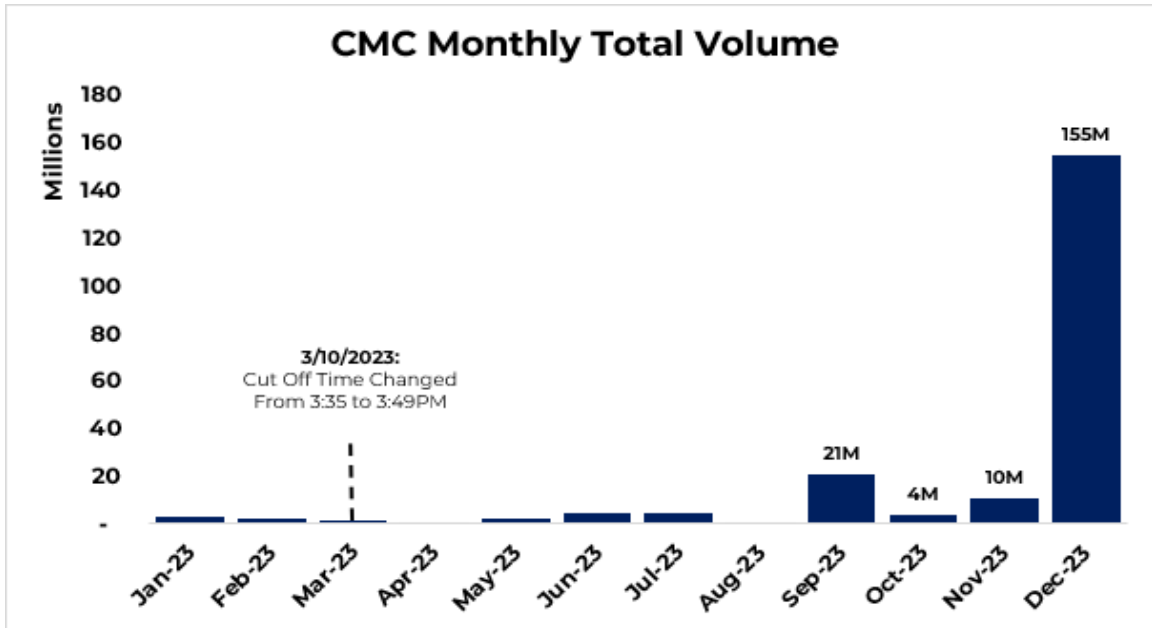
²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78f(b)(8).

MOC Cut-Off Time, CMC has experienced noticeable growth in its trading volume, rising modestly beginning in May 2023 and more remarkably between September 2023 and November 2023, ultimately reaching a record-high of 155 million shares traded in December 2023. Based on CMC's growing usage, the Exchange has received various feedback from both existing CMC users and prospective CMC users. Collectively, these Members have requested certain enhancements to CMC that would encourage existing users to increase their utilization of CMC, as well encourage prospective users to begin using CMC. Namely, Members have expressed a desire for: (1) CMC MOC Cut-Off Times earlier in the trading day, and prior to the current CMC MOC Cut-Off Time of 3:49 p.m.; and (2) a CMC MOC Cut-Off Time closer to Nasdaq's MOC cut-off time of 3:55 p.m.

As noted, both the Exchange and its Members believe that these enhancements will help to position CMC as more viable alternative to the primary exchanges' closing auctions and off-exchange closing price services. Additionally, multiple CMC MOC Cut-Off Times will make CMC more appealing to a larger segment of Members by providing Members with different trading strategies and technical and operational capabilities more flexibility in how they manage their MOC and closing price orders.

Figure 1 (Source: Internal Exchange Data)



Proposed Functionality

Accordingly, BZX proposes to amend Rule 11.28(a) to add three CMC MOC Cut-Off times. These MOC Cut-Off times would be in addition to the existing CMC MOC Cut-Off time of 3:49 p.m., for a total of four matching sessions: 3:15 p.m. (new), 3:30 p.m. (new), 3:49 p.m. (current), 3:54 p.m. (the 3:54 p.m. matching session is for Nasdaq-listed securities only). MOC orders may be entered for each matching session up to the relevant CMC MOC Cut-Off Time, beginning each day at 6:00 a.m.²⁸ Members will have the ability to specify on their order instructions which CMC session(s) they wish to participate in. For orders that specify a willingness to match in multiple matching sessions, any unfilled quantity from an earlier session will carry forward to the next session(s). Any unfilled quantity remaining after a Member’s specified final matching session will be

²⁸ For instance, an MOC order specifying that it wishes to participate in the proposed 3:15 CMC MOC Cut-Off Time must be entered, cancelled, or replaced prior to 3:15 p.m. Similarly, a MOC order specified to participate in the proposed 3:30 CMC MOC Cut-Off Time may be entered, cancelled, or replaced anytime between 6:00 a.m. and 3:29:59 p.m.

canceled back to the Member. To illustrate the proposed functionality, consider the following examples.

Example 1: Order indicates matching in a single session

Order 1: Buy 100 @ MKT – CMC Session: 3:49pm, Timestamp: 3:00:00 pm

Order 2: Sell 100 @ MKT – CMC Session: 3:15pm, 3:30pm, 3:49pm, Timestamp: 3:01:00pm

Results:

- Order 1 will not match with Order 2 in the 3:15pm or 3:30pm session. Order 2's unfilled quantity of 100 shares will first carry forward from the 3:15 session, then again from the 3:30 session, and finally to the 3:49 session.
- Order 1 and Order 2 match in the 3:49pm session for 100 shares at the closing price.

Example 2: Order indicates matching in multiple sessions

Order 1: Buy 500 @ MKT – CMC Session: 3:15pm, 3:30pm, 3:49pm, Timestamp: 3:00:00pm

Order 2: Sell 100 @ MKT – CMC Session: 3:30pm, Timestamp: 3:01:00pm

Order 3: Sell 100 @ MKT – CMC Session: 3:15pm, Timestamp: 3:02:00pm

Order 4: Sell 100 @ MKT – CMC Session: 3:49pm, Timestamp: 3:03:00pm

Results:

- Order 1 and Order 3 match in the 3:15pm session for 100 shares at the closing price and Order 1's 400 remaining shares are carried over to the next session.
- Order 1 and Order 2 match in the 3:30pm session for 100 shares at the closing price and Order 1's 300 remaining shares are carried over to the next session.
- Order 1 and Order 4 match in the 3:49pm session for 100 shares at the closing price and Order 1's 200 remaining shares are canceled back.

Example 3: Order's unfilled quantity retains its original timestamp for priority purposes

Order 1: Buy 500 @ MKT – CMC Session: 3:15pm, 3:30pm, Timestamp: 3:00:00pm

Order 2: Buy 100 @ MKT – CMC Session: 3:30pm, Timestamp: 3:01:00pm

Order 3: Sell 100 @ MKT – CMC Session: 3:15pm, Timestamp: 3:02:00pm

Order 4: Sell 100 @ MKT – CMC Session: 3:30pm, Timestamp: 3:03:00pm

Results:

- Order 1 and Order 3 match in the 3:15pm session for 100 shares at the closing price and Order 1's 400 remaining shares are carried over to the next session.
- Order 1²⁹ and Order 4 match in the 3:30pm session for 100 shares at the closing price and Order 1's 300 remaining shares are canceled back.
- Order 2's 100 shares are unfilled and canceled back at 3:30pm.

As reflected in the proposed edits to Rule 11.28, Interpretations and Policies .02, the Exchange also wishes to clarify that the reference to an "impairment" refers to an impairment of an Exchange's matching engine responsible for the CMC matching process – i.e. where a matching engine responsible for conducting the CMC matching process has become unresponsive or crashed and is unable to process Members' orders. With this in mind, the Exchange notes that when an Exchange matching engine responsible for the CMC process is impaired prior to or after a CMC MOC Cut-Off Time but prior to completion of CMC's closing match process in a security, the action taken by the Exchange on orders designated to participate in CMC is dependent on Member instruction. Specifically, and as detailed in the Exchange's technical specifications,³⁰ Members may elect "Cancel on Disconnect = Yes" or "Cancel on Disconnect = No".³¹ When a Member elects "No", the Exchange will allow a Member's orders to remain open during a matching engine

²⁹ Note that Order 1 in this scenario retains its priority over Order 2. Because Order 1 and Order 2 are both un-priced MOC orders, time priority takes precedent, with Order 1 maintaining its queue priority versus Order 2. See Rule 11.12, Priority of Orders, which provides that orders are ranked based on price, then time.

³⁰ See "Cboe US Equities BOE Specification," pg. 74, "Cancel on ME Disconnect," available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf; See also "Cboe US Equities FIX Specification," pg. 66, "Cancel on ME Disconnect," available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf.

³¹ The Exchange notes that this field cannot be left blank, and that if a Member does not designate a value, the default is, "Cancel on Disconnect = YES". Furthermore, during an impairment, no new Exchange orders – including CMC orders – are accepted.

impairment; provided, however, if an impairment exceeds five-minutes *all* orders will be cancelled unconditionally, regardless of a Member's instruction. Importantly, even when a Member has elected "No", a Member may still cancel their order during a matching engine impairment and prevent their MOC order(s) from participating in CMC once the matching engine failover is completed. When a Member elects "Yes", all open orders associated with a session are immediately cancelled in the event of a matching engine impairment.

By way of illustration, assume a Member has submitted an order to participate in the 3:15 CMC MOC Cut-Off Time, has selected "Cancel on Disconnect = No", a matching engine impairment occurs at 3:14 p.m., and an impairment impacting the CMC matching process lasts less than five-minutes. In this instance, the Member's MOC order will remain open, and post matching engine failover, the Exchange will simply conduct the CMC session that should have occurred at 3:15 p.m. and attempt to match the Member's MOC order.

To further illustrate, assume a Member has designated its MOC order to participate in multiple CMC MOC Cut-Off Times (e.g., 3:30, 3:49, and 3:54), has also selected Cancel on Disconnect = NO, a matching engine impairment impacting the CMC process occurs at 3:29 p.m., and the impairment last less than five-minutes. In this instance, the Member's MOC order will remain open, and post matching engine failover, the Exchange will simply conduct the CMC session that should have occurred at 3:30 p.m. and attempt to match the Member's MOC order. Should the Member's 3:30 p.m. MOC order not be matched, or only partially filled, the Member's MOC order will proceed to the 3:49 matching session.

In addition, as is the case with the current functionality, if the Exchange becomes impaired after completing the closing match process in a security, it will retain all matched MOC orders and execute those orders at the official closing price once the impairment is resolved.

Finally, the Exchange wishes to amend Rule 11.28(c) to clarify that even with the proposed multiple CMC MOC Cut-Off Times, the total size of matched buy and sell orders disseminated via the Cboe Auction Feed will be limited to that *particular* CMC matching session – i.e., the information disseminated for the 3:30 p.m. CMC matching session will include the total size of matched buy and sell orders for the 3:30 p.m. CMC MOC Cut-Off Time only, and would not aggregate the total sizes of matched buy and sell orders from the prior 3:15 p.m. CMC MOC Cut-Off Time.

The Proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times

Members requesting CMC MOC Cut-Off Times earlier in the trading day have expressed that these additional CMC MOC Cut-Off Times will provide them more flexibility in managing their MOC and closing price order flow. For instance, some Members maintain multiple internal trading desks, each managing different types of order flow and trading strategies. One trading desk may manage orders that its traders actively trade throughout the trading day leading up to the close, making CMC MOC Cut-Off Times closer to 4:00 p.m. more valuable for that trading desk. Separately, one of the Member's other trading desks may typically execute orders guaranteeing the closing price or perhaps manage orders on behalf of index funds or ETF providers, that are often benchmarked to the official closing price. For this workflow, a Member may be agnostic as to when it commits MOC orders to CMC, a primary exchange's closing auction, or an off-exchange

closing price service, and may view the ability to commit such order flow to CMC earlier in the trading day at 3:15 p.m. or 3:30 p.m. as a valuable tool to help them execute orders and de-risk their trading risk earlier in the trading day.

Additionally, Members have indicated the proposed 3:15 p.m. and 3:30 p.m. CMC MOC Cut-Off Times will also assist them in managing any technological and operational risk associated with managing high volumes of order flow. Notional trading and trading volatility are typically at their highest towards the end of Regular Trading Hours. During this time, Members systems may be managing a significant number of MOC or closing price orders. Unless the Member is attempting to beat the closing price by trading such orders for as long as possible heading into the close, committing such orders to CMC earlier in the trading day will enable them to reduce the number of MOC and closing price orders their trading systems must manage. Notably, the Exchange noted in its CMC Amendment that today's market participants, including CMC's existing users, were technologically equipped³² to handle CMC's current 3:49 p.m. CMC MOC Cut-Off Time. While this remains the case today, the recent growth in CMC's executed volume has attracted

³² As a general matter, today's market participants, including CMC users, rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically often measured in microseconds. See generally "Staff Report on Algorithmic Trading in U.S. Capital Markets" (August 5, 2020), available at https://www.sec.gov/tm/reports-and-publications/special-studies/algo_trading_report_2020 ("Algorithmic Trading Report") ("Over the past decade, the manual handling of institutional orders is increasingly rare and has been replaced by sophisticated institutional order execution algorithms and smart order routing systems.") ("The secondary market for U.S.-listed equity securities that has developed within this structure is now primarily automated. The process of trading has changed dramatically primarily as a result of developments in technologies for generating, routing, and executing orders, as well as by the requirement imposed by law and regulation.") ("Modern equity markets are connected in part by the data flowing between market centers. An enormous volume of data is available to market participants. In recent years, there has been an exponential growth in the amount of market data available, the speed with which it is disseminated, and the computer power used to analyze and react to price movements.").

potential new users with trading strategies, and technological and operational capabilities, that have presented new use cases for CMC.

Overall, by having the ability to submit orders to the proposed 3:15 p.m., 3:30 p.m., and 3:49 p.m. CMC MOC Cut-Off Times, Members will have a greater opportunity of being matched earlier in the trading day before potentially needing to re-route their unmatched MOC orders to the primary exchanges or off-exchange closing price offerings. On high-volume order days – e.g. Russell Rebalance Days where trading volume is high – the utility of being able to de-risk closing cross order volume earlier in the trading day is both a rational trading decision and a prudent way for Members to manage their operational and technological risk as such event days are marked by high volume and volatility that may utilize a significant portion of some Members' systems capacity.

The Proposed 3:54 p.m. CMC MOC Cut-Off Time

The proposed 3:54 p.m. CMC MOC Cut-Off Time applies only to orders in Nasdaq-listed securities. Members requesting the CMC MOC Cut-Off Time of 3:54 p.m. have indicated that this CMC MOC Cut-Off Time will help to better align CMC with Nasdaq's MOC cut-off time of 3:55 p.m., thereby helping to make CMC a more viable alternative to Nasdaq's closing auction.

As noted in SR-CboeBZX-2022-038,³³ today's market participants, including users of CMC, are technologically equipped³⁴ to handle a CMC MOC Cut-Off Time one-minute prior to the primary exchange's MOC cut-off time (here, Nasdaq's MOC cut-off time of 3:55 p.m.). As a general matter, today's market participants, including CMC users, rely

³³ Supra note 24.

³⁴ Supra note 32.

on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically measured in microseconds. In this regard, the Exchange believes that if a CMC user receives a message that its MOC order was not matched in CMC, such CMC user will have more than enough time to reroute its MOC order(s) to Nasdaq. Importantly, the Exchange has confirmed with both existing and prospective CMC users that based on their technological capabilities (discussed *infra*), they would have ample time³⁵ to reroute unmatched CMC orders from the proposed 3:54 CMC MOC Cut-Off Time to Nasdaq by 3:55 p.m. in order to participate in the Nasdaq closing auction.³⁶ Furthermore, Members

³⁵ The CMC Closing Match Process – i.e., the matching of all buy and sell MOC orders entered into the System by time priority at the MOC Cut-Off Time, the electronic notification to Members of any unmatched MOC orders, and the dissemination by the Exchange of the total size of all buy and sell orders matched through CMC via the Cboe Auction Feed – generally occurs within *microseconds*. More specifically, while the duration may vary, the total matching process typically takes a fraction of second (e.g., ~948 microseconds), with the maximum being around 1-second. With these timeframes in mind, a Member in most instances currently knows its paired CMC quantity no later than 3:49:01 p.m., leaving the user at least fifty-nine-seconds (59) to reroute any unpaired MOC orders to the primary exchanges' closing auctions. As noted, the speed of today's trading technology is typically measured in microseconds, making fifty-nine-seconds (59) a significant amount of time for a user to make an automated trading decision. For reference, a microsecond is 1- millionth of a second.

³⁶ As it did for its proposal to move the CMC MOC Cut-Off Time to 3:49 p.m. from 3:35 p.m. (See SR-CboeBZX-2022-038) the Exchange discussed the proposed amendment with both current CMC users, as well as potential new users. By way of background, a large majority of CMC users are mid-size, regional broker dealers that utilize third-party front-end providers or broker-dealers that provide them with electronic and automated trading solutions such as algorithms and smart order routers, which they use to access CMC. Specifically, the Exchange discussed the proposed amendment - namely, the proposed 3:15 p.m., 3:30 p.m., and 3:54 p.m. MOC Cut-Off Times - with CMC's users, two (2) third-party providers whose end users are responsible for 100% of CMC's volume. Importantly these providers indicated that the automated routing and trading solutions they offer to CMC's users can appropriately manage the proposed CMC MOC Cut-Off Times, including the proposed 3:54 p.m. CMC MOC Cut-Off Time. Additionally, the Exchange discussed the proposed CMC MOC Cut-Off Times with potential new users of CMC (4 large, multinational bulge bracket broker-dealers). These market participants indicated that proposed CMC MOC Cut-Off Times would likely encourage them to use CMC as part of their trading and that they either independently maintained high-speed routing and trading capabilities, or utilized third-party technology providers or broker-dealers that provide them with such solutions. As such, these market participants did not have any operational or technological concerns with the proposed CMC MOC Cut-Off Times – particularly the 3:54 p.m. CMC MOC Cut-Off.

that may not possess their own internal electronic trading and routing capabilities to self-manage the proposed 3:54 p.m. CMC MOC Cut-Off Time rely on third-party solutions³⁷ and broker dealers that offer high-speed routing and trading solutions to manage their order flow, including their CMC orders.

Similar to the rationale for extending CMC's MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., Members desire a CMC MOC Cut-Off Time that is closer to Nasdaq's MOC cut-off time and the end of Regular Trading Hours³⁸ so they can retain control of their trading for a longer period of time.³⁹ By being able to trade closer to the Nasdaq's MOC cut-off time and the end of Regular Trading Hours, Members have more opportunities to

³⁷ As a general matter, third-party technology providers and broker-dealers with electronic trading offerings provide automated trading and routing products and services to market participants that may not possess their own proprietary technology, or simply choose to leverage third-party solutions they deem superior to their own internal technology. By way of example, portfolio managers responsible for reweighting their managed funds may not possess internal automated routing and algorithmic trading capabilities, and instead utilize third-party solutions enabling them to trade on an automated basis. As such, the proposed CMC MOC Cut-Off Time of 3:54 p.m. is not likely to negatively impact market participants who may not possess the internal capabilities to reroute unmatched CMC MOC orders to the primary exchanges' closing auctions. The Exchange further notes that the utilization of third parties and broker-dealers for technological trading solutions was even noted by the Commission in its Algorithmic Trading Report. *Supra* note 34 ("Institutions that do not create their own algorithms generally use algorithms provided to them by institutional brokers.") ("Brokers are tasked by their customers with finding liquidity in a complex, fragmented market, achieving best execution, and minimizing information leakage and other implicit costs. To try to meet these goals, brokers use, and offer to their customers, a wide range of execution algorithms.").

³⁸ The term "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See Rule 1.2 (w), definition of, "Regular Trading Hours."

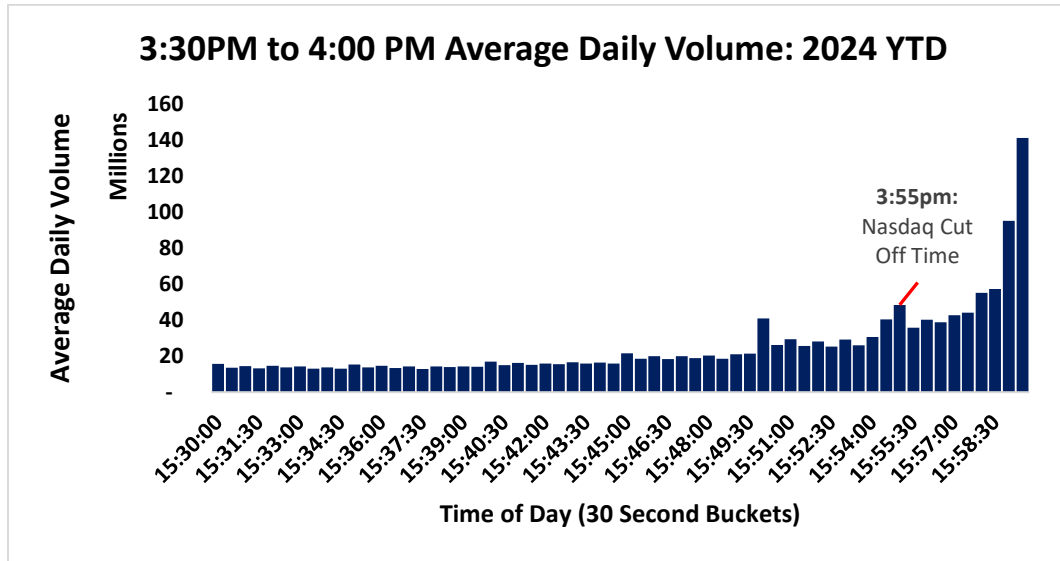
³⁹ The Exchange notes that part of its rationale for adding the proposed 3:54 p.m. MOC Cut-Off Time is substantively identical to that of other exchanges moving their MOC cutoff times to later in the trading day, namely, NYSE and Nasdaq. See Securities Exchange Act Release No. 34-84454 (October 19, 2018), 83 FR 18580 (October 25, 2018) (SR-Nasdaq-2018-068) ("Specifically, the Exchange believes that extending the cutoff times for submitting on close orders will allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close."); see also Securities Exchange Act Release No. 34-84804 (December 12, 2018), 83 FR 64910 (December 18, 2018) (SR-NYSE-2018-58) ("The Exchange believes that extending the cut-off times for entry and cancellation of MOC and LOC Orders, cancellation of CO orders, as well as when the Exchange would begin disseminating Order Imbalance Information for the close would...allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close.").

seek better priced liquidity for their orders in a variety of ways and reducing the size of their outstanding orders they may need to commit to CMC or the primary auctions, including but not limited to, finding contra-side liquidity in the marketplace and trading directly against such interest, or guaranteeing a customer order at a price better than the national best bid or offer by committing capital to an order and filling it in a principal capacity, as well as continuing to trade algorithmically into the close. By adding the CMC MOC Cut-Off Time of 3:54 p.m., CMC will be better positioned to serve as a viable option for market participants to consider when deciding which venues to route their MOC orders in Nasdaq-listed securities, thus enhancing intermarket competition.

In support of the above, Figure 2 shows the total average *daily* volume across all market centers, from 3:30 p.m. to 4:00 p.m. in 30-second intervals, and illustrates the Nasdaq MOC cut-off time. As illustrated, at Nasdaq's 3:55 p.m. MOC cut-off time, and 4:00 p.m. market close, there is a noticeable increase in traded volume in the overall marketplace, with volume relatively flat in the overall marketplace prior to those times. This analysis supports the Exchange's assertion that certain market participants do indeed prefer cut-off times later in the trading day, as volumes tend to significantly increase as the closing auctions approach. Therefore, the Exchange now seeks to implement the MOC Cut-Off Time of 3:54 p.m. to better align CMC with Nasdaq's 3:55 p.m. MOC cut-off time. By implementing this change, the Exchange believes that CMC will be better positioned as a viable alternative to Nasdaq's closing auction, thereby "foster[ing] price competition and...decreas[ing] costs for market participants."⁴⁰

⁴⁰ Supra note 15.

Figure 2 (Source: Internal Exchange Data)



(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the

⁴¹ 15 U.S.C. 78f(b).

⁴² Supra note 26.

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the addition of the proposed CMC MOC Cut-Off Times would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed times would offer CMC users increased flexibility in how to manage their MOC and closing price order flow and their associated trading, and their technological and operational risk, as well help to better position CMC to serve as a viable alternative to the primary exchanges' closing auctions, and off-exchange closing price mechanisms. For instance, by having the option to allocate their MOC order flow across various CMC MOC Cut-Off Times, Members will have the opportunity to receive matches earlier in the trading day, thereby reducing their trading risk, as well as the volume of orders their systems may need to handle at once, thereby reducing operational and technology risk.

Furthermore, the Exchange has received feedback from Members that while moving the single CMC MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. (six-minutes prior to Nasdaq's MOC cut-off time) has been helpful in managing their MOC orders in NYSE-listed securities, Members desire a CMC MOC Cut-Off Time that more closely aligns with the current Nasdaq MOC cut-off time of 3:55 p.m. In this regard, the proposed 3:54 p.m. CMC MOC Cut-Off time will enable Members to actively trade orders in Nasdaq-listed securities for a longer period as they will no longer have to submit their MOC orders to BZX in order to participate in CMC at 3:49 p.m. – i.e., six-minutes prior to

⁴³ Id.

Nasdaq's cut-off time. Rather, Members will have until 3:53:59 to submit MOC orders to BZX in order to participate in CMC, which provides Members an additional four minutes and fifty-nine seconds to actively trade Nasdaq-listed securities. As discussed above, if a Member's MOC orders are not matched in CMC the Member will still have ample time to reroute any unmatched to CMC MOC orders to Nasdaq's closing auction, thereby making CMC a more competitive alternative to Nasdaq's closing auction.

The Exchange notes that the primary market participants that would utilize the proposed 3:54 p.m. CMC MOC Cut-Off Time are technologically equipped⁴⁴ to re-route any unmatched CMC MOC orders in Nasdaq-listed securities to Nasdaq prior to Nasdaq's 3:55 p.m. MOC cut-off time. Specifically, Members are either technologically self-equipped to manage the proposed CMC MOC-Cut Off Times, or currently rely on third-party solutions that provide them with the technological capability to appropriately manage the proposed CMC MOC Cut-Off Times and timely re-route unmatched CMC orders participate in Nasdaq's closing auction.

Similarly, given the widespread use of routing and trading technology in today's markets, it is also likely that potential new CMC users currently possess the technological capabilities to manage the proposed CMC MOC Cut-Off Times, and if they do not, they could similarly rely on third-party providers⁴⁵ with high-speed technology offerings. Alternatively, new CMC users lacking high-speed trading and routing technology can simply utilize the earlier CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m., providing themselves more flexibility to reroute unmatched CMC orders to the primary exchanges.

⁴⁴ Supra note 32.

⁴⁵ Supra note 37.

The Exchange also notes that as CMC volume has increased, prospective new users⁴⁶ with different trading strategies and different technological and operational capabilities have expressed interest in utilizing CMC. This segment of Members has expressed a desire for earlier CMC MOC Cut-Off Times (i.e., 3:15 p.m. and 3:30 p.m.), which they note will assist them in more efficiently managing their workflows and trading risk. For instance, some of these Members would prefer to commit certain of their closing price orders – e.g., guaranteed close orders – to a closing auction mechanism earlier in the trading day. By submitting such orders to CMC and potentially receiving a match, a Member can reduce its trading risk. Additionally, by having the ability to allocate MOC orders across various CMC MOC Cut-Off Times, Members can more capably manage their closing order volume and reduce the number of messages that their systems must manage and process heading into market close, when trading volume and volatility are typically at their highest. As such, Members will be better able to manage any operational or technology risk⁴⁷ associated with a high order volume day such as index rebalance days (e.g., Russell or MSCI index rebalance days) or unexpected high volatility trading days, as

⁴⁶ Prospective new users of CMC include both Members expressing interest in utilizing CMC for the first time, as well as new end-clients of Members that currently utilize CMC, and have inquired as to CMC's functionality, and the proposed enhancements.

⁴⁷ The Exchange notes that there are market participants that may not currently possess internal high-speed routing and trading technology. However, such market participants may, and likely already do, utilize routing and trading services offered by third-party providers or broker-dealers to handle and execute their orders electronically. Additionally, CMC is entirely voluntary and Members that do not possess internal high-speed trading and routing technology, or utilize third-party broker-dealers, are not required to use CMC. Accordingly, the Exchange believes that the proposed MOC Cut-Off Time is not likely to result in disparate treatment amongst CMC users and other market participants.

well as better manage the number of MOC orders a Member may need to send to an exchange or off-exchange venue at any one time.⁴⁸

As with existing CMC users, given the widespread use of routing and trading technology in today's markets, it is likely that potential new CMC users also currently possess the technological capabilities to manage the proposed CMC MOC Cut-Off Times, and if they do not, could similarly rely on third-party providers⁴⁹ with high-speed technology offerings. Alternatively, new CMC users lacking high-speed trading and routing technology can simply utilize the earlier CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m., providing themselves more flexibility to reroute unmatched CMC orders to the primary exchanges. Regardless, the proposed earlier MOC Cut-Off Times occur much earlier in time than the primary exchanges' MOC cut-off times, giving the users of the proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times more than enough time to re-route their unmatched MOC orders to the primary exchanges' closing auctions; i.e., thirty-five minutes/twenty minutes prior to the NYSE MOC cut-off time, respectively; and forty minutes/twenty minutes prior to the Nasdaq MOC cut-off time respectively.

As noted in its CMC Amendment, the Exchange continues to believe that the extension of cut-off times by the primary exchanges since CMC's approval in 2020 as well

⁴⁸ In this regard, the Exchange notes that some Members have expressed that while they have ample time to redirect any unmatched CMC orders to the primary exchanges, internal or external message rate checks (e.g., SEC Rule 15c3-5 risk checks or market center checks) may prohibit them from doing so if the Member is submitting a large volume of unmatched MOC orders at one time. In this regard, the proposed additional MOC Cut-Off Times may assist Members in allocating MOC orders across multiple CMC sessions, and should they be matched, reduce the volume of unmatched MOC orders the Member may have to submit to another market center.

⁴⁹ Supra note 37.

as the growth of off-exchange venues⁵⁰ with cut-off times in such close proximity to the end of Regular Trading Hours is indicative of Members' desires for such offerings. Logically, such a change in market structure would not have occurred if market participants did not already possess the operational and technological capabilities to effectively manage the multitude of cut-off times offered by the exchanges and off-exchange venues.

The Exchange also believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because adding the proposed 3:54 p.m. CMC MOC Cut-Off Time would more closely align the CMC with the cut-off time in place for the Nasdaq closing auction. By adding the 3:54 p.m. CMC MOC Cut-Off Time, CMC has the ability to become a more comparable alternative to Nasdaq's closing auction, thereby "foster[ing] price competition and...decreas[ing] costs for market participants."⁵¹

Importantly, even with the addition of the proposed CMC MOC Cut-Off Times, CMC will remove any perceived impact on Nasdaq's closing auction by publishing the

⁵⁰ For example, JP Morgan Securities' ATS, JPB-X, offers Close Price Match. This functionality utilizes a conditional order process to match orders and crosses them at the security's official closing prices, as determined by the closing auction at the primary exchange for a security. The Close Price Match time for an NMS stock is currently 30-seconds before the MOC cut-off time for that stock's primary exchange. Additionally, Instinet, LLC's ATS, CBX provides for three MOC Crossing Sessions, which consist of: a cross for securities where the primary listing exchange is the Nasdaq ("Nasdaq Cross"), a cross for securities where the primary listing exchange is the NYSE Arca ("Arca Cross"), and a cross for securities where the primary listing exchange is the NYSE ("NYSE Cross") (collectively, "MOC Crosses"). Each MOC Cross occurs two minutes prior to the relevant exchange's cut-off time; i.e. the Nasdaq Cross currently occurs at or near 3:53 p.m., the NYSE Cross at or near 3:48 p.m., and the Arca Cross at or near 3:57 p.m. See Form ATS-N, JPB-X, available at: https://www.sec.gov/Archives/edgar/data/782124/00001961722000459/xslATS-N_X01/primary_doc.xml; see also Form ATS-N, Instinet, LLC's ATS, CBX, available at: https://www.sec.gov/Archives/edgar/data/310607/000031060722000009/xslATS-N_X01/primary_doc.xml.

⁵¹ Supra note 15.

number of matched order shares,⁵² by individual security, in advance of Nasdaq's cut-off time. The total matched shares will still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at each of the newly proposed CMC MOC Cut-Off Times. Because of the speeds and widespread use of market technology the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information (including information about total matched shares in CMC) into their closing processes.⁵³ Additionally, as discussed above, because of the market technology utilized by market participants in today's markets, those who choose to participate in CMC will still have ample time⁵⁴ to reroute any MOC orders not matched via CMC to reach the primary exchanges' closing auctions. Notably, market participants that do not possess internal high-speed trading and routing capabilities often rely on third-party providers or broker-dealers⁵⁵ to handle and execute their orders electronically. Moreover, if market participants do not possess internal high-speed routing and trading technology, and do not

⁵² The Exchange notes that the Cboe Auction feed will disseminate the total matched shares only for the current CMC MOC Cut-Off Time. The Cboe Auction Feed will not disseminate the aggregate of total matched shares across each CMC matching session. For example, following the completion of the 3:30 p.m. CMC matching session, the Cboe Auction Feed message would disseminate matched shares only for the 3:30 p.m. CMC matching session, and would *not* disseminate the aggregate of number of matched shares from the prior 3:15 CMC matching session and the 3:30 p.m. CMC matching session.

⁵³ As it did in connection with its CMC Amendment, the Exchange again spoke with four (4) designated market makers for the primary exchanges and confirmed that while they do not currently monitor the Cboe Auction Feed, they are technologically equipped to do so, and could incorporate CMC information into their closing auction processes if they chose to do so. Additionally, it is the Exchange's understanding that Nasdaq subscribes to an Exchange depth of book feed which provides subscribers with an uncompressed data feed that includes depth of book quotations and execution information based on equity orders enter into the Exchange's System, including CMC orders. As discussed further, below, given the speed of today's market technology, a CMC MOC Cut-Off Time one-minute prior to the 3:55 p.m. Nasdaq MOC cut-off undoubtedly provides Nasdaq with enough time, should they so choose, to incorporate any relevant CMC information into their closing auction processes.

⁵⁴ Supra note 32.

⁵⁵ Supra note 37.

utilize third-party solutions, the addition of the proposed CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. would allow such participants to try and receive CMC matches earlier in the day at 3:15 p.m. or 3:30 p.m., rather than limiting themselves to the later CMC MOC Cut-Off Times of 3:49 p.m. and 3:54 p.m. and having less time to re-route the unmatched MOC orders to the primary exchanges or off-exchange closing price mechanisms. Accordingly, the Exchange believes that the proposed CMC MOC Cut-Off Times are not likely to result in disparate treatment amongst CMC users.

The proposed Interpretations and Policies .02 will also help to protect investors by making clear to Members participating in CMC how the Exchange will manage their CMC MOC orders in the event of a matching engine impairment that impacts the initiation and/or completion of a CMC matching session. Accordingly, Members will be better to manage their closing order flow and avoid risk of not receiving the official closing price for their orders by making informed decisions as to when they choose to remove their orders from CMC and instead re-route them to the primary exchanges' closing auctions, or an off-exchange closing price offering. Given the importance of the closing price to many investors for indexing, benchmark pricing, and guaranteed closing price orders, the information provided in proposed Interpretation and Policies .02 is critical to protection of investors.

Finally, the proposed amendment to 11.28(c) is designed to foster the protection of investors, and to prevent fraudulent and manipulative acts and practices. Because the Cboe Auction Feed will only disseminate the total size of matched buy and sell orders for each individual CMC MOC Cut-Off Time, and not the aggregate size across all CMC MOC Cut-Off Times, the information that any Member might be able to glean from the Cboe

Auction Feed message will remain limited in nature (discussed *infra*), thereby preventing opportunities for any Member to game or manipulate the official closing price.

Price Discovery⁵⁶

As was the case with its CMC Amendment, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirements.⁵⁷ As previously noted by the Exchange,⁵⁸ CMC accepts and matches only unpriced MOC orders. By matching only unpriced MOC orders, and not priced Limit-On-Close (“LOC”) orders and executing those matched MOC orders that naturally pair off with each other and effectively cancel each other out, CMC is designed to avoid impacting price discovery. The proposed rule change – i.e., the addition of additional CMC MOC Cut-Off Times – does not change CMC’s underlying functionality. As previously noted by the Exchange,⁵⁹ matched MOC orders are merely recipients of price formation and do not directly contribute to the price formation process. Indeed, in its Final Approval Order for CMC, even the Commission noted that unpriced, paired-off MOC orders do not directly contribute to setting the official

⁵⁶ As part of this proposed amendment, the Exchange is addressing several questions considered by the Commission in connection with the Exchange’s Original Proposal, including price discovery and fragmentation, market complexity and operational risk, and manipulation. Importantly, in considering these questions, the Commission found that based on CMC’s design and the record before the Commission, that the proposal was consistent with Section 6(b)(5) of the Act. Supra note 15.

⁵⁷ The Exchange notes that the Commission, in its Final Approval Order, carefully analyzed and considered CMC and its potential effects, if any, on the primary listing exchanges’ closing auctions, including their price discovery functions. Importantly, the Commission found that, based on CMC’s design, CMC should not disrupt the price discovery process in the closing auctions of the primary listing exchanges. Supra note 15.

⁵⁸ See Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc. (August 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-2162452-157801.pdf>; see also Letter from Joanne Moffic-Silver (October 11, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-2634580-161229.pdf>.

⁵⁹ Id.

closing price of securities on the primary listing exchanges but, rather, are inherently the recipients of price formation information.⁶⁰

Moreover, the Exchange believes that even if the addition of CMC MOC Cut-Off Times reduces the number of MOC orders routed to a security's primary listing market, CMC is still designed to remove any perceived adverse impact on the primary listing markets' close because the total matched shares for each CMC session would still be disseminated by the Exchange free of charge via the Cboe Auction Feed prior to the primary exchanges' cut-off times. Additionally, even with the addition of the new CMC MOC Cut-Off Times, because of the technological capabilities of today's market participants discussed more fully above, the market makers on the primary exchanges would still have the ability to incorporate the Cboe Auction Feed information, including information about total matched shares in CMC, into their closing processes.

Furthermore, current users of CMC are either technologically equipped to manage the proposed CMC MOC-Cut Off Times or rely on third-party solutions that provide them with the technological capability to appropriately manage the proposed CMC MOC Cut-Off Times and timely re-route unmatched CMC orders participate in the primary exchanges' closing auctions. Similarly, given the widespread use of routing and trading technology in today's markets, it is likely that potential new CMC users already possess the technological capabilities to manage the proposed CMC MOC Cut-Off Times, and if they do not, similarly rely on third-party providers with high-speed technology offerings. Alternatively, CMC users lacking high-speed trading and routing technology can simply

⁶⁰ Supra note 15.

utilize the earlier CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m., providing themselves more flexibility to reroute unmatched CMC orders to the primary exchanges.

Fragmentation⁶¹

Another matter addressed by the Commission in its review of the Original Proposal was fragmentation, and whether CMC would fragment the markets beyond what currently occurs through off-exchange close price matching venues offered by broker-dealers.⁶² While comparisons to off-exchange MOC activity may not be a perfect measure of the potential resulting effect of CMC market fragmentation,⁶³ the proposed CMC MOC Cut-Off Times are designed to enable CMC to better compete with off-exchange venues and for closing volume that is *already* executed away from the primary listing venues.

As illustrated in the first two charts below, a growing proportion of trading volume at the close occurs on off-exchange venues, where the TRF close volume, as a percent of Exchange close volume, has risen steadily since Q1 2019.⁶⁴ In the third chart the Exchange also studied the top ten most actively traded securities during the same time period and found that a significant portion of the total closing volume is executed off-exchange, following the dissemination of the official closing price.

⁶¹ Supra note 56.

⁶² Supra note 15.

⁶³ Id (“...[C]omparisons to off-exchange activity are not a perfect measure of the potential resulting effect of the [CMC] proposal because the structures of the many off-exchange mechanisms differ from the structure of Cboe Market Close.”).

⁶⁴ The Exchange conducted an analysis of off-exchange/Trade Reporting Facility (“TRF”) closing volume that occurs after market close, 4:00 p.m. Eastern Time, where the price is equal to the closing price and for which such trades are reported with a Prior Reference Price (“PRP”) trade reporting modifier. The TRF is a trade reporting facility where FINRA members may report trades in Nasdaq-listed and other exchange-listed securities, that were executed otherwise than on an exchange. The first two charts represent TRF executed volume at the close with the “PRP” flag that equals the closing auction price, divided by total on exchange auction volume.

Figure 3 (Source: Internal Exchange Data)

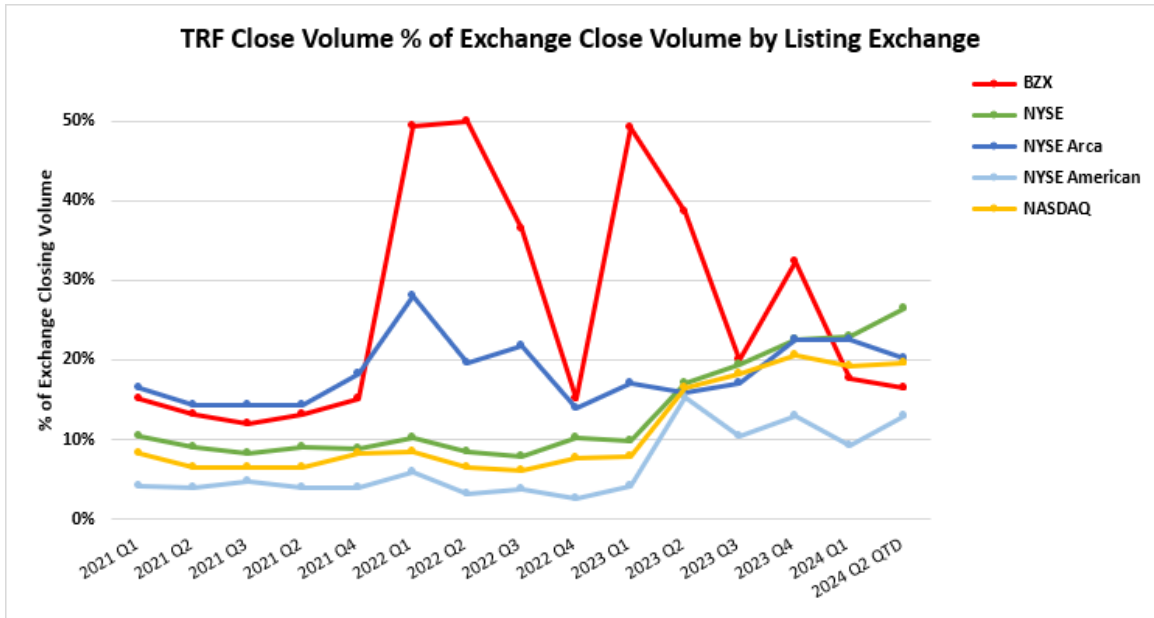


Figure 4 (Source: Internal Exchange Data)

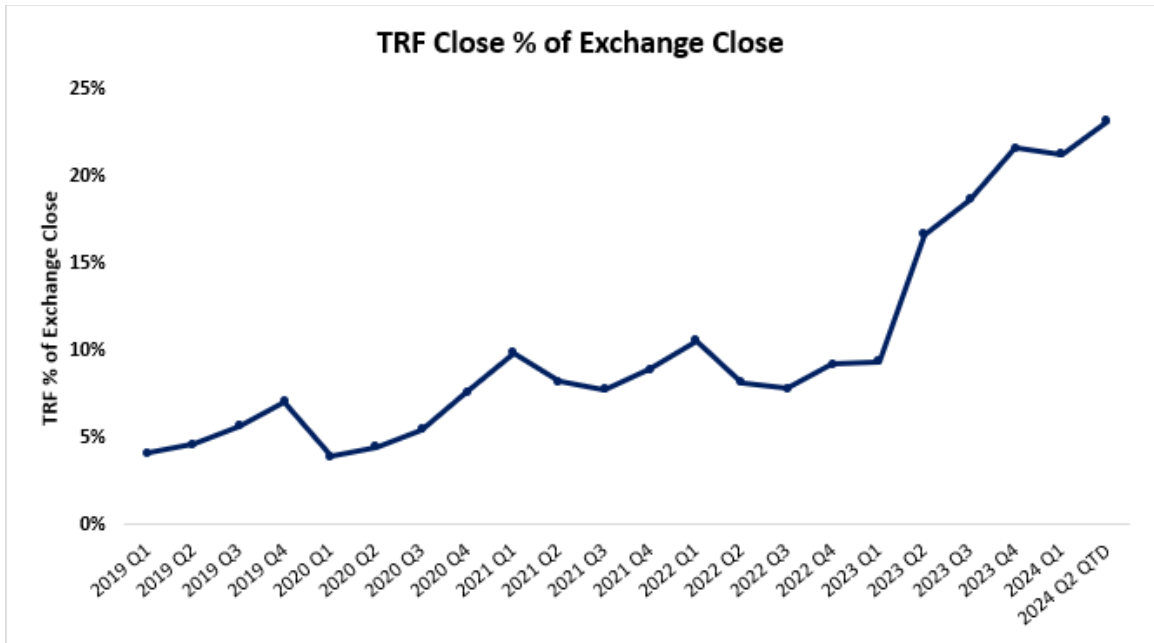


Figure 5 (Source: Internal Exchange Data)

	Symbol	Total ADV	Primary Listing Exchange	TRF Close % inc. PRP
1	TSLA	129,423,964	Nasdaq	12%
2	SQQQ	129,161,658	Nasdaq	21%
3	BBBY	122,763,238	Nasdaq	5%
4	SPY	80,346,142	NYSE Arca	13%
5	SOXS	73,944,691	NYSE Arca	16%
6	NKLA	67,493,708	Nasdaq	8%
7	AMD	64,632,893	Nasdaq	15%
8	PLTR	60,699,921	NYSE	15%
9	AAPL	59,750,017	Nasdaq	17%
10	PRTY	57,838,421	NYSE	7%

Given the significant volume of off-exchange MOC activity already occurring, the Exchange believes that there is still ample opportunity for the proposed CMC MOC Cut-Off Times to attract *existing* MOC volume that is being executed away from CMC and the primary listing venues. As discussed above, market participants have expressed the value of being able to trade closer to 4:00 p.m. In this regard, the proposed CMC MOC Cut-Off Time of 3:54 p.m. satisfies the needs of today’s market participants, and enables CMC to better compete with off-exchange venues, thereby “foster[ing] price competition and...decreas[ing] costs for market participants.”⁶⁵ Members may prefer to execute their MOC orders via CMC rather than off-exchange venues for reasons such as the increased

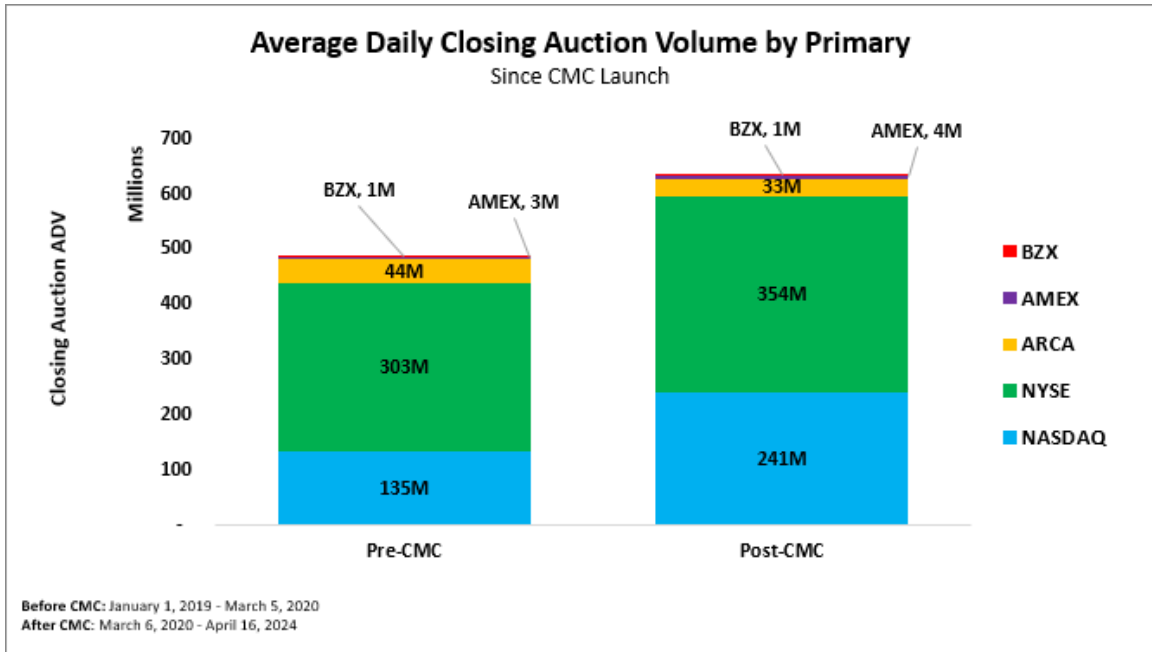
⁶⁵ Supra note 15.

transparency and reliability that exists when investors execute their orders on public, well-regulated exchanges. Moreover, by attracting such order flow, CMC can help to increase the amount of volume at the close executed on systems subject to the resiliency requirements of Regulation SCI.⁶⁶

Moreover, the Exchange's observations in Figure 6 below show that the closing auction volume on both NYSE and Nasdaq has increased despite the launch of CMC on March 6, 2020, and the subsequent implementation of the 3:49 p.m. CMC MOC Cut-Off Time in 2023. Therefore, while the proposed amendment may lead to additional orders being routed to CMC rather than the primary exchanges' closing auctions, it cannot be said with certainty that such a change will cause additional fragmentation in the marketplace as it is possible that existing MOC order flow that already executes on off-exchange venues may in fact migrate to CMC. In other words, MOC orders that are already being executed and matched away from the primary exchanges will continue to match and execute on away venues, but rather would match and execute on CMC rather than on a less regulated, less-transparent venue. In fact, the Exchange believes the proposed additional CMC MOC Cut-Off Times are not likely to materially increase market fragmentation and therefore have a negative impact on the market because data shows that even with the implementation of CMC, there is still a significant amount of volume executed on the primary exchanges' suggesting that market participants continue to utilize the primary closing auctions.

⁶⁶ See Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc., a Cboe Company (Oct. 11, 2017) ("Furthermore, [CMC] would operate on the Exchange's reliable SCI systems...significant MOC liquidity is conducted today by off-exchange venues. These venues are not SCI systems and, therefore, not subject to Regulation SCI's enhanced resiliency requirements. [CMC] could attract MOC orders from these off-exchange venues to the Exchange and its reliable SCI system, furthering the Commission's presumed desire for liquidity at the close to be conducted on SCI systems.")

Figure 6 (Source: Internal Exchange Data)



Market Complexity and Operational Risk⁶⁷

The Exchange believes that the proposed rule change is simple and straightforward, and as such will not significantly increase market complexity or operational risk. The Exchange already received approval to change its MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., which resulted in no increase in market complexity and operational risk. The Exchange now seeks only to offer additional CMC MOC Cut-Off Times, none of which will increase market complexity or operational risk. Indeed, the proposed 3:15 p.m. and 3:30 p.m. CMC MOC Cut-Off Times are designed to help aid Members in managing their MOC order flow, and actually *mitigate* their operational and technological risk. The proposed 3:54 p.m. MOC Cut-Off Time – like the approved 3:49 p.m. MOC Cut-Off Time – is intended only to help better align CMC with the MOC cut-off time utilized by Nasdaq for its closing auction. While Members will now have the option to designate orders for

⁶⁷ Supra note 56.

participation in multiple CMC MOC Cut-Off Times, and any unmatched quantities for such orders will carry forward to the next CMC session, the Exchange believes that Members are well-equipped to manage any new workflow associated with these proposed enhancements. Indeed, the Exchange conferred with Members to discuss the proposed workflow prior to submitting this proposal, and Members indicated that such changes did not present new or novel issues for them to consider. In addition, as previously noted,⁶⁸ both current CMC users and market participants in general, possess high-speed routing and order handling technology, that will enable them to efficiently manage the proposed changes to CMC. Members continuing to only participate in a single CMC session will not have to consider new operational requirements of monitoring and consuming a new data feed or consider the utilization of a new order type or implementation of new Exchange code, other than perhaps needing to monitor the Cboe Auction Feed for the publication of CMC information at a different CMC MOC Cut-Off Time. While Members electing to participate in multiple CMC sessions will need to monitor the Cboe Auction Feed for CMC information at multiple CMC MOC Cut-Off Times, Members have indicated that the operational and technological requirements to do so are not complex, and do not present any new or novel issues. In addition, as previously noted,⁶⁹ market participants today utilize high-speed technology that enables to receive and process market data in sub-second latencies. As such, given that the proposed CMC MOC Cut-Off Times are multiple *minutes* apart, the proposed CMC MOC Cut-Off Times should not present any new or novel issues for Members.

⁶⁸ Supra note 32.

⁶⁹ Id.

Additionally, just as the Exchange did prior to proposing the 3:49 p.m. CMC MOC Cut-Off Time, the Exchange discussed this current proposal with CMC users and learned that CMC's current users are technologically equipped⁷⁰ to manage the proposed 3:54 p.m. MOC Cut-Off Time, and that they can respond to CMC's publication of matched shares and quickly reroute any unmatched MOC orders in Nasdaq-listed securities to Nasdaq's closing auction. Furthermore, the Exchange again notes that both off-exchange venues and other exchanges already offer MOC cut-off times that are closer in time to the end of Regular Trading Hours. Specifically, in 2018 Nasdaq received approval to move the cut-off times for the entry of MOC and Limit-On-Close ("LOC") orders from 3:50 to 3:55 p.m..⁷¹ Similarly, in 2018 NYSE received approval from the SEC to extend cut-off times for order entry and cancellation for participation in its closing auction, from 3:45 p.m. to 3:50 p.m..⁷² NYSE also offers discretionary-orders, which unlike MOC/LOC orders subject to NYSE's 3:50 p.m. cut-off, may be entered for participation in the closing auction until 3:59:50.⁷³ Additionally, market participants may enter MOC orders for participation in NYSE Arca's closing auction up to 3:59 p.m..⁷⁴ Finally, various off-exchange venues

⁷⁰ Id.

⁷¹ See Securities Exchange Act Release No. 34-84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR-Nasdaq-2018-068) (Order approving a rule change by Nasdaq) (The Commission approved a rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC orders from 3:50 p.m. to 3:55 p.m.); see also Securities Exchange Act Release No. 34-85021 (January 31, 2019) (SR-NYSE-2018-58) (Order approving a rule change by NYSE) (The Commission approved a rule change by the NYSE to amend Rule 123C to extend the cut-off times for order entry and cancellation for participation in the closing auction, from 3:45 p.m. to 3:50 p.m.).

⁷² Id.

⁷³ Supra note 4.

⁷⁴ See "Closing Auction Timeline", available at: <https://www.nyse.com/markets/nyse-arca/trading-info>.

offer closing match processes with cut-off times aligned with those of the primary exchanges, and even as close to 30-seconds before market close, 4:00 p.m.⁷⁵

Moreover, the proposed 3:15 p.m. and 3:30 p.m. CMC MOC Cut-Off Times will also enable new and existing CMC users that may not have high-speed trading and routing infrastructure, to still utilize CMC and not rely on high-speed technology to reroute unmatched CMC orders from the 3:49 p.m. or 3:54 p.m. MOC Cut-Off Times. The Exchange also notes that CMC is a voluntary offering, and Members may freely decide whether to participate.

Accordingly, the Exchange believes that market participants are well accustomed to managing the various cut-off times in today's marketplace and incorporating these timelines into their trading decisions. The number of exchanges and off-exchange venues with extended cut-off times indicates that market participants find value in their ability to retain control of their trading heading into the end of Regular Trading Hours, and the primary exchanges and off-exchange venues have responded to such demand. Certainly, market participants would not desire cut-off times closer to the end of Regular Trading Hours if they could not technologically and operationally manage their trading accordingly. Therefore, the proposed additional later CMC MOC Cut-Off Time should not present market participants with any novel operational or technological complexities.

The Exchange further notes that it has considered carefully the operational and technological requirements necessary to implement multiple CMC MOC Cut-Off Times. Relevant operations and technology teams were consulted in designing the proposed CMC MOC Cut-Off Times and confirmed that the Exchange's Systems can process and manage

⁷⁵ Supra note 50.

multiple CMC sessions. As such, the Exchange does not anticipate any undue increase in operational or technological complexity in implementing the proposed CMC MOC Cut-Off Times.

Manipulation⁷⁶

In its CMC Amendment the Exchange noted that the value of the 3:49 p.m. CMC MOC Cut-Off Time was not the proximity of CMC's matched share message to the cut-off times of the primary exchanges, but rather the ability of users to trade their orders for a longer period of time before deciding whether to commit their MOC orders to CMC. The Exchange further stated that it did not expect that the proposed extension of the CMC MOC Cut-Off Time to 3:49 p.m. would result in an increase in manipulative activity due to information asymmetries, or that it raised any unique manipulation concerns relative to how CMC existed with a CMC MOC Cut-Off Time of 3:35 p.m. Importantly, the Exchange believes that this rationale also applies to the current proposal, and that the SEC should dismiss any manipulation concerns regarding this proposal, just as it did with the Original Proposal and CMC Amendment.

Here, the Exchange notes that the mere existence of multiple CMC MOC Cut-Off Times does not make any information CMC participants may be able to glean from their paired-off MOC orders any more valuable. Rather, the value of any information learned by CMC participants is still limited in nature. For instance, any information that CMC participants may learn from receiving matched MOC order messages is indeed limited in nature because the CMC participant would still only know the unexecuted size of its own

⁷⁶ Supra note 56.

order(s).⁷⁷ Even if a Member participated in all four CMC sessions - 3:15 p.m., 3:30 p.m., 3:49 p.m., and 3:54 p.m. – and received messages regarding matched MOC orders, the Cboe Auction Feed disseminates the total size of matched buy and sell orders for each MOC session *individually* (i.e., not in aggregate). Moreover, the proposed CMC MOC Cut-Off Times are many minutes apart, during which time new MOC orders may be entered, rendering useless any information a Member may have gleaned regarding an imbalance in the prior session. Additionally, even if a Member chose to participate in CMC only to gather information about the direction of an imbalance and use such information to manipulate the closing price, the Member's orders were still eligible for execution subjecting the Member to economic risk.

While this proposal would result in the total shares for buy and sell orders in CMC being disseminated several times during the last hour of trading, and with two CMC MOC Cut-Off Times in close proximity to the primary exchanges' MOC cut-off times, these changes do not suddenly make such information more valuable or useful in terms of enhancing opportunities for gaming and manipulating the official closing price. The 3:49 p.m. and 3:54 p.m. CMC MOC Cut-Off Times are one-minute prior to NYSE's and Nasdaq's MOC cut-off times. As noted throughout, today's markets are marked by technological solutions which typically operate in durations of microseconds. In this context, the separation between the CMC MOC Cut-Off Times and those of NYSE's and

⁷⁷ The Exchange notes that in its Final Approval Order, even the Commission noted that, "In particular, a market participant would only be able to determine the direction of the imbalance and would have difficulty determining the magnitude of any imbalance, as it would only know the unexecuted size of its own order. In addition, the information would only be with regard to the pool of liquidity on BZX and would provide no insight into imbalances on the primary listing exchange, competing auctions, ATSS, or other off-exchange matching services which, as described above, can represent a significant portion of trading volume at the close." Supra note 15.

Nasdaq's is a substantial duration of time, during which much can change in the marketplace, thus limiting the value of information, if any, that can be gleaned from CMC's dissemination of matched shares at these times.

Moreover, the 3:15 p.m. CMC MOC Cut-Off Time is thirty-five-minutes prior to NYSE's MOC cut-off time and forty-minutes prior to Nasdaq's MOC cut-off time. Similarly, the 3:30 p.m. CMC MOC Cut-Off Time is twenty-minutes prior to the NYSE's MOC cut-off time, and twenty-five-minutes prior to the Nasdaq MOC cut-off time. These proposed CMC MOC Cut-Off Times are even further from the primary exchanges' cut-off times than the current CMC MOC Cut-Off Time, during which the marketplace and CMC will experience significant change, even further limiting the value of information, if any, that a Member may glean from the dissemination of matched shares.

Furthermore, as with the current CMC MOC Cut-Off Time, the proposed CMC MOC Cut-off Times do not present any information asymmetries that do not already exist in today's markets, as the very nature of trading creates short term asymmetries of information to those who are parties to a trade.⁷⁸ Indeed, as noted by the Commission, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed.⁷⁹ Additionally, NYSE imbalance information is already disseminated to NYSE floor brokers, who are permitted to share with their customers specific data from the imbalance feed.⁸⁰ Even in this case, though, the Commission stated

⁷⁸ The Exchange also notes that in its Final Approval Order, even the Commission noted that, "Further, the Commission believes information asymmetries as those described by commenters exist today and are inherent in trading, including with respect to closing auctions. For example, any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed." Id.

⁷⁹ Id.

⁸⁰ Id.

that the value of such information is limited because the imbalance information does not represent overall supply and demand for a security, is subject to change, and is only one relevant piece of information.⁸¹ Similarly, because any information gleaned by a CMC participant is limited only to the unexecuted size of their order(s), and relative to the depth of only the BZX pool of liquidity, the Exchange believes that the proposed addition of the CMC MOC Cut-Off Times does not create an increased risk of manipulative trading activity.

Moreover, there are currently controls and processes in place to monitor for manipulative trading activity, such as the supervisory responsibilities and capabilities of exchanges and the expansive cross market surveillance conducted by FINRA. Following approval of this proposal, the Exchange, FINRA and others will continue to surveil for potential manipulative activity and when appropriate, bring enforcement actions against market participants engaged in manipulative trading activity.

Item 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment applies equally to all Members, and is intended to offer additional CMC MOC Cut-Off Times, enabling a broader segment of Members to utilize CMC at times that better accommodate different trading strategies, and Members' technological and operational capabilities. As discussed above, current and prospective CMC users are technologically equipped to participate in the 3:54 p.m. matching session

⁸¹ Id.

and timely re-route any unmatched CMC MOC orders in Nasdaq-listed securities to the Nasdaq closing auction. Members that may lack internal high-speed routing and trading technology may utilize third-party providers (discussed above) should they choose to participate in the 3:54 p.m. matching session. The Exchange notes that participation in CMC remains optional, and Members have the ability to determine whether or not to submit MOC orders to participate in CMC based on their technological capabilities.

Alternatively, the proposed CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. will allow CMC users that may lack high-speed trading and routing infrastructure to utilize CMC without having to quickly re-route unmatched CMC orders to the primary exchanges just prior to their cut-off times, as well as attract new users who may desire a mechanism that allows them to match their MOC orders earlier in the trading day. Moreover, CMC is a voluntary closing match process, and Members are not required to participate in CMC. By offering earlier CMC MOC Cut-Off Times in addition to the proposed later MOC Cut-Off Time of 3:54 p.m., the Exchange is providing various alternatives to support Members with different technological capabilities, thus seeking to foster competition rather than hinder competition.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed 3:54 p.m. MOC Cut-Off Time more closely aligns CMC MOC with the Nasdaq MOC cut-off time, while still providing CMC participants with an opportunity to reroute any of their unpaired MOC orders in Nasdaq-listed securities to the Nasdaq closing auction. In this regard, the proposed 3:54 p.m. MOC Cut-Off Time may make CMC a more viable alternative to the Nasdaq closing auction and

“should foster price competition and thereby decrease costs for market participants.”⁸²

Additionally, the proposed CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. will help make CMC a more attractive alternative to market participants that may not feel comfortable attempting to match in CMC at 3:49 p.m. and re-routing any unmatched CMC orders to NYSE before 3:49 p.m., or at 3:54 p.m. and re-routing any unmatched MOC orders in Nasdaq-listed securities to Nasdaq prior to 3:55 p.m.. These proposed MOC Cut-Off Times may also make CMC a more attractive closing price alternative to market participants that simply wish to reduce their MOC trading obligations earlier in the trading day by attempting to match in CMC. Collectively, the proposed CMC MOC Cut-Off Times will enable the Exchange to compete with the primary exchanges more effectively, as well as with off-exchange venues that have cut-off times much closer in time to the market close and comprise a growing percentage of closing volume.

Item 5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Securities and Exchange Commission (the “Commission”) action on the proposed rule change specified in Section 19(b)(2) of the Act.⁸³

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

(a) Not applicable.

⁸² Supra note 15.

⁸³ 15 U.S.C. 78s(b)(2).

(b) Not applicable.

(c) Not applicable.

(d) The Exchange requests that the Commission approve the proposed Amendment No. 2 on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable. This proposed Amendment No. 2 removes from consideration the initially proposed 3:58 p.m. MOC Cut-Off Time. Specifically, the elimination of the initially proposed 3:58 p.m. MOC Cut-Off Time and limiting the proposed 3:54 MOC Cut-Off Time to Nasdaq-listed securities, removes from this proposal regulatory concerns on key issues, discussed *supra*, relating to CMC inhibiting price formation in the primary exchanges' closing auctions, as well as CMC adding complexity to the marketplace. Furthermore, as noted above, the proposed clarifications to Interpretations and Policies .02 are designed to foster the protection of investors and will enable Members to better manage their MOC orders in the event of an Exchange' matching engine impairment.

The Exchange notes that the proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times are well in advance of any of the primary exchanges' MOC cut-off times, providing both technologically advanced Members and those relying on third-party vendors or other broker-dealers, more than enough time to re-route any unmatched MOC orders to the primary auctions or off-exchange closing price mechanisms. The Exchange further notes that the proposed 3:54 p.m. MOC Cut-Off Time, while limited to Nasdaq-listed securities only, is essentially identical in function and purpose to the existing 3:49 p.m. MOC Cut-Off Time. Specifically, just as the 3:49 p.m. MOC Cut-Off Time, which is one minute prior to the NYSE MOC cut-off time of 3:50 p.m., helps to make CMC a more viable alternative to the NYSE closing auction, the proposed 3:54 p.m. MOC Cut-Off Time is also one minute prior to

Nasdaq's MOC cut-off time of 3:55 p.m., helping to make CMC a more viable alternative to the Nasdaq closing auction. Moreover, just as Members have more than enough time to re-route any unmatched MOC orders to the NYSE closing auction, Members will also have more than enough time to re-route any unmatched CMC orders in Nasdaq-listed securities to the Nasdaq closing auction. Accordingly, this Amendment No. 2 does not present any new or novel issues for consideration, and the Commission should approve the Exchange's proposed Amendment No. 2, just as it approved⁸⁴ the Exchange's earlier proposal to establish the existing 3:49 p.m. MOC Cut-Off Time.

The Exchange further believes that approval of the proposed rule change on an accelerated basis will help to quickly provide both existing and prospective CMC users with a viable alternative to the primary exchanges' closing auctions, and off-exchange closing price mechanisms, thereby foster[ing] price competition and...decreas[ing] costs for market participants."⁸⁵ Moreover, the proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times will make CMC appealing to a broader range of market participants, enabling investors to commit trading risk to a closing price mechanism earlier in the trading day, thereby reducing not only their trading risk, but operational and technological risk as well. As such, these proposed MOC Cut-Off Times are designed to foster the protection of investors, as well as remove impediments to and perfect the mechanism of a free and open market and a national market system. Furthermore, as discussed above, the proposed MOC Cut-Off Times do not present any new or novel manipulation, market fragmentation, market complexity, or price discovery concerns. As discussed above, CMC is designed to mitigate each of these concerns, and the

⁸⁴ Supra note 25.

⁸⁵ Supra note 15.

addition of the proposed MOC Cut-Off Times will not change the nature of CMC's underlying functionality.

Accordingly, the proposed rule change will not significantly affect the protection investors and the public interest. Therefore, the Exchange believes it is appropriate for the Commission to approve the proposed rule change on an accelerated basis.

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

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

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Exhibit 2-4. Not applicable.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2024-032]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Add Three Additional Market-on-Close Cut-Off Times to Cboe Market Close

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (the “Commission” or “SEC”) a proposal to amend Rule 11.28(a) to add three additional market-on-close (“MOC”) cut-off times (each a “MOC Cut-Off Time” and collectively “MOC Cut-Off Times”) to Cboe Market Close (“CMC”). The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the 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

BZX proposes to amend Rule 11.28(a) to add three additional CMC MOC Cut-Off times. These proposed CMC MOC Cut-Off times would be in addition to the existing CMC MOC Cut-Off time of 3:49 p.m. ET, for a total of four matching sessions: 3:15 p.m. ET (new); 3:30 p.m. ET (new); 3:49 p.m. ET (current); and 3:54 p.m. ET (new).³ The 3:54 p.m. CMC MOC Cut-Off Time will be limited to only Nasdaq-listed securities. Additionally, the Exchange proposes to amend Interpretations and Polices .02 to Rule 11.28 in order to more accurately describe how the Exchange will handle orders designated for multiple CMC MOC Cut-Off Times in the event the Exchange experiences a matching impairment impacting the Exchange's ability to conduct CMC matching sessions. Finally, the Exchange proposes to amend Rule 11.28(c) to state that at the

³ Hereinafter, all times referenced are in Eastern Time.

conclusion of each CMC MOC Cut-Off Time, the Cboe Auction Feed will disseminate the total size of all buy and sell orders matched in CMC, and that such information will only be for that particular CMC matching session and would not include the total size of matched buy and sell orders from any prior CMC MOC Cut-Off Time.

The proposed CMC MOC Cut-Off Times are based on Member feedback.⁴ Specifically, in response to CMC's noticeable increase in executed volume (discussed *infra*), there has been heightened interest in CMC from both existing users, as well as potential new users of CMC (collectively "Members"). Collectively, these Members have requested certain enhancements to CMC that would encourage existing users to increase their utilization of CMC, as well encourage prospective users to begin using CMC. Namely, Members have expressed a desire for: (1) CMC MOC Cut-Off Times earlier in the trading day, and prior to the current CMC MOC Cut-Off Time of 3:49 p.m.; and (2) a CMC MOC Cut-Off Time closer to Nasdaq's MOC cut-off time of 3:55 p.m.⁵ Accordingly, both the Exchange and its Members believe that these additional CMC MOC Cut-Off Times will help to position CMC as more viable alternative to the primary exchanges' closing auctions and off-exchange closing price services. Additionally, multiple CMC MOC Cut-Off Times will make CMC more appealing to a larger segment

⁴ The Exchange notes that its Amendment No. 1 also proposed an MOC Cut-Off Time of 3:58 p.m. The Exchange, however, has removed the 3:58 MOC Cut-Off Time from its proposal reflected in this Amendment No. 2, and instead now proposes additional MOC Cut-Off Times of 3:15 p.m., 3:30 p.m., and 3:54 p.m. (the 3:54 p.m. ET session is limited to Nasdaq-listed securities only).

⁵ See Nasdaq Rule 4702(b)(11)(A), "A "Market On Close Order" or "MOC Order" is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. Subject to the qualifications provided below, MOC Orders may be entered between 4 a.m. ET and immediately prior to 3:55 p.m. ET. MOC Orders may be cancelled and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 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 (e.g., Side, Size, Symbol, or Price, or duplication of an Order). MOC Orders cannot be cancelled or modified at or after 3:58 p.m. ET for any reason. An MOC Order shall execute only at the price determined by the Nasdaq Closing Cross."

of market participants by providing Members with different trading strategies and technical and operational capabilities more flexibility in how they manage their market-on-close (“MOC”) and closing price orders.

Procedural Background

On May 5, 2017, the Exchange filed a proposed rule change to adopt CMC, a match process for MOC orders in non-BZX listed securities and on December 1, 2017, filed Amendment No. 1⁶ to that proposal (the “Original Proposal”).⁷ On January 17, 2018, the Commission, acting through authority delegated to the Division of Trading and Markets,⁸ approved the Original Proposal (“Approval Order”).⁹ On January 31, 2018, NYSE Group, Inc. (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”) filed petitions for review of the Approval Order (“Petitions for Review”). Pursuant to Commission Rule of Practice 431(e),¹⁰ the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.¹¹ On March 1, 2018,

⁶ The only change in Amendment No. 1 was to rename the proposed closing match process as Cboe Market Close. Per the Commission, because Amendment No. 1 was a technical amendment and did not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 was not subject to notice and comment.

⁷ See Securities Exchange Act Release No. 34-80683 (May 16, 2017), 82 FR 23320 (May 22, 2017) (SR-Bats-BZX-2017-34) (Notice of Filing of a Proposed Rule Change to Introduce Bats Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

⁸ 17 CFR 200.30-3(a)(12).

⁹ See Securities Exchange Act Release No. 34-82522 (January 17, 2018), 83 FR 3205 (January 23, 2018) (SR-BatsBZX-2017-34) (Notice of Filing of Amendment No. 1 and Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28).

¹⁰ 17 CFR 201.431(e).

¹¹ See Letter to Christopher Solgan, Assistant General Counsel, Cboe Global Markets, Inc. (Jan. 24, 2018) (providing notice of receipt of notices of intention to petition for review of delegated action and stay of order), available at: <https://www.sec.gov/rules/sro/batsbzx/2018/sr-batsbzx-2017-34-letter-from-secretary-to-cboe.pdf>.

pursuant to Commission Rule of Practice 431, the Commission issued a scheduling order granting the Petitions of Review of the Approval Order, and provided until March 22, 2018, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.¹² On April 12, 2018, NYSE and Nasdaq submitted written statements opposing the Approval Order and BZX submitted a statement in support of the Approval Order.¹³ On October 4, 2018, BZX filed Amendment No. 2¹⁴ to the Original Proposal.

The Commission conducted a de novo review of the CMC proposal and associated public record, including Amendment No. 2, the Petitions for Review, and all comments and statements submitted by certain exchanges, issuers, and other market participants,¹⁵ to determine whether the proposal was consistent with the requirements of the Act and the rules and regulations issued thereunder that are applicable to a national securities exchange.¹⁶ The Commission noted that under Rule 700(b)(3) of the

¹² See Securities Exchange Act Release No. 82794, 83 FR 9561 (Mar. 6, 2018). On March 16, 2018, the Office of the Secretary, acting by delegated authority, issued an order on behalf of the Commission granting a motion for an extension of time to file statements on or before April 12, 2018. See Securities Exchange Act Release No. 82896, 83 FR 12633 (Mar. 22, 2018)

¹³ See Statement of NYSE Group, Inc., in Opposition to the Division’s Order Approving a Rule to Introduce Cboe Market Close (“NYSE Statement”); Statement of the Nasdaq Stock Market LLC in Opposition to Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Introduce Cboe Market Close (“Nasdaq Statement”); and Statement of Cboe BZX Exchange, Inc., in support of Commission Staff’s Approval Order (“BZX Statement”), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm>.

¹⁴ See Securities Exchange Act Release No. 34-84670 (November 28, 2018), 83 FR 62646 (December 4, 2018) (SR-BatsBZX-2017-34) (“Notice of Filing of Amendment No. 2 to Proposed Rule Change to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28”).

¹⁵ See “Statements on File No. SR-BatsBZX-2017-34”, available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm>.

¹⁶ See Securities Exchange Act Release No. 34-88008 (January 21, 2020), 85 FR 4726 (January 27, 2020) (SR-BatsBZX-2017-34) (“Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities Under New Exchange Rule 11.28”).

Commission’s Rule of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder...is on the self-regulatory organization that proposed the rule change.”¹⁷

Importantly, after reviewing the entire record, the Commission concluded that BZX met its burden to show that the proposed rule change was consistent with the Act, and pursuant to its January 21, 2020, order, set aside the Approval Order and approved BZX’s CMC proposal, as amended (“Final Approval Order”).¹⁸ Notably, the Commission stated that the record “demonstrate[d] that Cboe Market Close should introduce and promote competitive forces among national securities exchanges for the execution of MOC orders”¹⁹ and that “the record demonstrate[d] that Cboe Market Close should not disrupt the closing auction price discovery process nor should it materially increase the risk of manipulation of official closing prices”.²⁰

Subsequently, on August 5, 2022, the Exchange filed a proposed rule change to amend Rule 11.28(a) to extend CMC’s MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. (“CMC Amendment”).²¹ On October 4, 2022, the Commission, acting through authority delegated to the Division of Trading and Markets, designated a longer period within which to take action on the Exchange’s CMC Amendment.²² Later, on November 11, 2022, BZX filed Amendment No. 1 to its CMC Amendment, and the Commission

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ See Securities Exchange Act Release No. 34-95529 (August 17, 2020), 87 FR 52092 (August 24, 2022) (SR-CboeBZX-2022-038).

²² See Securities Exchange Act Release No. 34-95967 (October 4, 2022), 87 FR 61425 (October 11, 2022) (SR-CboeBZX-2022-038).

instituted proceedings to determine whether to approve or disapprove the proposed rule change as modified by Amendment No. 1.²³ Finally, on February, 9, 2023, the Commission, approved the proposed CMC Amendment (“CMC Amendment Approval Order”).²⁴

In approving the CMC Amendment, the Commission stated that the proposal was consistent with Section 6(b)(5) of the Act,²⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; as well as Section 6(b)(8) of the Act,²⁶ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons discussed more fully below, the Exchange believes that when applying the Commission’s analysis in the Final Approval Order and the CMC Amendment Approval Order, to the current proposal, such review would similarly conclude that this proposal is consistent with the Act.

Increased Volume and New Demand for CMC

²³ See Securities Exchange Act Release No. 34-96359 (November 18, 2022), 87 FR 72537 (November 25, 2022) (SR-CboeBZX-2022-038).

²⁴ See Securities Exchange Act Release No. 34-96861 (February 9, 2023), 88 FR 9940 (February 15, 2023) (SR-CboeBZX-2022-038).

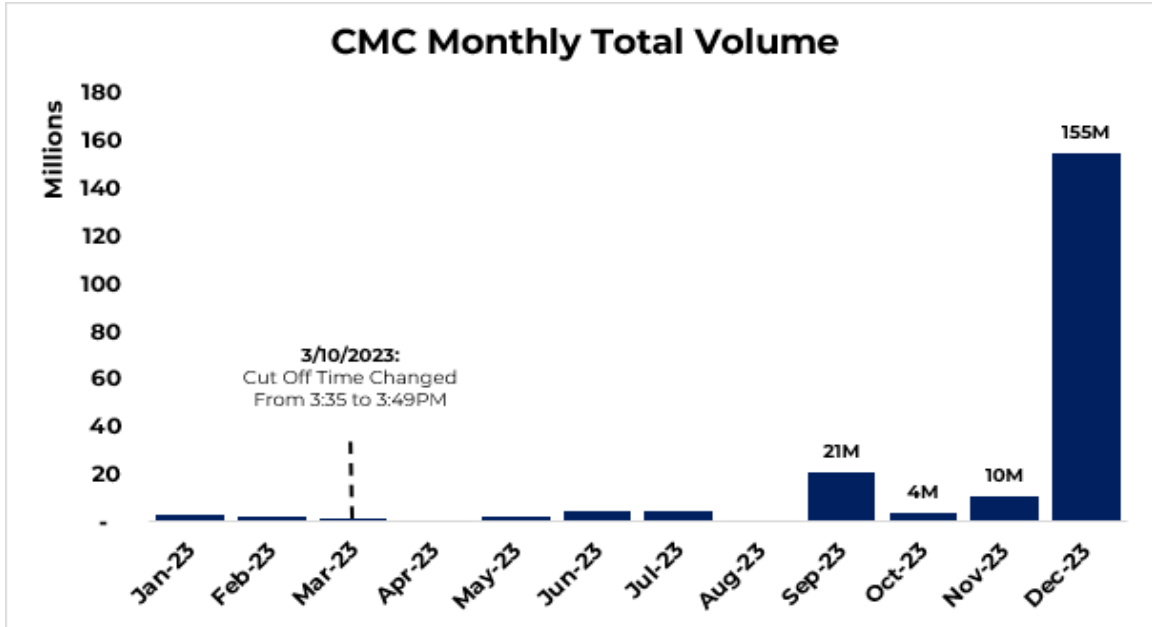
²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(8).

On March 10, 2023, the Exchange moved its CMC MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. As illustrated in Figure 1 below, since implementing the 3:49 p.m. CMC MOC Cut-Off Time, CMC has experienced noticeable growth in its trading volume, rising modestly beginning in May 2023 and more remarkably between September 2023 and November 2023, ultimately reaching a record-high of 155 million shares traded in December 2023. Based on CMC's growing usage, the Exchange has received various feedback from both existing CMC users and prospective CMC users. Collectively, these Members have requested certain enhancements to CMC that would encourage existing users to increase their utilization of CMC, as well encourage prospective users to begin using CMC. Namely, Members have expressed a desire for: (1) CMC MOC Cut-Off Times earlier in the trading day, and prior to the current CMC MOC Cut-Off Time of 3:49 p.m.; and (2) a CMC MOC Cut-Off Time closer to Nasdaq's MOC cut-off time of 3:55 p.m.

As noted, both the Exchange and its Members believe that these enhancements will help to position CMC as more viable alternative to the primary exchanges' closing auctions and off-exchange closing price services. Additionally, multiple CMC MOC Cut-Off Times will make CMC more appealing to a larger segment of Members by providing Members with different trading strategies and technical and operational capabilities more flexibility in how they manage their MOC and closing price orders.

Figure 1 (Source: Internal Exchange Data)



Proposed Functionality

Accordingly, BZX proposes to amend Rule 11.28(a) to add three CMC MOC Cut-Off times. These MOC Cut-Off times would be in addition to the existing CMC MOC Cut-Off time of 3:49 p.m., for a total of four matching sessions: 3:15 p.m. (new), 3:30 p.m. (new), 3:49 p.m. (current), 3:54 p.m. (the 3:54 p.m. matching session is for Nasdaq-listed securities only). MOC orders may be entered for each matching session up to the relevant CMC MOC Cut-Off Time, beginning each day at 6:00 a.m.²⁷ Members will have the ability to specify on their order instructions which CMC session(s) they wish to participate in. For orders that specify a willingness to match in multiple matching sessions, any unfilled quantity from an earlier session will carry forward to the next session(s). Any unfilled quantity remaining after a Member’s specified final matching

²⁷ For instance, an MOC order specifying that it wishes to participate in the proposed 3:15 CMC MOC Cut-Off Time must be entered, cancelled, or replaced prior to 3:15 p.m. Similarly, a MOC order specified to participate in the proposed 3:30 CMC MOC Cut-Off Time may be entered, cancelled, or replaced anytime between 6:00 a.m. and 3:29:59 p.m.

session will be canceled back to the Member. To illustrate the proposed functionality, consider the following examples.

Example 1: Order indicates matching in a single session

Order 1: Buy 100 @ MKT – CMC Session: 3:49pm, Timestamp: 3:00:00 pm

Order 2: Sell 100 @ MKT – CMC Session: 3:15pm, 3:30pm, 3:49pm, Timestamp: 3:01:00pm

Results:

- Order 1 will not match with Order 2 in the 3:15pm or 3:30pm session. Order 2's unfilled quantity of 100 shares will first carry forward from the 3:15 session, then again from the 3:30 session, and finally to the 3:49 session.
- Order 1 and Order 2 match in the 3:49pm session for 100 shares at the closing price.

Example 2: Order indicates matching in multiple sessions

Order 1: Buy 500 @ MKT – CMC Session: 3:15pm, 3:30pm, 3:49pm, Timestamp: 3:00:00pm

Order 2: Sell 100 @ MKT – CMC Session: 3:30pm, Timestamp: 3:01:00pm

Order 3: Sell 100 @ MKT – CMC Session: 3:15pm, Timestamp: 3:02:00pm

Order 4: Sell 100 @ MKT – CMC Session: 3:49pm, Timestamp: 3:03:00pm

Results:

- Order 1 and Order 3 match in the 3:15pm session for 100 shares at the closing price and Order 1's 400 remaining shares are carried over to the next session.
- Order 1 and Order 2 match in the 3:30pm session for 100 shares at the closing price and Order 1's 300 remaining shares are carried over to the next session.
- Order 1 and Order 4 match in the 3:49pm session for 100 shares at the closing price and Order 1's 200 remaining shares are canceled back.

Example 3: Order's unfilled quantity retains its original timestamp for priority purposes

Order 1: Buy 500 @ MKT – CMC Session: 3:15pm, 3:30pm, Timestamp: 3:00:00pm

Order 2: Buy 100 @ MKT – CMC Session: 3:30pm, Timestamp: 3:01:00pm

Order 3: Sell 100 @ MKT – CMC Session: 3:15pm, Timestamp: 3:02:00pm

Order 4: Sell 100 @ MKT – CMC Session: 3:30pm, Timestamp: 3:03:00pm

Results:

- Order 1 and Order 3 match in the 3:15pm session for 100 shares at the closing price and Order 1's 400 remaining shares are carried over to the next session.
- Order 1²⁸ and Order 4 match in the 3:30pm session for 100 shares at the closing price and Order 1's 300 remaining shares are canceled back.
- Order 2's 100 shares are unfilled and canceled back at 3:30pm.

As reflected in the proposed edits to Rule 11.28, Interpretations and Policies .02, the Exchange also wishes to clarify that the reference to an “impairment” refers to an impairment of an Exchange’s matching engine responsible for the CMC matching process – i.e. where a matching engine responsible for conducting the CMC matching process has become unresponsive or crashed and is unable to process Members’ orders. With this in mind, the Exchange notes that when an Exchange matching engine responsible for the CMC process is impaired prior to or after a CMC MOC Cut-Off Time but prior to completion of CMC’s closing match process in a security, the action taken by the Exchange on orders designated to participate in CMC is dependent on Member instruction. Specifically, and as detailed in the Exchange’s technical specifications,²⁹ Members may elect “Cancel on Disconnect = Yes” or “Cancel on Disconnect = No”.³⁰ When a Member elects “No”, the Exchange will allow a Member’s orders to remain open

²⁸ Note that Order 1 in this scenario retains its priority over Order 2. Because Order 1 and Order 2 are both un-priced MOC orders, time priority takes precedent, with Order 1 maintaining its queue priority versus Order 2. See Rule 11.12, Priority of Orders, which provides that orders are ranked based on price, then time.

²⁹ See “Cboe US Equities BOE Specification,” pg. 74, “Cancel on ME Disconnect,” available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_BOE_Specification.pdf; See also “Cboe US Equities FIX Specification,” pg. 66, “Cancel on ME Disconnect,” available at: https://cdn.cboe.com/resources/membership/Cboe_US_Equities_FIX_Specification.pdf.

³⁰ The Exchange notes that this field cannot be left blank, and that if a Member does not designate a value, the default is, “Cancel on Disconnect = YES”. Furthermore, during an impairment, no new Exchange orders – including CMC orders – are accepted.

during a matching engine impairment; provided, however, if an impairment exceeds five-minutes *all* orders will be cancelled unconditionally, regardless of a Member's instruction. Importantly, even when a Member has elected "No", a Member may still cancel their order during a matching engine impairment and prevent their MOC order(s) from participating in CMC once the matching engine failover is completed. When a Member elects "Yes", all open orders associated with a session are immediately cancelled in the event of a matching engine impairment.

By way of illustration, assume a Member has submitted an order to participate in the 3:15 CMC MOC Cut-Off Time, has selected "Cancel on Disconnect = No", a matching engine impairment occurs at 3:14 p.m., and an impairment impacting the CMC matching process lasts less than five-minutes. In this instance, the Member's MOC order will remain open, and post matching engine failover, the Exchange will simply conduct the CMC session that should have occurred at 3:15 p.m. and attempt to match the Member's MOC order.

To further illustrate, assume a Member has designated its MOC order to participate in multiple CMC MOC Cut-Off Times (e.g., 3:30, 3:49, and 3:54), has also selected Cancel on Disconnect = NO, a matching engine impairment impacting the CMC process occurs at 3:29 p.m., and the impairment last less than five-minutes. In this instance, the Member's MOC order will remain open, and post matching engine failover, the Exchange will simply conduct the CMC session that should have occurred at 3:30 p.m. and attempt to match the Member's MOC order. Should the Member's 3:30 p.m. MOC order not be matched, or only partially filled, the Member's MOC order will proceed to the 3:49 matching session.

In addition, as is the case with the current functionality, if the Exchange becomes impaired after completing the closing match process in a security, it will retain all matched MOC orders and execute those orders at the official closing price once the impairment is resolved.

Finally, the Exchange wishes to amend Rule 11.28(c) to clarify that even with the proposed multiple CMC MOC Cut-Off Times, the total size of matched buy and sell orders disseminated via the Cboe Auction Feed will be limited to that *particular* CMC matching session – i.e., the information disseminated for the 3:30 p.m. CMC matching session will include the total size of matched buy and sell orders for the 3:30 p.m. CMC MOC Cut-Off Time only, and would not aggregate the total sizes of matched buy and sell orders from the prior 3:15 p.m. CMC MOC Cut-Off Time.

The Proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times

Members requesting CMC MOC Cut-Off Times earlier in the trading day have expressed that these additional CMC MOC Cut-Off Times will provide them more flexibility in managing their MOC and closing price order flow. For instance, some Members maintain multiple internal trading desks, each managing different types of order flow and trading strategies. One trading desk may manage orders that its traders actively trade throughout the trading day leading up to the close, making CMC MOC Cut-Off Times closer to 4:00 p.m. more valuable for that trading desk. Separately, one of the Member's other trading desks may typically execute orders guaranteeing the closing price or perhaps manage orders on behalf of index funds or ETF providers, that are often benchmarked to the official closing price. For this workflow, a Member may be agnostic as to when it commits MOC orders to CMC, a primary exchange's closing auction, or an

off-exchange closing price service, and may view the ability to commit such order flow to CMC earlier in the trading day at 3:15 p.m. or 3:30 p.m. as a valuable tool to help them execute orders and de-risk their trading risk earlier in the trading day.

Additionally, Members have indicated the proposed 3:15 p.m. and 3:30 p.m. CMC MOC Cut-Off Times will also assist them in managing any technological and operational risk associated with managing high volumes of order flow. Notional trading and trading volatility are typically at their highest towards the end of Regular Trading Hours. During this time, Members systems may be managing a significant number of MOC or closing price orders. Unless the Member is attempting to beat the closing price by trading such orders for as long as possible heading into the close, committing such orders to CMC earlier in the trading day will enable them to reduce the number of MOC and closing price orders their trading systems must manage. Notably, the Exchange noted in its CMC Amendment that today's market participants, including CMC's existing users, were technologically equipped³¹ to handle CMC's current 3:49 p.m. CMC MOC Cut-Off Time. While this remains the case today, the recent growth in CMC's executed

³¹ As a general matter, today's market participants, including CMC users, rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically often measured in microseconds. See generally "Staff Report on Algorithmic Trading in U.S. Capital Markets" (August 5, 2020), available at https://www.sec.gov/tm/reports-and-publications/special-studies/algo_trading_report_2020 ("Algorithmic Trading Report") ("Over the past decade, the manual handling of institutional orders is increasingly rare and has been replaced by sophisticated institutional order execution algorithms and smart order routing systems.") ("The secondary market for U.S.-listed equity securities that has developed within this structure is now primarily automated. The process of trading has changed dramatically primarily as a result of developments in technologies for generating, routing, and executing orders, as well as by the requirement imposed by law and regulation.") ("Modern equity markets are connected in part by the data flowing between market centers. An enormous volume of data is available to market participants. In recent years, there has been an exponential growth in the amount of market data available, the speed with which it is disseminated, and the computer power used to analyze and react to price movements.").

volume has attracted potential new users with trading strategies, and technological and operational capabilities, that have presented new use cases for CMC.

Overall, by having the ability to submit orders to the proposed 3:15 p.m., 3:30 p.m., and 3:49 p.m. CMC MOC Cut-Off Times, Members will have a greater opportunity of being matched earlier in the trading day before potentially needing to re-route their unmatched MOC orders to the primary exchanges or off-exchange closing price offerings. On high-volume order days – e.g. Russell Rebalance Days where trading volume is high – the utility of being able to de-risk closing cross order volume earlier in the trading day is both a rational trading decision and a prudent way for Members to manage their operational and technological risk as such event days are marked by high volume and volatility that may utilize a significant portion of some Members' systems capacity.

The Proposed 3:54 p.m. CMC MOC Cut-Off Time

The proposed 3:54 p.m. CMC MOC Cut-Off Time applies only to orders in Nasdaq-listed securities. Members requesting the CMC MOC Cut-Off Time of 3:54 p.m. have indicated that this CMC MOC Cut-Off Time will help to better align CMC with Nasdaq's MOC cut-off time of 3:55 p.m., thereby helping to make CMC a more viable alternative to Nasdaq's closing auction.

As noted in SR-CboeBZX-2022-038,³² today's market participants, including users of CMC, are technologically equipped³³ to handle a CMC MOC Cut-Off Time one-minute prior to the primary exchange's MOC cut-off time (here, Nasdaq's MOC cut-off

³² Supra note 23.

³³ Supra note 31.

time of 3:55 p.m.). As a general matter, today's market participants, including CMC users, rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically measured in microseconds. In this regard, the Exchange believes that if a CMC user receives a message that its MOC order was not matched in CMC, such CMC user will have more than enough time to reroute its MOC order(s) to Nasdaq. Importantly, the Exchange has confirmed with both existing and prospective CMC users that based on their technological capabilities (discussed *infra*), they would have ample time³⁴ to reroute unmatched CMC orders from the proposed 3:54 CMC MOC Cut-Off Time to Nasdaq by 3:55 p.m. in order to participate in the Nasdaq closing auction.³⁵ Furthermore, Members

³⁴ The CMC Closing Match Process – i.e., the matching of all buy and sell MOC orders entered into the System by time priority at the MOC Cut-Off Time, the electronic notification to Members of any unmatched MOC orders, and the dissemination by the Exchange of the total size of all buy and sell orders matched through CMC via the Cboe Auction Feed – generally occurs within *microseconds*. More specifically, while the duration may vary, the total matching process typically takes a fraction of second (e.g., ~948 microseconds), with the maximum being around 1-second. With these timeframes in mind, a Member in most instances currently knows its paired CMC quantity no later than 3:49:01 p.m., leaving the user at least fifty-nine-seconds (59) to reroute any unpaired MOC orders to the primary exchanges' closing auctions. As noted, the speed of today's trading technology is typically measured in microseconds, making fifty-nine-seconds (59) a significant amount of time for a user to make an automated trading decision. For reference, a microsecond is 1- millionth of a second.

³⁵ As it did for its proposal to move the CMC MOC Cut-Off Time to 3:49 p.m. from 3:35 p.m. (See SR-CboeBZX-2022-038) the Exchange discussed the proposed amendment with both current CMC users, as well as potential new users. By way of background, a large majority of CMC users are mid-size, regional broker dealers that utilize third-party front-end providers or broker-dealers that provide them with electronic and automated trading solutions such as algorithms and smart order routers, which they use to access CMC. Specifically, the Exchange discussed the proposed amendment - namely, the proposed 3:15 p.m., 3:30 p.m., and 3:54 p.m. MOC Cut-Off Times - with CMC's users, two (2) third-party providers whose end users are responsible for 100% of CMC's volume. Importantly these providers indicated that the automated routing and trading solutions they offer to CMC's users can appropriately manage the proposed CMC MOC Cut-Off Times, including the proposed 3:54 p.m. CMC MOC Cut-Off Time. Additionally, the Exchange discussed the proposed CMC MOC Cut-Off Times with potential new users of CMC (4 large, multinational bulge bracket broker-dealers). These market participants indicated that proposed CMC MOC Cut-Off Times would likely encourage them to use CMC as part of their trading and that they either independently maintained high-speed routing and trading capabilities, or utilized third-party technology providers or broker-dealers that provide them with such solutions. As such, these market participants did not have any operational or technological concerns with the proposed CMC MOC Cut-Off Times – particularly the 3:54 p.m. CMC MOC Cut-Off.

that may not possess their own internal electronic trading and routing capabilities to self-manage the proposed 3:54 p.m. CMC MOC Cut-Off Time rely on third-party solutions³⁶ and broker dealers that offer high-speed routing and trading solutions to manage their order flow, including their CMC orders.

Similar to the rationale for extending CMC's MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., Members desire a CMC MOC Cut-Off Time that is closer to Nasdaq's MOC cut-off time and the end of Regular Trading Hours³⁷ so they can retain control of their trading for a longer period of time.³⁸ By being able to trade closer to the Nasdaq's MOC cut-off time and the end of Regular Trading Hours, Members have more

³⁶ As a general matter, third-party technology providers and broker-dealers with electronic trading offerings provide automated trading and routing products and services to market participants that may not possess their own proprietary technology, or simply choose to leverage third-party solutions they deem superior to their own internal technology. By way of example, portfolio managers responsible for reweighting their managed funds may not possess internal automated routing and algorithmic trading capabilities, and instead utilize third-party solutions enabling them to trade on an automated basis. As such, the proposed CMC MOC Cut-Off Time of 3:54 p.m. is not likely to negatively impact market participants who may not possess the internal capabilities to reroute unmatched CMC MOC orders to the primary exchanges' closing auctions. The Exchange further notes that the utilization of third parties and broker-dealers for technological trading solutions was even noted by the Commission in its Algorithmic Trading Report. *Supra* note 33 ("Institutions that do not create their own algorithms generally use algorithms provided to them by institutional brokers.") ("Brokers are tasked by their customers with finding liquidity in a complex, fragmented market, achieving best execution, and minimizing information leakage and other implicit costs. To try to meet these goals, brokers use, and offer to their customers, a wide range of execution algorithms.").

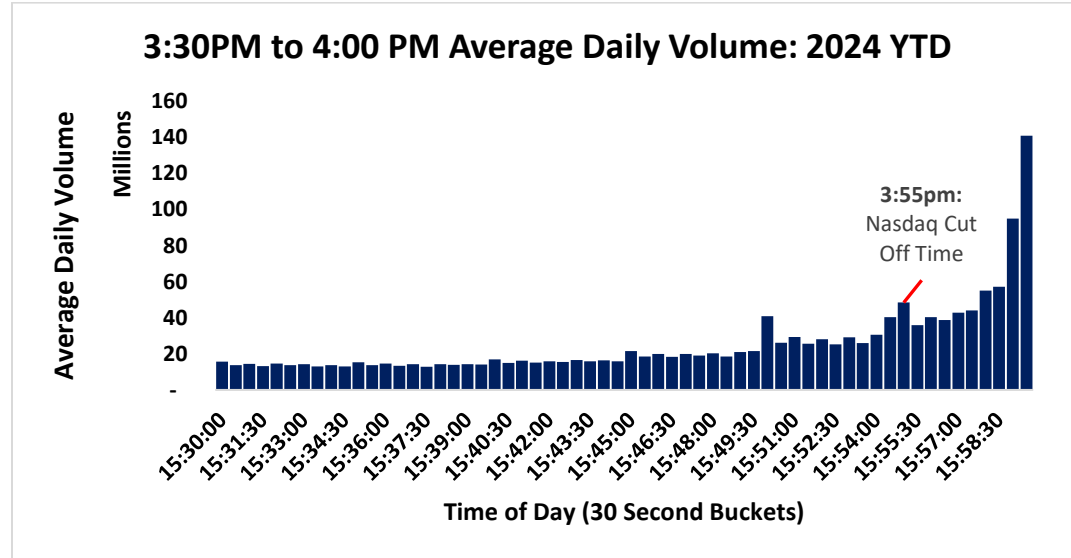
³⁷ The term "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* Rule 1.2 (w), definition of, "Regular Trading Hours."

³⁸ The Exchange notes that part of its rationale for adding the proposed 3:54 p.m. MOC Cut-Off Time is substantively identical to that of other exchanges moving their MOC cutoff times to later in the trading day, namely, NYSE and Nasdaq. *See* Securities Exchange Act Release No. 34-84454 (October 19, 2018), 83 FR 18580 (October 25, 2018) (SR-Nasdaq-2018-068) ("Specifically, the Exchange believes that extending the cutoff times for submitting on close orders will allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close."); *see also* Securities Exchange Act Release No. 34-84804 (December 12, 2018), 83 FR 64910 (December 18, 2018) (SR-NYSE-2018-58) ("The Exchange believes that extending the cut-off times for entry and cancellation of MOC and LOC Orders, cancellation of CO orders, as well as when the Exchange would begin disseminating Order Imbalance Information for the close would...allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close.").

opportunities to seek better priced liquidity for their orders in a variety of ways and reducing the size of their outstanding orders they may need to commit to CMC or the primary auctions, including but not limited to, finding contra-side liquidity in the marketplace and trading directly against such interest, or guaranteeing a customer order at a price better than the national best bid or offer by committing capital to an order and filling it in a principal capacity, as well as continuing to trade algorithmically into the close. By adding the CMC MOC Cut-Off Time of 3:54 p.m., CMC will be better positioned to serve as a viable option for market participants to consider when deciding which venues to route their MOC orders in Nasdaq-listed securities, thus enhancing intermarket competition.

In support of the above, Figure 2 shows the total average *daily* volume across all market centers, from 3:30 p.m. to 4:00 p.m. in 30-second intervals, and illustrates the Nasdaq MOC cut-off time. As illustrated, at Nasdaq's 3:55 p.m. MOC cut-off time, and 4:00 p.m. market close, there is a noticeable increase in traded volume in the overall marketplace, with volume relatively flat in the overall marketplace prior to those times. This analysis supports the Exchange's assertion that certain market participants do indeed prefer cut-off times later in the trading day, as volumes tend to significantly increase as the closing auctions approach. Therefore, the Exchange now seeks to implement the MOC Cut-Off Time of 3:54 p.m. to better align CMC with Nasdaq's 3:55 p.m. MOC cut-off time. By implementing this change, the Exchange believes that CMC will be better positioned as a viable alternative to Nasdaq's closing auction, thereby "foster[ing] price competition and...decreas[ing] costs for market participants."³⁹

³⁹ Supra note 14.

Figure 2 (Source: Internal Exchange Data)

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴⁰

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ Supra note 25.

the Section 6(b)(5)⁴² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the addition of the proposed CMC MOC Cut-Off Times would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed times would offer CMC users increased flexibility in how to manage their MOC and closing price order flow and their associated trading, and their technological and operational risk, as well help to better position CMC to serve as a viable alternative to the primary exchanges' closing auctions, and off-exchange closing price mechanisms. For instance, by having the option to allocate their MOC order flow across various CMC MOC Cut-Off Times, Members will have the opportunity to receive matches earlier in the trading day, thereby reducing their trading risk, as well as the volume of orders their systems may need to handle at once, thereby reducing operational and technology risk.

Furthermore, the Exchange has received feedback from Members that while moving the single CMC MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. (six-minutes prior to Nasdaq's MOC cut-off time) has been helpful in managing their MOC orders in NYSE-listed securities, Members desire a CMC MOC Cut-Off Time that more closely aligns with the current Nasdaq MOC cut-off time of 3:55 p.m. In this regard, the proposed 3:54 p.m. CMC MOC Cut-Off time will enable Members to actively trade orders in Nasdaq-listed securities for a longer period as they will no longer have to submit their MOC orders to BZX in order to participate in CMC at 3:49 p.m. – i.e., six-minutes prior to Nasdaq's cut-off time. Rather, Members will have until 3:53:59 to

⁴² Id.

submit MOC orders to BZX in order to participate in CMC, which provides Members an additional four minutes and fifty-nine seconds to actively trade Nasdaq-listed securities. As discussed above, if a Member's MOC orders are not matched in CMC the Member will still have ample time to reroute any unmatched to CMC MOC orders to Nasdaq's closing auction, thereby making CMC a more competitive alternative to Nasdaq's closing auction.

The Exchange notes that the primary market participants that would utilize the proposed 3:54 p.m. CMC MOC Cut-Off Time are technologically equipped⁴³ to re-route any unmatched CMC MOC orders in Nasdaq-listed securities to Nasdaq prior to Nasdaq's 3:55 p.m. MOC cut-off time. Specifically, Members are either technologically self-equipped to manage the proposed CMC MOC-Cut Off Times, or currently rely on third-party solutions that provide them with the technological capability to appropriately manage the proposed CMC MOC Cut-Off Times and timely re-route unmatched CMC orders participate in Nasdaq's closing auction.

Similarly, given the widespread use of routing and trading technology in today's markets, it is also likely that potential new CMC users currently possess the technological capabilities to manage the proposed CMC MOC Cut-Off Times, and if they do not, they could similarly rely on third-party providers⁴⁴ with high-speed technology offerings. Alternatively, new CMC users lacking high-speed trading and routing technology can simply utilize the earlier CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m.,

⁴³ Supra note 31.

⁴⁴ Supra note 36.

providing themselves more flexibility to reroute unmatched CMC orders to the primary exchanges.

The Exchange also notes that as CMC volume has increased, prospective new users⁴⁵ with different trading strategies and different technological and operational capabilities have expressed interest in utilizing CMC. This segment of Members has expressed a desire for earlier CMC MOC Cut-Off Times (i.e., 3:15 p.m. and 3:30 p.m.), which they note will assist them in more efficiently managing their workflows and trading risk. For instance, some of these Members would prefer to commit certain of their closing price orders – e.g., guaranteed close orders – to a closing auction mechanism earlier in the trading day. By submitting such orders to CMC and potentially receiving a match, a Member can reduce its trading risk. Additionally, by having the ability to allocate MOC orders across various CMC MOC Cut-Off Times, Members can more capably manage their closing order volume and reduce the number of messages that their systems must manage and process heading into market close, when trading volume and volatility are typically at their highest. As such, Members will be better able to manage any operational or technology risk⁴⁶ associated with a high order volume day such as index rebalance days (e.g., Russell or MSCI index rebalance days) or unexpected high

⁴⁵ Prospective new users of CMC include both Members expressing interest in utilizing CMC for the first time, as well as new end-clients of Members that currently utilize CMC, and have inquired as to CMC's functionality, and the proposed enhancements.

⁴⁶ The Exchange notes that there are market participants that may not currently possess internal high-speed routing and trading technology. However, such market participants may, and likely already do, utilize routing and trading services offered by third-party providers or broker-dealers to handle and execute their orders electronically. Additionally, CMC is entirely voluntary and Members that do not possess internal high-speed trading and routing technology, or utilize third-party broker-dealers, are not required to use CMC. Accordingly, the Exchange believes that the proposed MOC Cut-Off Time is not likely to result in disparate treatment amongst CMC users and other market participants.

volatility trading days, as well as better manage the number of MOC orders a Member may need to send to an exchange or off-exchange venue at any one time.⁴⁷

As with existing CMC users, given the widespread use of routing and trading technology in today's markets, it is likely that potential new CMC users also currently possess the technological capabilities to manage the proposed CMC MOC Cut-Off Times, and if they do not, could similarly rely on third-party providers⁴⁸ with high-speed technology offerings. Alternatively, new CMC users lacking high-speed trading and routing technology can simply utilize the earlier CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m., providing themselves more flexibility to reroute unmatched CMC orders to the primary exchanges. Regardless, the proposed earlier MOC Cut-Off Times occur much earlier in time than the primary exchanges' MOC cut-off times, giving the users of the proposed 3:15 p.m. and 3:30 p.m. MOC Cut-Off Times more than enough time to re-route their unmatched MOC orders to the primary exchanges' closing auctions; i.e., thirty-five minutes/twenty minutes prior to the NYSE MOC cut-off time, respectively; and forty minutes/twenty minutes prior to the Nasdaq MOC cut-off time respectively.

As noted in its CMC Amendment, the Exchange continues to believe that the extension of cut-off times by the primary exchanges since CMC's approval in 2020 as well as the growth of off-exchange venues⁴⁹ with cut-off times in such close proximity to

⁴⁷ In this regard, the Exchange notes that some Members have expressed that while they have ample time to redirect any unmatched CMC orders to the primary exchanges, internal or external message rate checks (e.g., SEC Rule 15c3-5 risk checks or market center checks) may prohibit them from doing so if the Member is submitting a large volume of unmatched MOC orders at one time. In this regard, the proposed additional MOC Cut-Off Times may assist Members in allocating MOC orders across multiple CMC sessions, and should they be matched, reduce the volume of unmatched MOC orders the Member may have to submit to another market center.

⁴⁸ Supra note 36.

⁴⁹ For example, JP Morgan Securities' ATS, JPB-X, offers Close Price Match. This functionality utilizes a conditional order process to match orders and crosses them at the security's official

the end of Regular Trading Hours is indicative of Members' desires for such offerings.

Logically, such a change in market structure would not have occurred if market participants did not already possess the operational and technological capabilities to effectively manage the multitude of cut-off times offered by the exchanges and off-exchange venues.

The Exchange also believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because adding the proposed 3:54 p.m. CMC MOC Cut-Off Time would more closely align the CMC with the cut-off time in place for the Nasdaq closing auction. By adding the 3:54 p.m. CMC MOC Cut-Off Time, CMC has the ability to become a more comparable alternative to Nasdaq's closing auction, thereby "foster[ing] price competition and...decreas[ing] costs for market participants."⁵⁰

Importantly, even with the addition of the proposed CMC MOC Cut-Off Times, CMC will remove any perceived impact on Nasdaq's closing auction by publishing the number of matched order shares,⁵¹ by individual security, in advance of Nasdaq's cut-off

closing prices, as determined by the closing auction at the primary exchange for a security. The Close Price Match time for an NMS stock is currently 30-seconds before the MOC cut-off time for that stock's primary exchange. Additionally, Instinet, LLC's ATS, CBX provides for three MOC Crossing Sessions, which consist of: a cross for securities where the primary listing exchange is the Nasdaq ("Nasdaq Cross"), a cross for securities where the primary listing exchange is the NYSE Arca ("Arca Cross"), and a cross for securities where the primary listing exchange is the NYSE ("NYSE Cross") (collectively, "MOC Crosses"). Each MOC Cross occurs two minutes prior to the relevant exchange's cut-off time; i.e. the Nasdaq Cross currently occurs at or near 3:53 p.m., the NYSE Cross at or near 3:48 p.m., and the Arca Cross at or near 3:57 p.m. See Form ATS-N, JPB-X, available at: https://www.sec.gov/Archives/edgar/data/782124/00001961722000459/xslATS-N_X01/primary_doc.xml; see also Form ATS-N, Instinet, LLC's ATS, CBX, available at: https://www.sec.gov/Archives/edgar/data/310607/000031060722000009/xslATS-N_X01/primary_doc.xml.

⁵⁰ Supra note 14.

⁵¹ The Exchange notes that the Cboe Auction feed will disseminate the total matched shares only for the current CMC MOC Cut-Off Time. The Cboe Auction Feed will not disseminate the aggregate of total matched shares across each CMC matching session. For example, following the completion of the 3:30 p.m. CMC matching session, the Cboe Auction Feed message would

time. The total matched shares will still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at each of the newly proposed CMC MOC Cut-Off Times. Because of the speeds and widespread use of market technology the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information (including information about total matched shares in CMC) into their closing processes.⁵² Additionally, as discussed above, because of the market technology utilized by market participants in today's markets, those who choose to participate in CMC will still have ample time⁵³ to reroute any MOC orders not matched via CMC to reach the primary exchanges' closing auctions. Notably, market participants that do not possess internal high-speed trading and routing capabilities often rely on third-party providers or broker-dealers⁵⁴ to handle and execute their orders electronically. Moreover, if market participants do not possess internal high-speed routing and trading technology, and do not utilize third-party solutions, the addition of the proposed CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. would allow such participants to try and receive CMC matches earlier in the day at 3:15 p.m. or 3:30 p.m., rather than limiting themselves to the later

disseminate matched shares only for the 3:30 p.m. CMC matching session, and would *not* disseminate the aggregate of number of matched shares from the prior 3:15 CMC matching session and the 3:30 p.m. CMC matching session.

⁵² As it did in connection with its CMC Amendment, the Exchange again spoke with four (4) designated market makers for the primary exchanges and confirmed that while they do not currently monitor the Cboe Auction Feed, they are technologically equipped to do so, and could incorporate CMC information into their closing auction processes if they chose to do so. Additionally, it is the Exchange's understanding that Nasdaq subscribes to an Exchange depth of book feed which provides subscribers with an uncompressed data feed that includes depth of book quotations and execution information based on equity orders enter into the Exchange's System, including CMC orders. As discussed further, below, given the speed of today's market technology, a CMC MOC Cut-Off Time one-minute prior to the 3:55 p.m. Nasdaq MOC cut-off undoubtedly provides Nasdaq with enough time, should they so choose, to incorporate any relevant CMC information into their closing auction processes.

⁵³ Supra note 31.

⁵⁴ Supra note 36.

CMC MOC Cut-Off Times of 3:49 p.m. and 3:54 p.m. and having less time to re-route the unmatched MOC orders to the primary exchanges or off-exchange closing price mechanisms. Accordingly, the Exchange believes that the proposed CMC MOC Cut-Off Times are not likely to result in disparate treatment amongst CMC users.

The proposed Interpretations and Policies .02 will also help to protect investors by making clear to Members participating in CMC how the Exchange will manage their CMC MOC orders in the event of a matching engine impairment that impacts the initiation and/or completion of a CMC matching session. Accordingly, Members will be better to manage their closing order flow and avoid risk of not receiving the official closing price for their orders by making informed decisions as to when they choose to remove their orders from CMC and instead re-route them to the primary exchanges' closing auctions, or an off-exchange closing price offering. Given the importance of the closing price to many investors for indexing, benchmark pricing, and guaranteed closing price orders, the information provided in proposed Interpretation and Policies .02 is critical to protection of investors.

Finally, the proposed amendment to 11.28(c) is designed to foster the protection of investors, and to prevent fraudulent and manipulative acts and practices. Because the Cboe Auction Feed will only disseminate the total size of matched buy and sell orders for each individual CMC MOC Cut-Off Time, and not the aggregate size across all CMC MOC Cut-Off Times, the information that any Member might be able to glean from the Cboe Auction Feed message will remain limited in nature (discussed *infra*), thereby preventing opportunities for any Member to game or manipulate the official closing price.

Price Discovery⁵⁵

As was the case with its CMC Amendment, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirements.⁵⁶ As previously noted by the Exchange,⁵⁷ CMC accepts and matches only unpriced MOC orders. By matching only unpriced MOC orders, and not priced Limit-On-Close (“LOC”) orders and executing those matched MOC orders that naturally pair off with each other and effectively cancel each other out, CMC is designed to avoid impacting price discovery. The proposed rule change – i.e., the addition of additional CMC MOC Cut-Off Times – does not change CMC’s underlying functionality. As previously noted by the Exchange,⁵⁸ matched MOC orders are merely recipients of price formation and do not directly contribute to the price formation process. Indeed, in its Final Approval Order for CMC, even the Commission noted that unpriced, paired-off MOC orders do not directly contribute to setting the official closing price of securities on the primary listing exchanges but, rather, are inherently the recipients of price formation information.⁵⁹

⁵⁵ As part of this proposed amendment, the Exchange is addressing several questions considered by the Commission in connection with the Exchange’s Original Proposal, including price discovery and fragmentation, market complexity and operational risk, and manipulation. Importantly, in considering these questions, the Commission found that based on CMC’s design and the record before the Commission, that the proposal was consistent with Section 6(b)(5) of the Act. Supra note 14.

⁵⁶ The Exchange notes that the Commission, in its Final Approval Order, carefully analyzed and considered CMC and its potential effects, if any, on the primary listing exchanges’ closing auctions, including their price discovery functions. Importantly, the Commission found that, based on CMC’s design, CMC should not disrupt the price discovery process in the closing auctions of the primary listing exchanges. Supra note 14.

⁵⁷ See Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc. (August 2, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-2162452-157801.pdf>; see also Letter from Joanne Moffic-Silver (October 11, 2017), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734-2634580-161229.pdf>.

⁵⁸ Id.

⁵⁹ Supra note 14.

Moreover, the Exchange believes that even if the addition of CMC MOC Cut-Off Times reduces the number of MOC orders routed to a security's primary listing market, CMC is still designed to remove any perceived adverse impact on the primary listing markets' close because the total matched shares for each CMC session would still be disseminated by the Exchange free of charge via the Cboe Auction Feed prior to the primary exchanges' cut-off times. Additionally, even with the addition of the new CMC MOC Cut-Off Times, because of the technological capabilities of today's market participants discussed more fully above, the market makers on the primary exchanges would still have the ability to incorporate the Cboe Auction Feed information, including information about total matched shares in CMC, into their closing processes.

Furthermore, current users of CMC are either technologically equipped to manage the proposed CMC MOC-Cut Off Times or rely on third-party solutions that provide them with the technological capability to appropriately manage the proposed CMC MOC Cut-Off Times and timely re-route unmatched CMC orders participate in the primary exchanges' closing auctions. Similarly, given the widespread use of routing and trading technology in today's markets, it is likely that potential new CMC users already possess the technological capabilities to manage the proposed CMC MOC Cut-Off Times, and if they do not, similarly rely on third-party providers with high-speed technology offerings. Alternatively, CMC users lacking high-speed trading and routing technology can simply utilize the earlier CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m., providing themselves more flexibility to reroute unmatched CMC orders to the primary exchanges.

*Fragmentation*⁶⁰

⁶⁰ Supra note 55.

Another matter addressed by the Commission in its review of the Original Proposal was fragmentation, and whether CMC would fragment the markets beyond what currently occurs through off-exchange close price matching venues offered by broker-dealers.⁶¹ While comparisons to off-exchange MOC activity may not be a perfect measure of the potential resulting effect of CMC market fragmentation,⁶² the proposed CMC MOC Cut-Off Times are designed to enable CMC to better compete with off-exchange venues and for closing volume that is *already* executed away from the primary listing venues.

As illustrated in the first two charts below, a growing proportion of trading volume at the close occurs on off-exchange venues, where the TRF close volume, as a percent of Exchange close volume, has risen steadily since Q1 2019.⁶³ In the third chart the Exchange also studied the top ten most actively traded securities during the same time period and found that a significant portion of the total closing volume is executed off-exchange, following the dissemination of the official closing price.

Figure 3 (Source: Internal Exchange Data)

⁶¹ Supra note 15.

⁶² Id (“...[C]omparisons to off-exchange activity are not a perfect measure of the potential resulting effect of the [CMC] proposal because the structures of the many off-exchange mechanisms differ from the structure of Cboe Market Close.”).

⁶³ The Exchange conducted an analysis of off-exchange/Trade Reporting Facility (“TRF”) closing volume that occurs after market close, 4:00 p.m. Eastern Time, where the price is equal to the closing price and for which such trades are reported with a Prior Reference Price (“PRP”) trade reporting modifier. The TRF is a trade reporting facility where FINRA members may report trades in Nasdaq-listed and other exchange-listed securities, that were executed otherwise than on an exchange. The first two charts represent TRF executed volume at the close with the “PRP” flag that equals the closing auction price, divided by total on exchange auction volume.

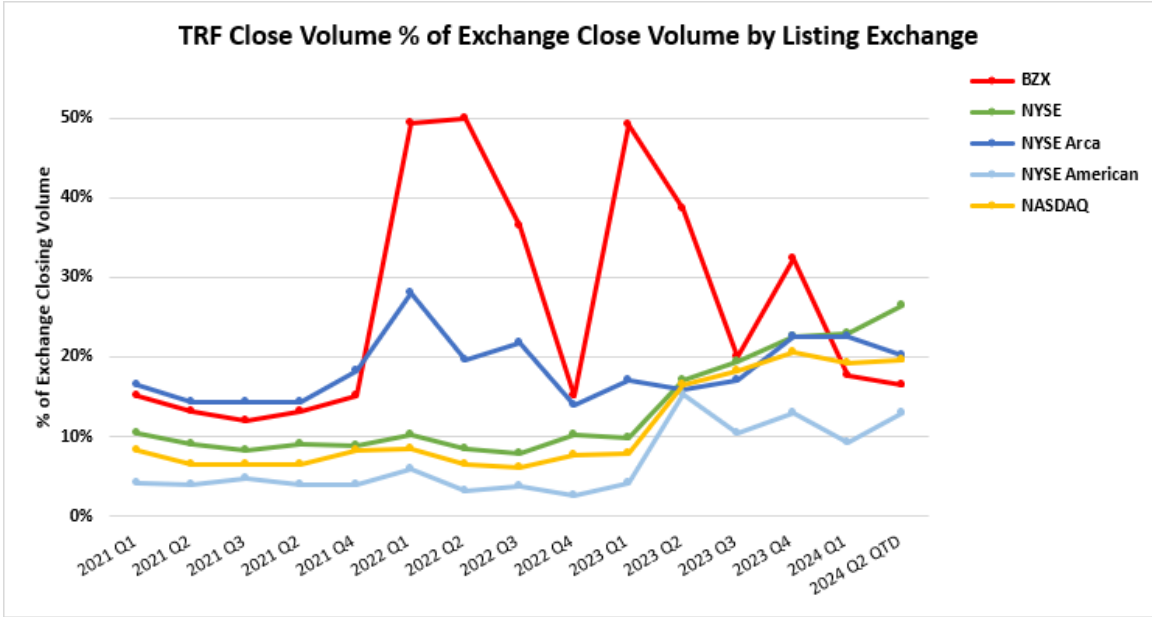


Figure 4 (Source: Internal Exchange Data)

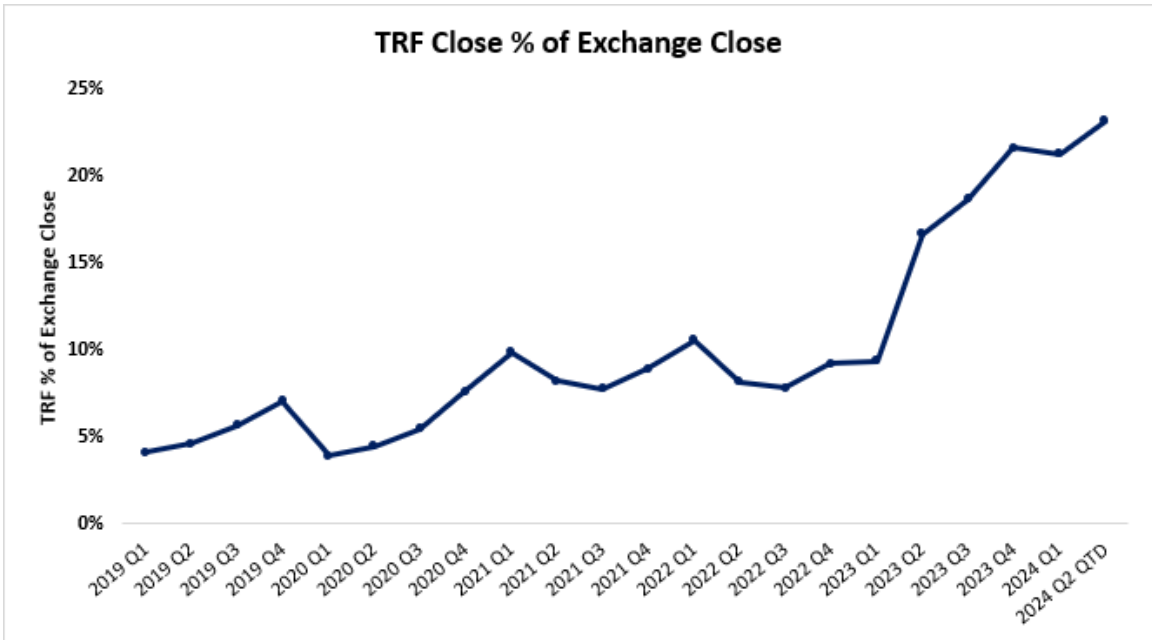


Figure 5 (Source: Internal Exchange Data)

	Symbol	Total ADV	Primary Listing Exchange	TRF Close % inc. PRP
1	TSLA	129,423,964	Nasdaq	12%
2	SQQQ	129,161,658	Nasdaq	21%
3	BBBY	122,763,238	Nasdaq	5%
4	SPY	80,346,142	NYSE Arca	13%
5	SOXS	73,944,691	NYSE Arca	16%
6	NKLA	67,493,708	Nasdaq	8%
7	AMD	64,632,893	Nasdaq	15%
8	PLTR	60,699,921	NYSE	15%
9	AAPL	59,750,017	Nasdaq	17%
10	PRTY	57,838,421	NYSE	7%

Given the significant volume of off-exchange MOC activity already occurring, the Exchange believes that there is still ample opportunity for the proposed CMC MOC Cut-Off Times to attract *existing* MOC volume that is being executed away from CMC and the primary listing venues. As discussed above, market participants have expressed the value of being able to trade closer to 4:00 p.m. In this regard, the proposed CMC MOC Cut-Off Time of 3:54 p.m. satisfies the needs of today’s market participants, and enables CMC to better compete with off-exchange venues, thereby “foster[ing] price competition and...decreas[ing] costs for market participants.”⁶⁴ Members may prefer to

⁶⁴ Supra note 14.

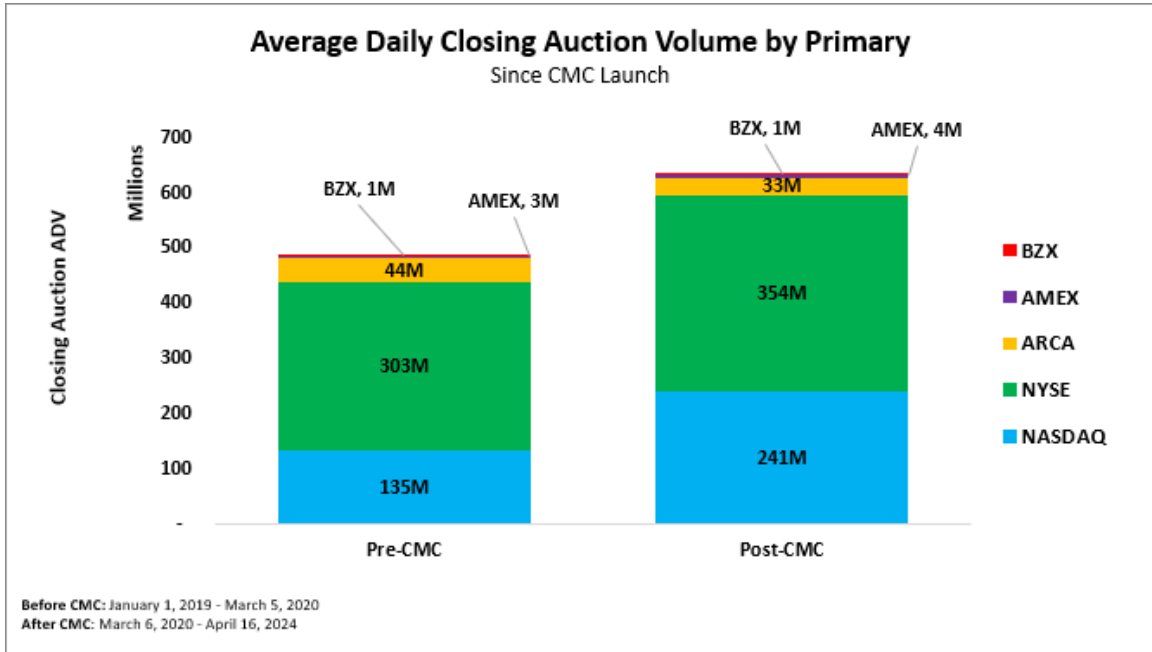
execute their MOC orders via CMC rather than off-exchange venues for reasons such as the increased transparency and reliability that exists when investors execute their orders on public, well-regulated exchanges. Moreover, by attracting such order flow, CMC can help to increase the amount of volume at the close executed on systems subject to the resiliency requirements of Regulation SCI.⁶⁵

Moreover, the Exchange's observations in Figure 6 below show that the closing auction volume on both NYSE and Nasdaq has increased despite the launch of CMC on March 6, 2020, and the subsequent implementation of the 3:49 p.m. CMC MOC Cut-Off Time in 2023. Therefore, while the proposed amendment may lead to additional orders being routed to CMC rather than the primary exchanges' closing auctions, it cannot be said with certainty that such a change will cause additional fragmentation in the marketplace as it is possible that existing MOC order flow that already executes on off-exchange venues may in fact migrate to CMC. In other words, MOC orders that are already being executed and matched away from the primary exchanges will continue to match and execute on away venues, but rather would match and execute on CMC rather than on a less regulated, less-transparent venue. In fact, the Exchange believes the proposed additional CMC MOC Cut-Off Times are not likely to materially increase market fragmentation and therefore have a negative impact on the market because data shows that even with the implementation of CMC, there is still a significant amount of

⁶⁵ See Letter from Joanne Moffic-Silver, Executive Vice President, General Counsel, and Corporate Secretary, Bats Global Markets, Inc., a Cboe Company (Oct. 11, 2017) ("Furthermore, [CMC] would operate on the Exchange's reliable SCI systems...significant MOC liquidity is conducted today by off-exchange venues. These venues are not SCI systems and, therefore, not subject to Regulation SCI's enhanced resiliency requirements. [CMC] could attract MOC orders from these off-exchange venues to the Exchange and its reliable SCI system, furthering the Commission's presumed desire for liquidity at the close to be conducted on SCI systems.")

volume executed on the primary exchanges’ suggesting that market participants continue to utilize the primary closing auctions.

Figure 6 (Source: Internal Exchange Data)



Market Complexity and Operational Risk⁶⁶

The Exchange believes that the proposed rule change is simple and straightforward, and as such will not significantly increase market complexity or operational risk. The Exchange already received approval to change its MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., which resulted in no increase in market complexity and operational risk. The Exchange now seeks only to offer additional CMC MOC Cut-Off Times, none of which will increase market complexity or operational risk. Indeed, the proposed 3:15 p.m. and 3:30 p.m. CMC MOC Cut-Off Times are designed to help aid Members in managing their MOC order flow, and actually *mitigate* their operational and

⁶⁶ Supra note 55.

technological risk. The proposed 3:54 p.m. MOC Cut-Off Time – like the approved 3:49 p.m. MOC Cut-Off Time – is intended only to help better align CMC with the MOC cut-off time utilized by Nasdaq for its closing auction. While Members will now have the option to designate orders for participation in multiple CMC MOC Cut-Off Times, and any unmatched quantities for such orders will carry forward to the next CMC session, the Exchange believes that Members are well-equipped to manage any new workflow associated with these proposed enhancements. Indeed, the Exchange conferred with Members to discuss the proposed workflow prior to submitting this proposal, and Members indicated that such changes did not present new or novel issues for them to consider. In addition, as previously noted,⁶⁷ both current CMC users and market participants in general, possess high-speed routing and order handling technology, that will enable them to efficiently manage the proposed changes to CMC. Members continuing to only participate in a single CMC session will not have to consider new operational requirements of monitoring and consuming a new data feed or consider the utilization of a new order type or implementation of new Exchange code, other than perhaps needing to monitor the Cboe Auction Feed for the publication of CMC information at a different CMC MOC Cut-Off Time. While Members electing to participate in multiple CMC sessions will need to monitor the Cboe Auction Feed for CMC information at multiple CMC MOC Cut-Off Times, Members have indicated that the operational and technological requirements to do so are not complex, and do not present any new or novel issues. In addition, as previously noted,⁶⁸ market participants

⁶⁷ Supra note 31.

⁶⁸ Id.

today utilize high-speed technology that enables to receive and process market data in sub-second latencies. As such, given that the proposed CMC MOC Cut-Off Times are multiple *minutes* apart, the proposed CMC MOC Cut-Off Times should not present any new or novel issues for Members.

Additionally, just as the Exchange did prior to proposing the 3:49 p.m. CMC MOC Cut-Off Time, the Exchange discussed this current proposal with CMC users and learned that CMC's current users are technologically equipped⁶⁹ to manage the proposed 3:54 p.m. MOC Cut-Off Time, and that they can respond to CMC's publication of matched shares and quickly reroute any unmatched MOC orders in Nasdaq-listed securities to Nasdaq's closing auction. Furthermore, the Exchange again notes that both off-exchange venues and other exchanges already offer MOC cut-off times that are closer in time to the end of Regular Trading Hours. Specifically, in 2018 Nasdaq received approval to move the cut-off times for the entry of MOC and Limit-On-Close ("LOC") orders from 3:50 to 3:55 p.m..⁷⁰ Similarly, in 2018 NYSE received approval from the SEC to extend cut-off times for order entry and cancellation for participation in its closing auction, from 3:45 p.m. to 3:50 p.m..⁷¹ NYSE also offers discretionary-orders, which unlike MOC/LOC orders subject to NYSE's 3:50 p.m. cut-off, may be entered for

⁶⁹ Id.

⁷⁰ See Securities Exchange Act Release No. 34-84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR-Nasdaq-2018-068) (Order approving a rule change by Nasdaq) (The Commission approved a rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC orders from 3:50 p.m. to 3:55 p.m.); see also Securities Exchange Act Release No. 34-85021 (January 31, 2019) (SR-NYSE-2018-58) (Order approving a rule change by NYSE) (The Commission approved a rule change by the NYSE to amend Rule 123C to extend the cut-off times for order entry and cancellation for participation in the closing auction, from 3:45 p.m. to 3:50 p.m.).

⁷¹ Id.

participation in the closing auction until 3:59:50.⁷² Additionally, market participants may enter MOC orders for participation in NYSE Arca's closing auction up to 3:59 p.m.⁷³ Finally, various off-exchange venues offer closing match processes with cut-off times aligned with those of the primary exchanges, and even as close to 30-seconds before market close, 4:00 p.m.⁷⁴

Moreover, the proposed 3:15 p.m. and 3:30 p.m. CMC MOC Cut-Off Times will also enable new and existing CMC users that may not have high-speed trading and routing infrastructure, to still utilize CMC and not rely on high-speed technology to reroute unmatched CMC orders from the 3:49 p.m. or 3:54 p.m. MOC Cut-Off Times. The Exchange also notes that CMC is a voluntary offering, and Members may freely decide whether to participate.

Accordingly, the Exchange believes that market participants are well accustomed to managing the various cut-off times in today's marketplace and incorporating these timelines into their trading decisions. The number of exchanges and off-exchange venues with extended cut-off times indicates that market participants find value in their ability to retain control of their trading heading into the end of Regular Trading Hours, and the primary exchanges and off-exchange venues have responded to such demand. Certainly, market participants would not desire cut-off times closer to the end of Regular Trading Hours if they could not technologically and operationally manage their trading

⁷² Supra note 3.

⁷³ See "Closing Auction Timeline", available at: <https://www.nyse.com/markets/nyse-arca/trading-info>.

⁷⁴ Supra note 49.

accordingly. Therefore, the proposed additional later CMC MOC Cut-Off Time should not present market participants with any novel operational or technological complexities.

The Exchange further notes that it has considered carefully the operational and technological requirements necessary to implement multiple CMC MOC Cut-Off Times. Relevant operations and technology teams were consulted in designing the proposed CMC MOC Cut-Off Times and confirmed that the Exchange's Systems can process and manage multiple CMC sessions. As such, the Exchange does not anticipate any undue increase in operational or technological complexity in implementing the proposed CMC MOC Cut-Off Times.

Manipulation⁷⁵

In its CMC Amendment the Exchange noted that the value of the 3:49 p.m. CMC MOC Cut-Off Time was not the proximity of CMC's matched share message to the cut-off times of the primary exchanges, but rather the ability of users to trade their orders for a longer period of time before deciding whether to commit their MOC orders to CMC. The Exchange further stated that it did not expect that the proposed extension of the CMC MOC Cut-Off Time to 3:49 p.m. would result in an increase in manipulative activity due to information asymmetries, or that it raised any unique manipulation concerns relative to how CMC existed with a CMC MOC Cut-Off Time of 3:35 p.m. Importantly, the Exchange believes that this rationale also applies to the current proposal, and that the SEC should dismiss any manipulation concerns regarding this proposal, just as it did with the Original Proposal and CMC Amendment.

⁷⁵ Supra note 55.

Here, the Exchange notes that the mere existence of multiple CMC MOC Cut-Off Times does not make any information CMC participants may be able to glean from their paired-off MOC orders any more valuable. Rather, the value of any information learned by CMC participants is still limited in nature. For instance, any information that CMC participants may learn from receiving matched MOC order messages is indeed limited in nature because the CMC participant would still only know the unexecuted size of its own order(s).⁷⁶ Even if a Member participated in all four CMC sessions - 3:15 p.m., 3:30 p.m., 3:49 p.m., and 3:54 p.m. – and received messages regarding matched MOC orders, the Cboe Auction Feed disseminates the total size of matched buy and sell orders for each MOC session *individually* (i.e., not in aggregate). Moreover, the proposed CMC MOC Cut-Off Times are many minutes apart, during which time new MOC orders may be entered, rendering useless any information a Member may have gleaned regarding an imbalance in the prior session. Additionally, even if a Member chose to participate in CMC only to gather information about the direction of an imbalance and use such information to manipulate the closing price, the Member's orders were still eligible for execution subjecting the Member to economic risk.

While this proposal would result in the total shares for buy and sell orders in CMC being disseminated several times during the last hour of trading, and with two CMC MOC Cut-Off Times in close proximity to the primary exchanges' MOC cut-off

⁷⁶ The Exchange notes that in its Final Approval Order, even the Commission noted that, "In particular, a market participant would only be able to determine the direction of the imbalance and would have difficulty determining the magnitude of any imbalance, as it would only know the unexecuted size of its own order. In addition, the information would only be with regard to the pool of liquidity on BZX and would provide no insight into imbalances on the primary listing exchange, competing auctions, ATSS, or other off-exchange matching services which, as described above, can represent a significant portion of trading volume at the close." Supra note 14.

times, these changes do not suddenly make such information more valuable or useful in terms of enhancing opportunities for gaming and manipulating the official closing price. The 3:49 p.m. and 3:54 p.m. CMC MOC Cut-Off Times are one-minute prior to NYSE's and Nasdaq's MOC cut-off times. As noted throughout, today's markets are marked by technological solutions which typically operate in durations of microseconds. In this context, the separation between the CMC MOC Cut-Off Times and those of NYSE's and Nasdaq's is a substantial duration of time, during which much can change in the marketplace, thus limiting the value of information, if any, that can be gleaned from CMC's dissemination of matched shares at these times.

Moreover, the 3:15 p.m. CMC MOC Cut-Off Time is thirty-five-minutes prior to NYSE's MOC cut-off time and forty-minutes prior to Nasdaq's MOC cut-off time. Similarly, the 3:30 p.m. CMC MOC Cut-Off Time is twenty-minutes prior to the NYSE's MOC cut-off time, and twenty-five-minutes prior to the Nasdaq MOC cut-off time. These proposed CMC MOC Cut-Off Times are even further from the primary exchanges' cut-off times than the current CMC MOC Cut-Off Time, during which the marketplace and CMC will experience significant change, even further limiting the value of information, if any, that a Member may glean from the dissemination of matched shares.

Furthermore, as with the current CMC MOC Cut-Off Time, the proposed CMC MOC Cut-off Times do not present any information asymmetries that do not already exist in today's markets, as the very nature of trading creates short term asymmetries of information to those who are parties to a trade.⁷⁷ Indeed, as noted by the Commission,

⁷⁷ The Exchange also notes that in its Final Approval Order, even the Commission noted that, "Further, the Commission believes information asymmetries as those described by commenters exist today and are inherent in trading, including with respect to closing auctions. For example, any party to a trade gains valuable insight regarding the depth of the market when an order is

any party to a trade gains valuable insight regarding the depth of the market when an order is executed or partially executed.⁷⁸ Additionally, NYSE imbalance information is already disseminated to NYSE floor brokers, who are permitted to share with their customers specific data from the imbalance feed.⁷⁹ Even in this case, though, the Commission stated that the value of such information is limited because the imbalance information does not represent overall supply and demand for a security, is subject to change, and is only one relevant piece of information.⁸⁰ Similarly, because any information gleaned by a CMC participant is limited only to the unexecuted size of their order(s), and relative to the depth of only the BZX pool of liquidity, the Exchange believes that the proposed addition of the CMC MOC Cut-Off Times does not create an increased risk of manipulative trading activity.

Moreover, there are currently controls and processes in place to monitor for manipulative trading activity, such as the supervisory responsibilities and capabilities of exchanges and the expansive cross market surveillance conducted by FINRA. Following approval of this proposal, the Exchange, FINRA and others will continue to surveil for potential manipulative activity and when appropriate, bring enforcement actions against market participants engaged in manipulative trading activity.

executed or partially executed.” Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendment applies equally to all Members, and is intended to offer additional CMC MOC Cut-Off Times, enabling a broader segment of Members to utilize CMC at times that better accommodate different trading strategies, and Members' technological and operational capabilities. As discussed above, current and prospective CMC users are technologically equipped to participate in the 3:54 p.m. matching session and timely re-route any unmatched CMC MOC orders in Nasdaq-listed securities to the Nasdaq closing auction. Members that may lack internal high-speed routing and trading technology may utilize third-party providers (discussed above) should they choose to participate in the 3:54 p.m. matching session. The Exchange notes that participation in CMC remains optional, and Members have the ability to determine whether or not to submit MOC orders to participate in CMC based on their technological capabilities.

Alternatively, the proposed CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. will allow CMC users that may lack high-speed trading and routing infrastructure to utilize CMC without having to quickly re-route unmatched CMC orders to the primary exchanges just prior to their cut-off times, as well as attract new users who may desire a mechanism that allows them to match their MOC orders earlier in the trading day. Moreover, CMC is a voluntary closing match process, and Members are not required to participate in CMC. By offering earlier CMC MOC Cut-Off Times in addition to the proposed later MOC Cut-Off Time of 3:54 p.m., the Exchange is providing various alternatives to support Members with different technological capabilities, thus seeking to foster competition rather than hinder competition.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed 3:54 p.m. MOC Cut-Off Time more closely aligns CMC MOC with the Nasdaq MOC cut-off time, while still providing CMC participants with an opportunity to reroute any of their unpaired MOC orders in Nasdaq-listed securities to the Nasdaq closing auction. In this regard, the proposed 3:54 p.m. MOC Cut-Off Time may make CMC a more viable alternative to the Nasdaq closing auction and “should foster price competition and thereby decrease costs for market participants.”⁸¹ Additionally, the proposed CMC MOC Cut-Off Times of 3:15 p.m. and 3:30 p.m. will help make CMC a more attractive alternative to market participants that may not feel comfortable attempting to match in CMC at 3:49 p.m. and re-routing any unmatched CMC orders to NYSE before 3:49 p.m., or at 3:54 p.m. and re-routing any unmatched MOC orders in Nasdaq-listed securities to Nasdaq prior to 3:55 p.m.. These proposed MOC Cut-Off Times may also make CMC a more attractive closing price alternative to market participants that simply wish to reduce their MOC trading obligations earlier in the trading day by attempting to match in CMC. Collectively, the proposed CMC MOC Cut-Off Times will enable the Exchange to compete with the primary exchanges more effectively, as well as with off-exchange venues that have cut-off times much closer in time to the market close and comprise a growing percentage of closing volume.

⁸¹ Supra note 14.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-032 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-CboeBZX-2024-032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-032 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸²

Sherry R. Haywood,

Assistant Secretary.

⁸² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe BZX Exchange, Inc.

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Rule 11.28. Cboe Market Close, a Closing Match Process for Non-BZX-Listed Securities

The System will seek to match all buy and sell MOC orders designated for participation in Cboe Market Close at the official closing price for such security published by the primary listing market, as described below.

(a) Order Entry. Beginning at 6:00 a.m. Eastern Time (“ET”), Members may enter, cancel or replace MOC orders designated for participation in up to five Cboe Market Close (“CMC”) matching sessions: 3:15 p.m. ET; 3:30 p.m. ET; 3:49 p.m. ET; and 3:54 p.m. ET (the 3:54 p.m. ET session applies only to Nasdaq-listed securities) (each a “MOC Cut-Off Time”, and collectively “MOC Cut-Off Times”). Members may specify on their MOC order instructions which MOC Cut-Off Time(s) they wish to participate in. For MOC orders that specify they are willing to participate in multiple MOC Cut-Off Times, any unfilled quantity from an earlier session will carry forward to the next MOC Cut-Off Time(s). Any unfilled quantity remaining after a Member’s latest specified MOC Cut-Off Time will be cancelled back to the Member. [beginning at 6:00 a.m. Eastern Time up to 3:49 p.m. Eastern Time (“MOC Cut-Off Time”).] MOC orders designated for participation in [Cboe Market Close] CMC cannot be entered, cancelled or replaced after each [the] MOC Cut-Off Time.

(b) Closing Match Process. At [the] each MOC Cut-Off Time, the System will match for execution all buy and sell MOC orders entered into the System based on time priority. For orders that specify they are willing to match during multiple CMC sessions, any unfilled quantity from an earlier session will carry forward to the next session(s). Any remaining balance of unmatched shares after a Member’s specified final matching session will be cancelled back to the Member[(s)] at their last designated MOC Cut-Off Time. All matched buy and sell MOC orders will remain in the System until the publication of the official closing price by the primary listing market. Upon publication of the official closing price by the primary listing market, the System will execute all previously matched buy and sell MOC orders at the official closing price published by the primary listing market.

(c) Publication of Closing Match Process Information. At [the]each MOC Cut-Off Time, the System will disseminate via the Cboe Auction Feed, as described in Rule 11.22(i), the total size of all buy and sell orders matched via [Cboe Market Close] CMC. The disseminated total size of all buy and sell orders matched via CMC will only be for that particular CMC matching session and would not include the size of matched buy and sell orders from any prior MOC Cut-Off Time.

Interpretations and Policies

.01 (No change.)

[.02 The Exchange will cancel all MOC orders designated to participate in Cboe Market Close if the Exchange becomes impaired prior to the MOC Cut-Off Time, and is unable to recover before the MOC Cut-Off Time, or becomes impaired after the MOC Cut-Off Time but before completing the closing match process in a security. If the Exchange is able to recover prior to the MOC Cut-Off Time, the Exchange will instead: cancel only those MOC orders designated to be cancelled by the member, if the impairment is resolved in less than five minutes; or cancel all MOC orders, if the impairment is not resolved in less than five minutes. If the Exchange becomes impaired after completing the closing match process in a security, it would retain all matched MOC orders and execute those orders at the official closing price once the impairment is resolved.]

.02 Handling of CMC Orders In Event of Matching Engine Impairment

If an Exchange matching engine responsible for a CMC matching session is impaired (i.e., has crashed or become unresponsive and Member orders cannot be processed) i) prior to an MOC Cut-Off Time, or ii) after an MOC Cut-Off Time but prior to completion of CMC's closing match process in a security, the manner in which a Member's MOC order(s) designated for participation in CMC is as follows:

- (a) If a Member has elected to cancel all its open MOC order(s) in the event an Exchange matching engine responsible for the CMC matching session is impaired, then the Member's MOC order(s) designated for participation in CMC will be cancelled, even if the Member designated the MOC order(s) for participation in multiple MOC Cut-Off Times; or
- (b) If a Member has elected to have its MOC order(s) remain open when an Exchange matching engine responsible for the CMC matching sessions is impaired, then the Member's open MOC order(s) will remain open while the Exchange performs a matching unit failover; provided, however, if the matching engine impairment persists for more than five minutes, then the Member's open MOC order(s) will be cancelled. Moreover, even where a Member has elected to keep its MOC order(s) open during an Exchange matching engine impairment, a Member may still cancel their MOC order(s), and such cancel request will be processed post matching engine failover. By way of illustration:
 - (i) A Member has elected to keep its MOC order(s) open if an Exchange matching engine responsible for the CMC matching session process is impaired. The Member has also designated its MOC order(s) to participate in a single CMC MOC Cut-Off Time (e.g., 3:15 p.m.). If the Exchange experiences a matching engine impairment prior to 3:15 p.m., or after 3:15 p.m. but prior to the completion of the closing match process in the subject security, the Member's MOC order(s) will remain open during matching engine failover, and the Exchange will conduct the 3:15 p.m. CMC matching session and attempt to match the Member's MOC order(s). However, should

the matching engine failover exceed five-minutes, the Member's MOC order(s) will be cancelled

(ii) A Member has elected to keep its MOC order(s) open if an Exchange matching engine responsible for the CMC matching session is impaired. The Member has also designated its MOC order(s) to participate in multiple CMC MOC Cut-Off Times (e.g., 3:15 p.m., and 3:30 p.m.). If the Exchange experiences a matching engine impairment prior to 3:15 p.m., or after 3:15 p.m. but prior to the completion of the closing match process in the subject security, the Member's MOC order(s) will remain open during the matching engine failover, and the Exchange will conduct the 3:15 p.m. CMC matching session and attempt to match the Member's MOC order(s). Should the Member's 3:15 p.m. MOC order(s) not be matched, or only partially filled, the Member's MOC order(s) will proceed to the 3:30 p.m. matching session. However, should the matching engine failover exceed five-minutes, the Member's MOC order(s) will be cancelled.

(c) If an Exchange matching engine responsible for the CMC matching process becomes impaired, the Exchange will not accept new MOC orders.

(d) If an Exchange matching engine responsible for the CMC matching process becomes impaired after completing the closing match process in a security, it will retain all matched MOC orders and execute those orders at the official closing price once the impairment is resolved.