

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100814; File No. SR-CboeBZX-2024-032)

August 23, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Amend Rule 11.28(a) to Add Three Additional Market-on-Close Cut-Off Times to Cboe Market Close

I. Introduction

On April 29, 2024, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend BZX Rule 11.28(a) to add several additional Market-on-Close (“MOC”) Cut-Off Times to Cboe Market Close. On May 13, 2024, the Exchange filed Amendment No. 1, which replaced and superseded the proposed rule change as originally filed. The proposed rule change, as modified by Amendment No.1, was published for comment in the Federal Register on May 29, 2024.³

On July 8, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On August 12, 2024, the Exchange submitted Amendment No. 2 to the proposed rule change.⁶ On August 14, 2024, the Exchange submitted Amendment No. 3 to the proposed rule change.⁷

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 100129 (May 14, 2024), 89 FR 46428 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 100466, 89 FR 57175 (July 12, 2024).

⁶ Amendment No. 2 amended and superseded Amendment No. 1, which replaced and superseded the proposed rule change as originally filed. Amendment No. 2 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboebzx-2024-032/srcboebzx2024032.htm>.

⁷ In Amendment No. 3, the Exchange revised BZX Rule 11.28(a) to correct an erroneous reference to “five” total CMC matching sessions. Amendment No. 3 is available on the Commission’s website at:

The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2⁸

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).⁹ 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

<https://www.sec.gov/comments/sr-cboebzx-2024-032/srcboebzx2024032.htm>.

⁸ This Section II reproduces Amendment No. 2, as filed by the Exchange. Amendment No. 3 does not make any revisions to Section II.

⁹ Hereinafter, all times referenced are in Eastern Time.

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 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.¹⁰ 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.¹¹ 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

¹⁰ 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).

¹¹ 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."

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 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. 1¹² to that proposal (the “Original Proposal”).¹³ On January 17, 2018, the Commission, acting through authority delegated to the Division of Trading and Markets,¹⁴ approved the Original Proposal (“Approval Order”).¹⁵ 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),¹⁶ the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.¹⁷ On March 1, 2018, pursuant to Commission Rule of Practice 431, the Commission

¹² 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.

¹³ 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).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 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).

¹⁶ 17 CFR 201.431(e).

¹⁷ 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>.

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.¹⁸ 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.¹⁹ On October 4, 2018, BZX filed Amendment No. 2²⁰ 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,²¹ 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.²² The Commission noted that under Rule 700(b)(3) of the Commission’s Rule of Practice, the “burden to demonstrate that a

¹⁸ 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)

¹⁹ 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>.

²⁰ 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”).

²¹ See “Statements on File No. SR-BatsBZX-2017-34”, available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm>.

²² 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”).

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.”²³

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”).²⁴ 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”²⁵ 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”.²⁶

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”).²⁷ 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.²⁸ 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 modified by Amendment No. 1.²⁹ Finally, on

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ See Securities Exchange Act Release No. 34-95529 (August 17, 2020), 87 FR 52092 (August 24, 2022) (SR-CboeBZX-2022-038).

²⁸ See Securities Exchange Act Release No. 34-95967 (October 4, 2022), 87 FR 61425 (October 11, 2022) (SR-CboeBZX-2022-038).

²⁹ See Securities Exchange Act Release No. 34-96359 (November 18, 2022), 87 FR 72537 (November 25, 2022) (SR-CboeBZX-2022-038).

February, 9, 2023, the Commission, approved the proposed CMC Amendment (“CMC Amendment Approval Order”).³⁰

In approving the CMC Amendment, the Commission stated that the proposal was consistent with Section 6(b)(5) of the Act,³¹ 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,³² 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 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,

³⁰ See Securities Exchange Act Release No. 34-96861 (February 9, 2023), 88 FR 9940 (February 15, 2023) (SR-CboeBZX-2022-038).

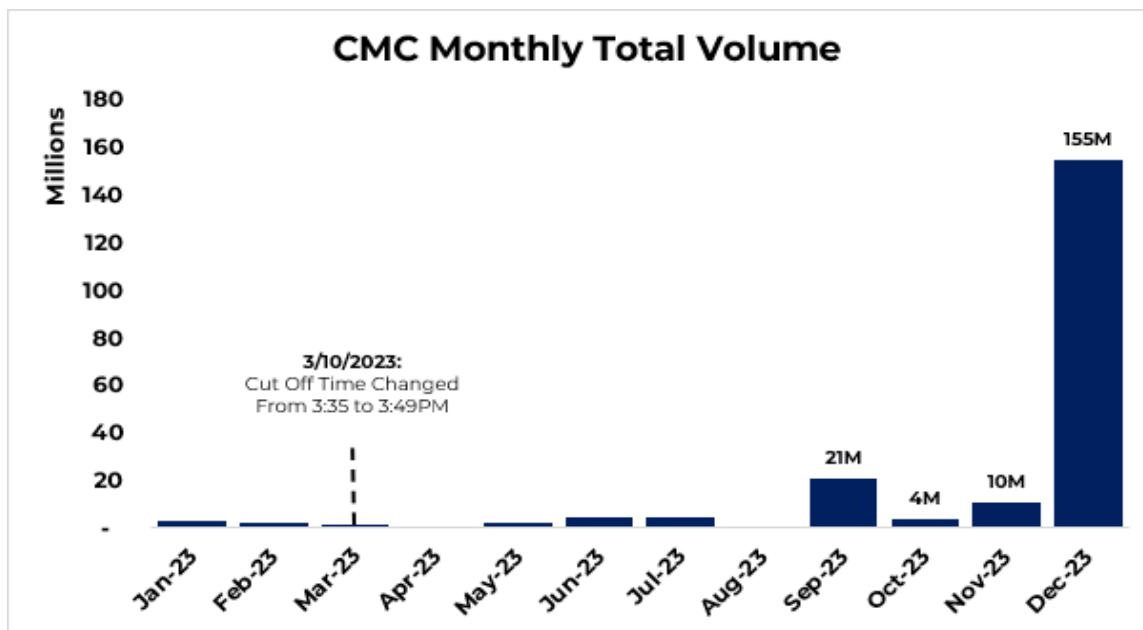
³¹ 15 U.S.C. 78f(b)(5).

³² 15 U.S.C. 78f(b)(8).

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.³³ 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 canceled back to the Member. To illustrate the proposed functionality, consider the following examples.

³³ 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.

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 1³⁴ 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,³⁵ Members may elect “Cancel on Disconnect = Yes” or “Cancel on Disconnect = No”.³⁶ When a Member elects “No”, the Exchange will allow a Member’s orders to remain open 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

³⁴ 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.

³⁵ 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.

³⁶ 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.

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 equipped³⁷ 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 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

³⁷ 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.”).

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-2022-038,³⁸ today's market participants, including users of CMC, are technologically equipped³⁹ 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 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 time⁴⁰ to

³⁸ Supra note 28.

³⁹ Supra note 36.

⁴⁰ 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

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.⁴¹ Furthermore, Members 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 solutions⁴² 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

reference, a microsecond is 1- millionth of a second.

⁴¹ 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.

⁴² 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 36 ("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.").

and the end of Regular Trading Hours⁴³ so they can retain control of their trading for a longer period of time.⁴⁴ 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 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.

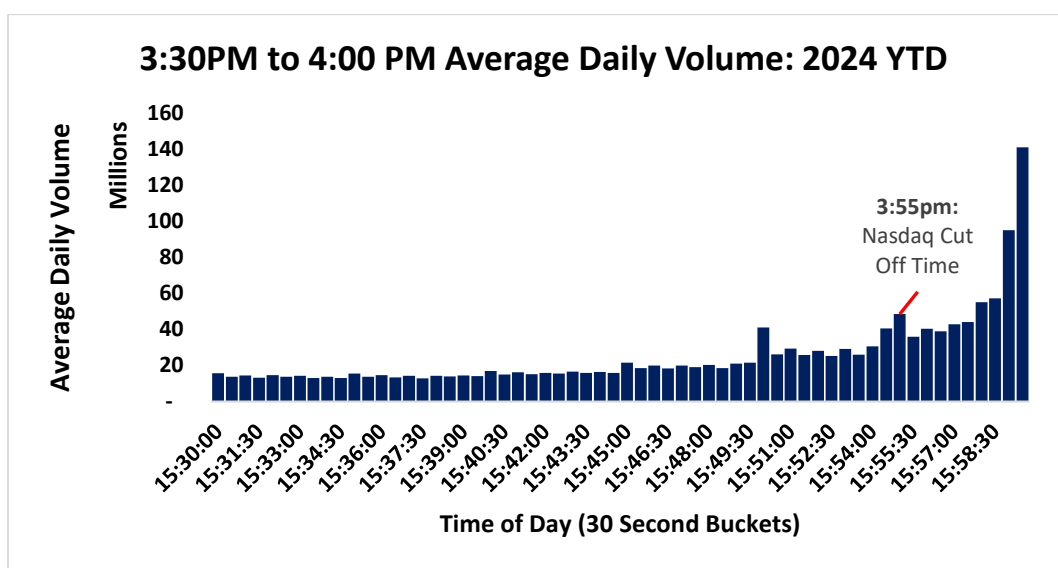
In support of the above, Figure 2 shows the total average *daily* volume across all market centers, from 3:30 p.m. to 4:00 p.m. in 30-second intervals, and illustrates the Nasdaq MOC cut-off time. As illustrated, at Nasdaq’s 3:55 p.m. MOC cut-off time, and 4:00 p.m. market close, there is a noticeable 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

⁴³ 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.”

⁴⁴ 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.”).

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.”⁴⁵

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.⁴⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

⁴⁵ Supra note 21.

⁴⁶ 15 U.S.C. 78f(b).

⁴⁷ Supra note 30.

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 the Section 6(b)(5)⁴⁸ 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

⁴⁸ Id.

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 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 equipped⁴⁹ 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 providers⁵⁰ with high-speed technology offerings. Alternatively, new CMC users lacking high-speed trading and routing technology can simply utilize the earlier CMC MOC Cut-

⁴⁹ Supra note 36.

⁵⁰ Supra note 41.

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.

The Exchange also notes that as CMC volume has increased, prospective new users⁵¹ 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 risk⁵² 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

⁵¹ 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.

⁵² 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.⁵³

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 providers⁵⁴ 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 venues⁵⁵ with cut-off times in such close proximity to the end of Regular

⁵³ 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.

⁵⁴ Supra note 41.

⁵⁵ 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

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."⁵⁶

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,⁵⁷ by individual security, in advance of Nasdaq's cut-off time. The total

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/782124/000001961722000459/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.

⁵⁶ Supra note 21.

⁵⁷ 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.

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.⁵⁸ 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 time⁵⁹ 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-dealers⁶⁰ 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 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

⁵⁸ 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.

⁵⁹ Supra note 36.

⁶⁰ Supra note 41.

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 Discovery⁶¹

⁶¹ 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 21.

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.⁶² As previously noted by the Exchange,⁶³ 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,⁶⁴ 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.⁶⁵

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.

⁶² 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 21.

⁶³ 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>.

⁶⁴ Id.

⁶⁵ Supra note 21.

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.

Fragmentation⁶⁶

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.⁶⁷ While comparisons to off-exchange MOC activity may not be a perfect measure of the potential

⁶⁶ Supra note 60.

⁶⁷ Supra note 20.

resulting effect of CMC market fragmentation,⁶⁸ 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 2019.⁶⁹ 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)

⁶⁸ 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.”).

⁶⁹ 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.

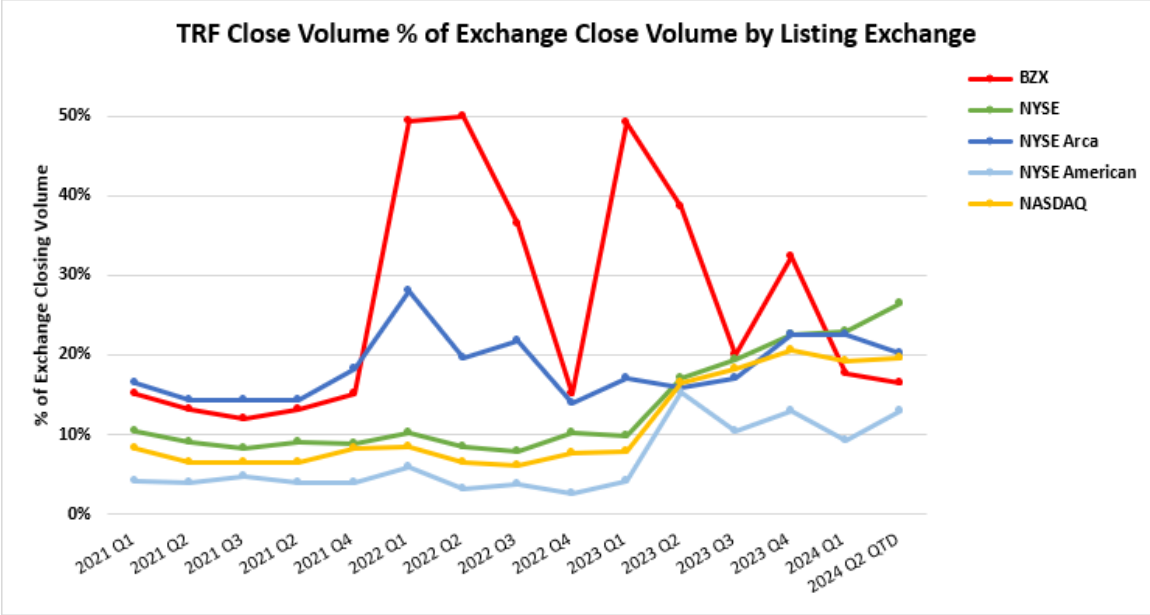


Figure 4 (Source: Internal Exchange Data)

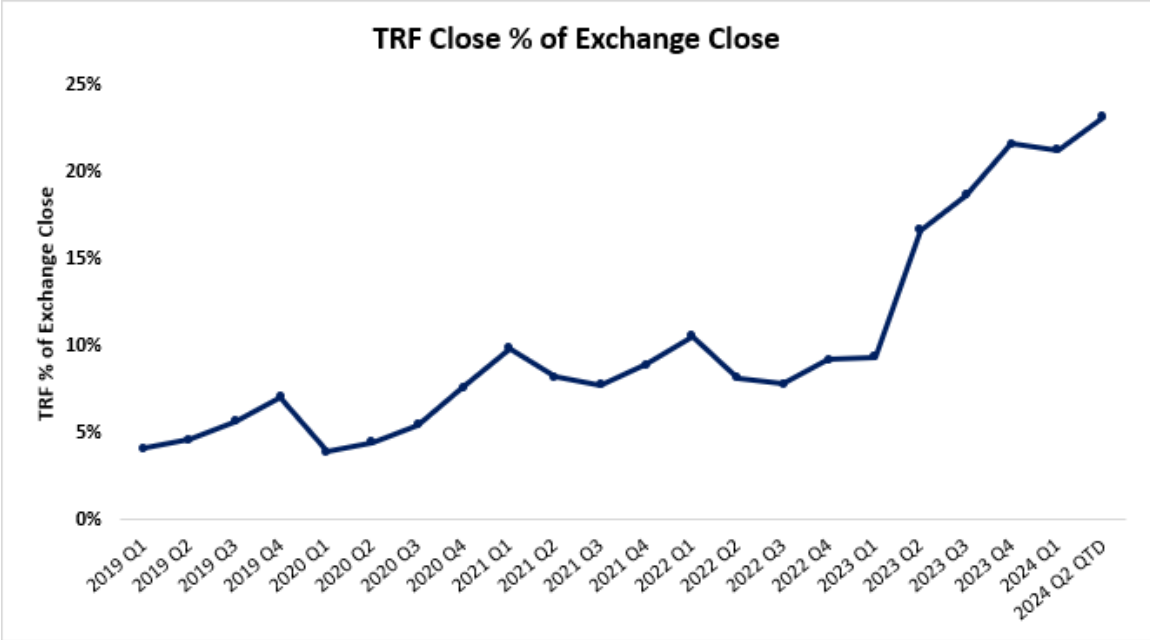


Figure 5 (Source: Internal Exchange Data)

	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.”⁷⁰ Members may prefer to 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

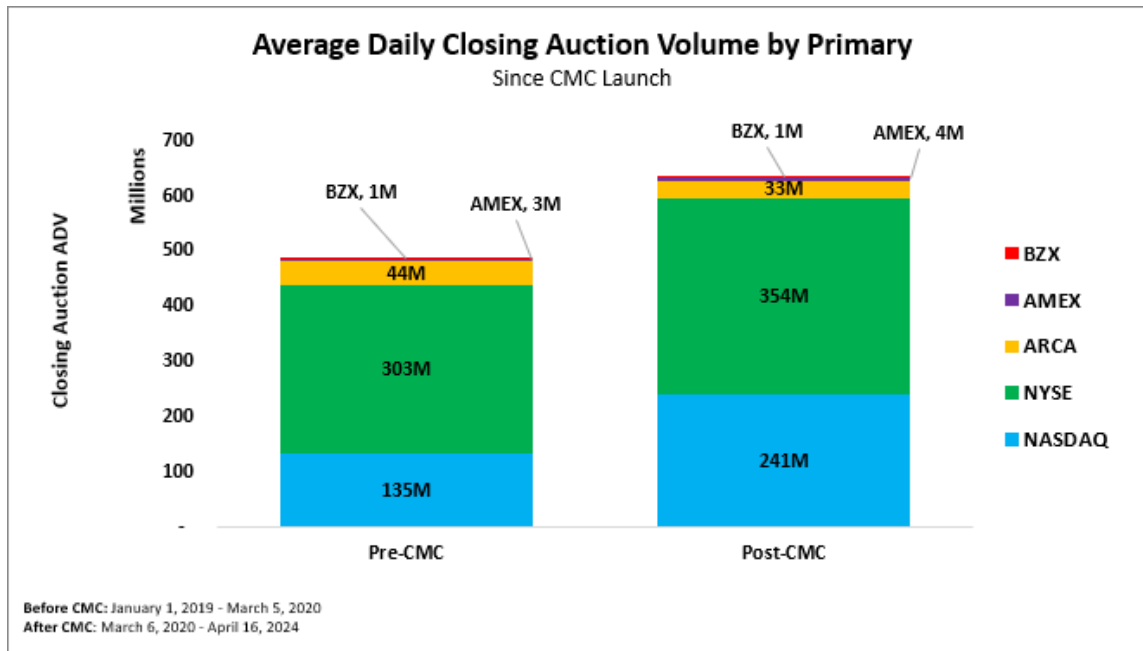
⁷⁰ Supra note 21.

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.⁷¹

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.

Figure 6 (Source: Internal Exchange Data)

⁷¹ 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.")



Market Complexity and Operational Risk⁷²

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 participation in multiple CMC MOC Cut-Off Times, and any

⁷² Supra note 60.

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,⁷³ 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,⁷⁴ 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.

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

⁷³ Supra note 36.

⁷⁴ Id.

current users are technologically equipped⁷⁵ 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..⁷⁶ 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..⁷⁷ 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 3:59:50.⁷⁸ Additionally, market participants may enter MOC orders for participation in NYSE Arca’s closing auction up to 3:59 p.m..⁷⁹ 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..⁸⁰

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

⁷⁵ Id.

⁷⁶ 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.).

⁷⁷ Id.

⁷⁸ Supra note 8.

⁷⁹ See “Closing Auction Timeline”, available at: <https://www.nyse.com/markets/nyse-arca/trading-info>.

⁸⁰ Supra note 54.

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 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.

Manipulation⁸¹

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

⁸¹ Supra note 60.

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 order(s).⁸² 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

⁸² 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 21.

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 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.⁸³ 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.⁸⁴ 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.⁸⁵ 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.⁸⁶ 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

⁸³ 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.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

when appropriate, bring enforcement actions against market participants engaged in manipulative trading activity.

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.”⁸⁷ 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.

⁸⁷ Supra note 21.

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. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder.⁸⁸ In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with Section 6(b)(5) of the Act,⁸⁹ 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; and Section 6(b)(8) of the Act,⁹⁰ 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.

The Exchange proposes to amend Rule 11.28(a) to add three additional CMC MOC Cut-Off Times 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); and 3:54 p.m. (new). The 3:54 p.m. CMC MOC Cut-Off Time will be limited to Nasdaq-listed securities. The Commission

⁸⁸ In approving this proposed rule change, as modified by Amendments No. 2 and 3, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸⁹ 15 U.S.C. 78f(b)(5).

⁹⁰ 15 U.S.C. 78f(b)(8).

believes that the earlier MOC Cut-Off Times will provide Exchange Members with more flexibility in mitigating any technological and operational risk associated with managing their MOC and closing price order flow. The Exchange has noted that this ability would be particularly useful on high-volume order days.⁹¹ Further, with the proposed 3:15 p.m. and 3:30 p.m. CMC MOC Cut-Off Times, Members could 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.⁹²

The proposed later MOC Cut-Off Time of 3:54 p.m., limited to orders in Nasdaq-listed securities, would be one-minute prior to Nasdaq's current MOC cut-off time of 3:55 p.m. The Exchange states that it discussed the proposed rule change with both current CMC users and potential new CMC users and confirmed that both groups could technologically manage the proposed rule change.⁹³ The Exchange states that 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.⁹⁴ The Exchange states that CMC's current users that utilize third-party front-end providers or broker-dealers that provide them with electronic and automated trading solutions

⁹¹ See Amendment No. 2, supra note 6.

⁹² See id.

⁹³ See supra note 41. Specifically, the Exchange discussed the proposed change with the two third-party providers whose end users are responsible for 100 percent of CMC's current volume. These providers indicated that the automated routing and trading solutions that they offer to CMC users can appropriately manage the proposed MOC Cut-Off Times, including the proposed 3:54 p.m. MOC Cut-Off Time. Additionally, the Exchange discussed the proposed change with potential new users of CMC. These market participants indicated that the proposed 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. See id.

⁹⁴ See supra note 37.

such as algorithms and smart order routers, which they use to access CMC;⁹⁵ and further states that market participants that may not currently possess internal high-speed routing and trading technology may, and likely already do, utilize such service providers.⁹⁶ According to the Exchange, if a CMC user receives a message that their MOC order was not matched in the CMC 3:54 p.m. matching session, such user would have more than enough time to re-route their MOC order to Nasdaq's Closing Cross auction.⁹⁷ The Commission believes that the data and survey information provided by the Exchange support the Exchange's contention that CMC users will have adequate time to receive electronic notification of any unmatched MOC orders and participate in Nasdaq's Closing Cross auction, should they choose to do so. Further, enabling CMC users to retain control of their trading for a longer period could encourage participation in CMC by market participants by providing more time to seek and may therefore promote competition among MOC order execution venues.

The Exchange also states that CMC's total matched shares information would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at the new proposed MOC Cut-Off Times. According to the Exchange, because of the speeds and widespread use of market technology, market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information into their closing processes.⁹⁸ Further, the Exchange states that it discussed the proposed rule change with four designated market makers for the primary exchanges who confirmed that, while they do not

⁹⁵ See supra note 41.

⁹⁶ See supra note 52.

⁹⁷ According to the Exchange, because the total matching process typically takes a fraction of a second, with the maximum around one second, with a 3:49pm MOC Cut-Off Time for example, a user should, in most instances, know the paired CMC quantity no later than 3:49:01pm, leaving the user at least 59 seconds to re-route any unpaired MOC orders to the primary exchanges' closing auctions. See supra note 40.

⁹⁸ See supra note 58 and accompanying text.

currently monitor the Cboe Auction Feed, they are technically equipped to do so.⁹⁹ Therefore, with the proposed CMC MOC Cut-Off Times, market participants should continue to have opportunities to utilize CMC's total matched shares information, should they choose to do so.¹⁰⁰

As noted above, the Exchange's survey information and data indicate that CMC users and other market participants could accommodate the proposed CMC MOC Cut-Off Times and the total matched shares information would be disseminated by the Exchange free of charge at each of the proposed CMC MOC Cut-Off Times. Therefore, the Commission believes that the proposed rule change should not significantly contribute to increased market complexity or operational risk.¹⁰¹ Finally, the proposed rule change should not adversely impact the ability of existing self-regulatory organization surveillance and enforcement activity to deter market participants who might seek to abuse CMC or use CMC information to abuse a closing auction on a primary exchange.

The Exchange also proposes to amend Interpretations and Polices .02 to Rule 11.28 to state 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. The Commission believes that the proposed procedures

⁹⁹ See id.

¹⁰⁰ The Exchange also 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 matching session and would not include the total size of matched buy and sell orders from any prior CMC MOC Cut-Off Time. This clarification of the information disseminated in the Cboe Auction Feed will aid Members seeking to utilize CMC information into their closing auction processes.

¹⁰¹ Moreover, the Commission previously found that CMC "should not significantly increase market complexity and operational risk because it will simply constitute an additional optional MOC order execution venue for market participants, and an optional data feed that market participants may choose to monitor for information regarding the total size of matched MOC orders via Cboe Market Close." Securities Exchange Act Release No. 88008 (January 21, 2020), 85 FR 4726, 4729 (January 27, 2020) (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).

provide more transparency regarding how MOC orders would be treated in the case of a matching engine impairment, particularly in the case where an MOC order has been designated for several matching sessions. In addition, the Commission believes that allowing a Member to 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 helps Members better manage their orders should an impairment occur and, if desired, re-route their orders to the applicable primary listings exchange.

Based on the foregoing, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the Act and the rules and regulations thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment Nos. 2 and 3, 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-2024-32 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-2024-32. 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-2024-32 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁰² to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, prior to the 30th day after the date of publication of Amendment Nos. 2 and 3 in the Federal Register. In Amendment No. 2, the Exchange amended the proposal to: (1) eliminate the proposed 3:58 p.m. matching session; (2) limit the proposed 3:54 p.m. matching session to Nasdaq-listed securities; (3) provide that for the Cboe Auction Feed, the disseminated total size of all buy and sell orders matched via CMC

¹⁰² 15 U.S.C. 78f(b)(2).

will only be for that particular CMC matching; (4) provide more detail about the handling of CMC MOC order in the event of a matching engine impairment; and (5) provide additional justification and support of the proposal. In Amendment No. 3, the Exchange corrected a typographical error in the proposed rule text regarding the total number of CMC matching sessions.¹⁰³

The Commission believes that these revisions strengthen the proposal and provide greater specificity and justification about to the proposed rule change and do not raise any novel regulatory issues. The additional explanation in support of the proposal as well as the amended rule language in Amendment Nos. 2 and 3 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. Moreover, Amendment No. 3 makes no substantive changes to the proposal. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰⁴ that the

¹⁰³ See Amendment No. 3, *supra* note 7.

¹⁰⁴ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-CboeBZX-2024-032), as modified by Amendment Nos. 2 and 3, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁵

Vanessa A. Countryman,

Secretary.

¹⁰⁵ 17 CFR 200.30-3(a)(12).