

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2022-10 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-IEX-2022-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2022-10, and should be submitted on or before December 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-96359; File No. SR-CboeBZX-2022-038]

**Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Rule 11.28(a) To Extend the MOC Cut-Off Time**

November 18, 2022.

On August 5, 2022, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend BZX Rule 11.28(a) to extend the cut-off time for accepting Market-on-Close orders entered for participation in the Cboe Market Close. The proposed rule change was published for comment in the **Federal Register** on August 24, 2022.<sup>3</sup> On October 4, 2022, pursuant to section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> On November 11, 2022, the Exchange submitted Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and superseded the proposed rule change as originally filed.<sup>6</sup> The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to amend Rule 11.28(a) to extend the Cboe Market Close MOC Cut-Off Time from 3:35 p.m. Eastern Time to 3:49 p.m. Eastern Time. The text of the proposed rule change is provided in Exhibit 5.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>5</sup> See Securities Exchange Act Release No. 95967, 87 FR 61425 (October 11, 2022). The Commission designated November 22, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>6</sup> Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboebzx-2022-038/sr-cboebzx2022038.htm>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>52</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 95529 (August 17, 2022), 87 FR 52092.

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

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

1. Purpose

Exchange Rule 11.28 (Cboe Market Close, a Closing Match Process for Non-BZX-Listed Securities) provides Members an optional closing match process for non-BZX-Listed securities, known as Cboe Market Close (“CMC”). Currently, per Rule 11.28(a) (Order Entry) Members<sup>8</sup> may enter, cancel, or replace Market-on-Close (“MOC”) orders designated for participation in CMC beginning at 6:00 a.m. Eastern Time<sup>9</sup> up to 3:35 p.m. (“MOC Cut-Off Time”). The Exchange now proposes to move the MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m. The Exchange is not proposing to make any other changes to the CMC process.

By way of 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. 1<sup>10</sup> to that proposal (the “Original Proposal”).<sup>11</sup> On January 17, 2018, the Commission, acting through authority delegated to the Division of Trading and Markets,<sup>12</sup> approved the Original Proposal (“Approval Order”).<sup>13</sup> 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

<sup>8</sup> The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to section 15 of the Act, and which has been approved by the Exchange. See Rule 1.5(n), definition of “Member”.

<sup>9</sup> All times noted throughout are in Eastern Time.

<sup>10</sup> 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.

<sup>11</sup> 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).

<sup>12</sup> 17 CFR 200.30–3(a)(12).

<sup>13</sup> 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).

Review”). Pursuant to Commission Rule of Practice 431(e),<sup>14</sup> the Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.<sup>15</sup> On March 1, 2018, pursuant to Commission Rule of Practice 431, the Commission issued a scheduling order granting the Petitions of Review of the Approval Order, and provided until March 22, 2018, for any party or other person to file a written statement in support of, or in opposition to, the Approval Order.<sup>16</sup> 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.<sup>17</sup> On October 4, 2018, BZX filed Amendment No. 2<sup>18</sup> 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,<sup>19</sup> 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.<sup>20</sup> The Commission noted that

<sup>14</sup> 17 CFR 201.431(e).

<sup>15</sup> 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>.

<sup>16</sup> 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).

<sup>17</sup> 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>.

<sup>18</sup> 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”).

<sup>19</sup> See “Statements on File No. SR–BatsBZX–2017–34”, available at: <https://www.sec.gov/comments/sr-batsbzx-2017-34/batsbzx201734.htm>.

<sup>20</sup> 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

under Rule 700(b)(3) of the Commission’s Rule of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.”<sup>21</sup>

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”).<sup>22</sup> 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”<sup>23</sup> 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”.<sup>24</sup> For the reasons discussed more fully below, the Exchange believes that when applying the Commission’s analysis in the Final Approval Order to the current proposal, such review would similarly conclude that this proposal is consistent with the Act and should be approved.

Since the Original Proposal various exchanges have extended the MOC cut-off times for their closing auctions, moving them closer to 4:00 p.m.<sup>25</sup> Additionally, closing price match services offered by off-exchange venues have grown in popularity,<sup>26</sup> including alternative trading systems (“ATS”) that offer a MOC cut-off time as close as 30-seconds before the primary exchanges’

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”).

<sup>21</sup> *Id.*

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> 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.).

<sup>26</sup> See *infra*, “Price Discovery” and “Fragmentation”, which describes the growth of off-exchange closing volume.

cut-off times, as well as MOC cut-off times aligned with those of NYSE, NYSE Arca, and Nasdaq.<sup>27</sup> As the market structure for closing auctions and closing price match offerings has continued to evolve, and in response to customer feedback and to better compete with off-exchange venues, the Exchange is proposing this rule change to align CMC's MOC Cut-Off Time more closely with the other exchanges and off-exchange venues.

The Exchange notes that Members have requested a MOC Cut-Off Time that is closer to the end of Regular Trading Hours<sup>28</sup> so that they may retain control of their trading for a longer period and be better able to manage their trading at the close.<sup>29</sup> Generally speaking, notional trading and trading volatility are typically at their highest towards the end of Regular Trading Hours. Accordingly, market participants often prefer to trade as close to 4:00 p.m. as possible, because doing so can provide them with more time to seek better priced liquidity for their orders in a variety of ways, 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 orders algorithmically into the close, thus reducing the size of their outstanding orders that they may decide to commit to CMC or the primary auctions.

Additionally, Members have indicated that extending the MOC Cut-Off Time to 3:49 p.m. will help to make CMC a more comparable alternative to NYSE and Nasdaq, which have MOC cut-off times of 3:50 p.m.<sup>30</sup> and 3:55 p.m.,<sup>31</sup> respectively. For reasons discussed directly above, cut-off times closer to 4:00 p.m. are beneficial to market participants, and by extending CMC's MOC Cut-Off Time to 3:49 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, thus enhancing intermarket competition.

In support of the above, the chart below shows the total traded volume across all market centers, from 3:30 p.m. to 4:00 p.m. in 30-second intervals, and includes labels for the different MOC cut-off times for CMC, NYSE, and Nasdaq. As illustrated, at NYSE's 3:50 p.m. MOC cut-off time, 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. Comparatively, there is no observed spike in traded volume in the overall marketplace at the current CMC MOC Cut-Off Time of 3:35 p.m. The Exchange believes that this data substantiates the view that a MOC cut-off time closer to 4:00 p.m. is valued by market participants, and that by extending the CMC MOC Cut-Off Time to 3:49 p.m. CMC will be better positioned as a viable alternative to the primary exchanges' closing auctions, "foster[ing] price competition and thereby decrease[ing] costs for market participants."<sup>32</sup>

<sup>27</sup> For example, JP Morgan Securities' ATS, JPB-X, offers Close Price Match. This functionality utilizes a conditional order process to match orders and crosses them at the security's official closing prices, as determined by the closing auction at the primary listing 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](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/310607/0000310607/22000009/xslATS-N\\_X01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/310607/0000310607/22000009/xslATS-N_X01/primary_doc.xml).

<sup>28</sup> 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."

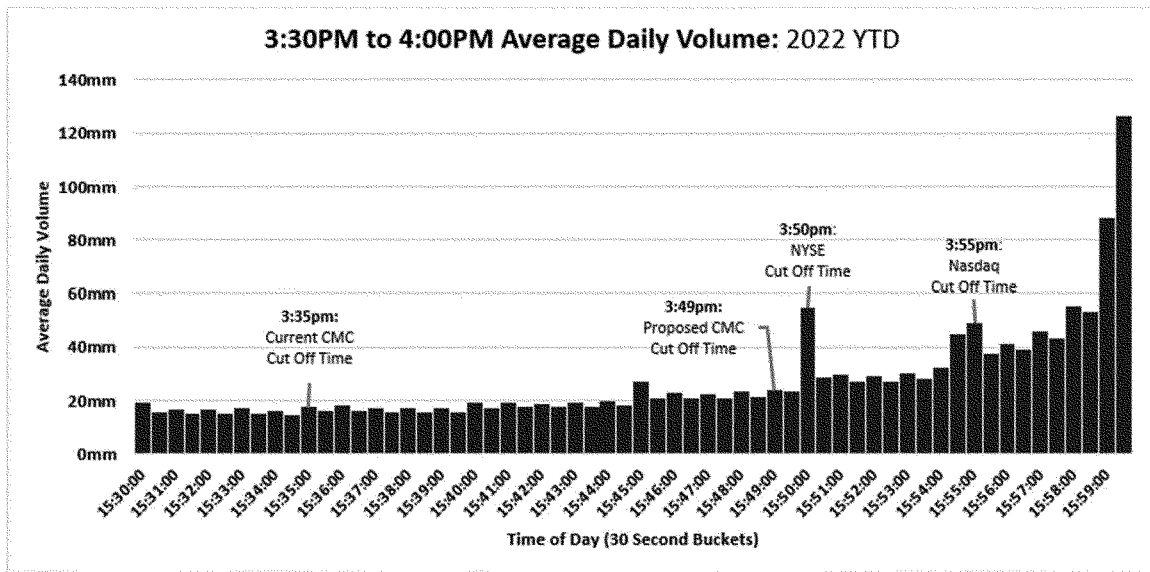
<sup>29</sup> The Exchange notes that part of its rationale for extending CMC's MOC Cut-Off Time is substantively identical to that of other exchanges moving their MOC cut-off times to later in the trading day, namely, NYSE and Nasdaq. See Securities Exchange Act Release No. 34-84454 (October 19, 2018), 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.")

<sup>30</sup> See NYSE Rule 73.5(a)(8), Closing Auction Imbalance Freeze Time.

<sup>31</sup> See Nasdaq Rule 4702(b)(11)(A), Market On Close Order.

<sup>32</sup> *Supra* note 20.



Source: Internal Exchange Data

The Exchange also notes that today's market participants, including users of CMC, are technologically equipped<sup>33</sup> to handle a 3:49 p.m. MOC Cut-Off Time. 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 their MOC order was not matched in CMC,<sup>34</sup> such CMC

user will have more than enough time to reroute their MOC order to the primary exchange. Importantly, the Exchange discussed the proposed change with both current CMC users and potential new CMC users<sup>35</sup> to gauge whether a MOC Cut-Off Time one-minute prior to the NYSE cut-off time, and six-minutes prior to the Nasdaq cut-off time, would present operational or technological challenges, and confirmed that both current CMC users as well as potential new CMC users can in fact technologically manage the proposed change.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>36</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>37</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>38</sup> 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 moving the MOC Cut-Off Time to 3:49 p.m. would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow Members to retain control over their orders for a longer period, thereby assisting market participants in managing their trading at the close. As discussed more fully above, market participants may prefer to trade as close to 4:00 p.m. as possible,

<sup>33</sup> The Exchange notes that today's equities markets involve the widespread use of automated trading algorithms and routing solutions, as well as market connectivity options with speeds 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](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.").

<sup>34</sup> 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 via CMC via the Cboe Auction Feed—generally occurs within microseconds. As such, a MOC Cut-Off Time one-minute prior to the primary exchanges' cut-off times is a sufficient period of time for Members to reroute their unmatched MOC orders to the primary exchanges, should they choose to do so.

<sup>35</sup> 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 with CMC's Users' two (2) third-party providers whose end users are responsible for 100% of CMC's volume, and these providers indicated that the automated routing and trading solutions they offer to CMC's users can appropriately manage the proposed MOC Cut-Off Time. Additionally, the Exchange discussed the proposed amendment with potential new users of CMC (approximately sixty (60) market participants, including proprietary trading firms, regional broker-dealers, and bulge bracket broker-dealers). These market participants indicated that amending the MOC Cut-Off Time would likely encourage them to use CMC as part of their trading strategies (whether directly or through a third-party provider) because the proposed MOC Cut-Off Time enables market participants to hold onto and trade their orders closer to 4:00 p.m. and makes CMC a more viable alternative to the primary exchanges' closing auctions.

<sup>36</sup> 15 U.S.C. 78f(b).

<sup>37</sup> 15 U.S.C. 78f(b)(5).

<sup>38</sup> *Id.*

because doing so can provide them with more time to seek better priced liquidity for their orders in a variety of ways, as well as give them more time to determine the size of their outstanding orders that they may decide to commit to CMC the primary auctions, or services offered by off-exchange venues such as ATSS.

Additionally, the Exchange believes that a MOC Cut-Off Time fifteen-minutes (15) prior to NYSE's cut-off time, and twenty-five-minutes (25) prior to Nasdaq's cut-off time, is no longer necessary. Rather, the Exchange notes that today's market participants are technologically equipped<sup>39</sup> to handle a 3:49 p.m. MOC Cut-Off Time. Specifically, CMC's current users utilizes third-party providers or broker-dealers<sup>40</sup> that provide them with electronic trading technology enabling them to quickly react to market conditions and messages, such as the Cboe Auction Feed. Moreover, as noted above, many market participants, including non-users of CMC, utilize electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times often measured in microseconds. Therefore, the Exchange believes that both current users of CMC, as well as those that may utilize CMC following approval of this amendment, will be technologically equipped to efficiently respond to CMC's publication of matched shares and should they so choose, reroute any unmatched MOC

orders to the respective primary closing auction.<sup>41</sup>

The Exchange acknowledges 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<sup>42</sup> to handle and execute their orders electronically. 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.

The Exchange also believes that the extension of cut-off times by the primary exchanges since CMC's proposal, as well as the growth of off-exchange venues<sup>43</sup> with cut-off times in

<sup>41</sup> By way of background, CMC calculates the matched shares at the MOC Cut-Off Time (currently 3:35 p.m.) Importantly, the matching process happens quickly, and 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 user should in most instances know the paired CMC quantity no later than 3:49:01 p.m., leaving the user at least fifty-nine-seconds (59) to reroute any unpaired CMC MOC orders to the primary exchanges' closing auctions. As noted by the Exchange throughout this filing, the speed of today's trading technology is typically measured in microseconds, making fifty-nine-seconds (59) a significant amount of time for a user to make an automated trading decision. For reference, a microsecond is 1-millionth of a second.

<sup>42</sup> *Supra* note 40.

<sup>43</sup> *Supra* note 27.

<sup>44</sup> As noted above, NYSE's cut-off time is 3:50 p.m., and Nasdaq's cut-off time is 3:55 p.m. NYSE Arca's cut-off time for MOC orders is 3:59 p.m. See "Trading Information—Closing Auctions", available at: <https://www.nyse.com/markets/nyse-arca/trading-info>.

<sup>45</sup> *Supra* note 20.

<sup>46</sup> The Exchange 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 technically equipped to do so.

<sup>47</sup> *Supra* note 41.

<sup>48</sup> 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 MOC Cut-Off Time of 3:49 p.m. is not likely to negatively impact market participants who may not possess the internal capabilities to reroute unmatched CMC MOC orders to the primary exchanges' closing auctions. The Exchange further notes that the utilization of third parties and broker-dealers for technological trading solutions was even noted by the Commission in its Algorithmic Trading Report. *Supra* note 33 ("Institutions that do not create their own algorithms generally use algorithms provided to them by institutional brokers.") ("Brokers are tasked by their customers with finding liquidity in a complex, fragmented market, achieving best execution, and minimizing information leakage and other implicit costs. To try to meet these goals, brokers use, and offer to their customers, a wide range of execution algorithms.")

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

Moreover, the Exchange 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 extending the MOC Cut-Off Time to 3:49 p.m. would more closely align the CMC MOC Cut-Off Time to the cut-off times in place for the primary exchanges.<sup>44</sup> For the reasons discussed more fully above, the primary exchanges' cut-off times are beneficial to market participants because of their proximity to 4:00 p.m. By moving the MOC Cut-Off Time closer to the primary exchanges' cut-off times, CMC can become a comparable alternative to the primary exchanges' closing auctions for Members to route their unpriced MOC orders, and "should foster price competition and thereby decrease costs for market participants."<sup>45</sup> Importantly, even with a MOC Cut-Off Time closer to the primary exchanges' cut-off times, CMC removes any perceived impact on the primary listing markets' close by publishing the number of matched order shares, by security, in advance of the primary markets' cut-off time. The total matched shares would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at the new proposed MOC Cut-Off Time of 3:49 p.m. Because of the speeds and widespread use of market technology the market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information into their closing processes.<sup>46</sup> 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 time<sup>47</sup> to reroute any MOC orders not matched via CMC to reach the primary market to be included in their closing auction process. Specifically, CMC's current users rely on third-party providers or broker-dealers<sup>48</sup> to handle and execute their orders electronically. Furthermore, potential new users of

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.")

<sup>39</sup> *Supra* note 33.

<sup>40</sup> 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 MOC Cut-Off Time of 3:49 p.m. is not likely to negatively impact market participants who may not possess the internal capabilities to reroute unmatched CMC MOC orders to the primary exchanges' closing auctions. The Exchange further notes that the utilization of third parties and broker-dealers for technological trading solutions was even noted by the Commission in its Algorithmic Trading Report. *Supra* note 33 ("Institutions that do not create their own algorithms generally use algorithms provided to them by institutional brokers.") ("Brokers are tasked by their customers with finding liquidity in a complex, fragmented market, achieving best execution, and minimizing information leakage and other implicit costs. To try to meet these goals, brokers use, and offer to their customers, a wide range of execution algorithms.")

CMC either likely already possess the necessary routing and trading technology or may simply choose to utilize third-party solutions.<sup>49</sup> Accordingly, the Exchange believes that the proposed MOC Cut-Off Time is not likely to result in disparate treatment amongst CMC users.

The proposed rule change would also more closely align CMC's MOC Cut-Off Time with that of off-exchange venues that offer cut-off times aligned with those currently offered by the primary exchanges, and as little as 30-seconds prior to market close.<sup>50</sup> As such, the Exchange believes that the proposed rule change is supported by both ample precedent as well as current market structure, and should not present any new or novel issues that market participants must consider when managing their trading and determining which exchange or off-exchange venue to route their MOC orders.

#### Price Discovery<sup>51</sup>

The Exchange believes that the proposed rule change is consistent with the section 6(b)(5) requirements.<sup>52</sup> As previously noted by the Exchange,<sup>53</sup> CMC accepts and matches only unpriced MOC orders. By matching only unpriced MOC orders, and not 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. While the proposed rule change would have CMC accept MOC orders up to 3:49 p.m., such extension will not change this underlying functionality. As previously noted by the Exchange,<sup>54</sup> 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.<sup>55</sup>

Moreover, the Exchange believes that even if extending the MOC Cut-Off Time to 3:49 p.m. reduces the number of MOC orders routed to a security's primary listing market, CMC is designed to remove any perceived adverse impact on the primary listing markets' close because the total matched shares would still be disseminated by the Exchange free of charge via the Cboe Auction Feed prior to the primary exchanges' cut-off times. Additionally, because of the technological capabilities of today's market participants discussed more fully above, the market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information into their closing processes. Furthermore, current users of CMC are technologically equipped to manage the proposed CMC MOC-Cut Off Time. Potential new CMC users are capable of rerouting any unmatched CMC MOC orders to the primary exchanges. As discussed above, CMC's current users rely on third-party solutions that provide them with the technological capability to appropriately manage the proposed MOC Cut-Off Time above. 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

MOC Cut-Off time. Even where potential new users of CMC may not possess internally high-speed routing and trading technology, such users can utilize, to the extent they do not so already, third-party providers and broker-dealers to handle and route their orders electronically.

#### Fragmentation<sup>56</sup>

Another matter addressed by the Commission in their 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.<sup>57</sup> While comparisons to off-exchange MOC activity may not be a perfect measure of the potential resulting effect of CMC market fragmentation,<sup>58</sup> the proposed amendment is 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 January 2019.<sup>59</sup> 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.

<sup>49</sup> *Supra* note 40.

<sup>50</sup> *Supra* note 27.

<sup>51</sup> As part of this proposed rule change 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 20.

<sup>52</sup> 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 20.

<sup>53</sup> 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/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>.

<sup>54</sup> *Id.*

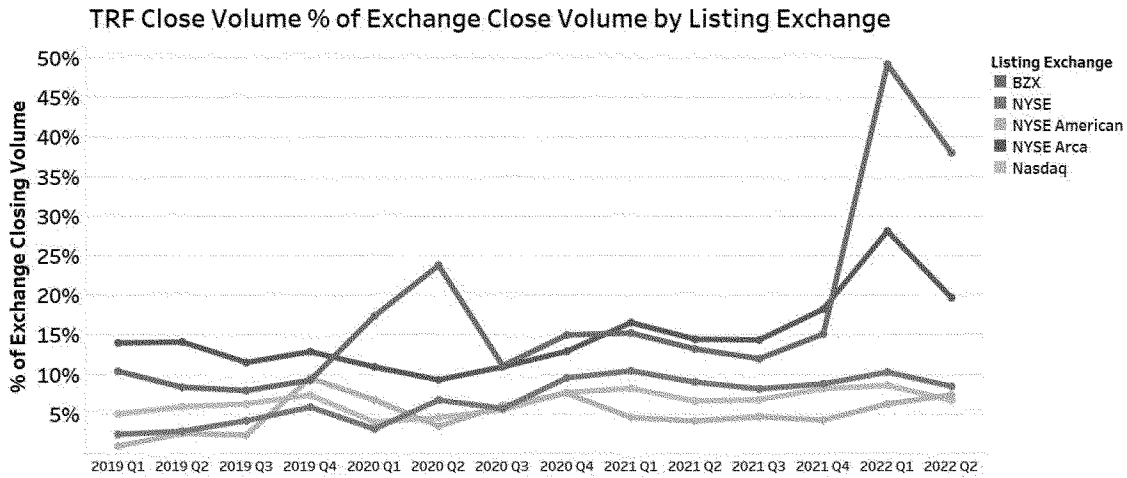
<sup>55</sup> *Supra* note 20.

<sup>56</sup> *Supra* note 51.

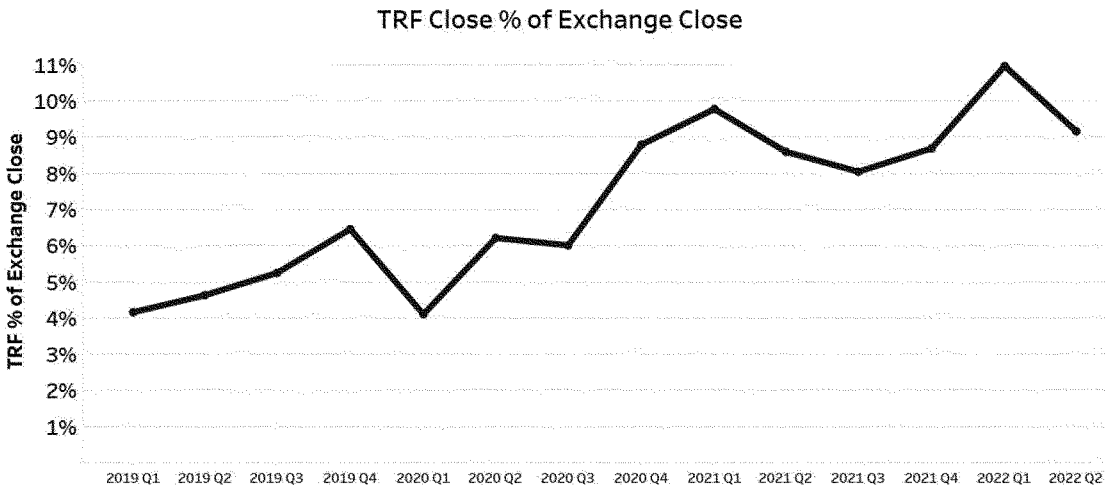
<sup>57</sup> *Supra* note 20.

<sup>58</sup> *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.")

<sup>59</sup> 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.



Source: Internal Exchange Data.



Source: Internal Exchange Data.

	Symbol	Primary exchange	TRF close % inc. PRP <sup>60</sup>
1	AAPL	Nasdaq	9
2	T	NYSE	6
3	BAC	NYSE	10
4	INTC	Nasdaq	5
5	MSFT	Nasdaq	7
6	F	NYSE	9
7	PFE	NYSE	5
8	CSCO	Nasdaq	5
9	CMCSA	Nasdaq	7
10	WFC	NYSE	9

Source: Internal Exchange Data.

Given the significant volume of off-exchange MOC activity, the Exchange believes there is ample opportunity for CMC to attract *existing* MOC volume that is already 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, with the proposed MOC Cut-Off Time CMC will be able to meet the needs of market participants, and better compete with off-exchange venues, “foster[ing] price competition and thereby decreas[ing] costs for

market participants.<sup>61</sup> 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.

<sup>60</sup> As defined above, “PRP”.

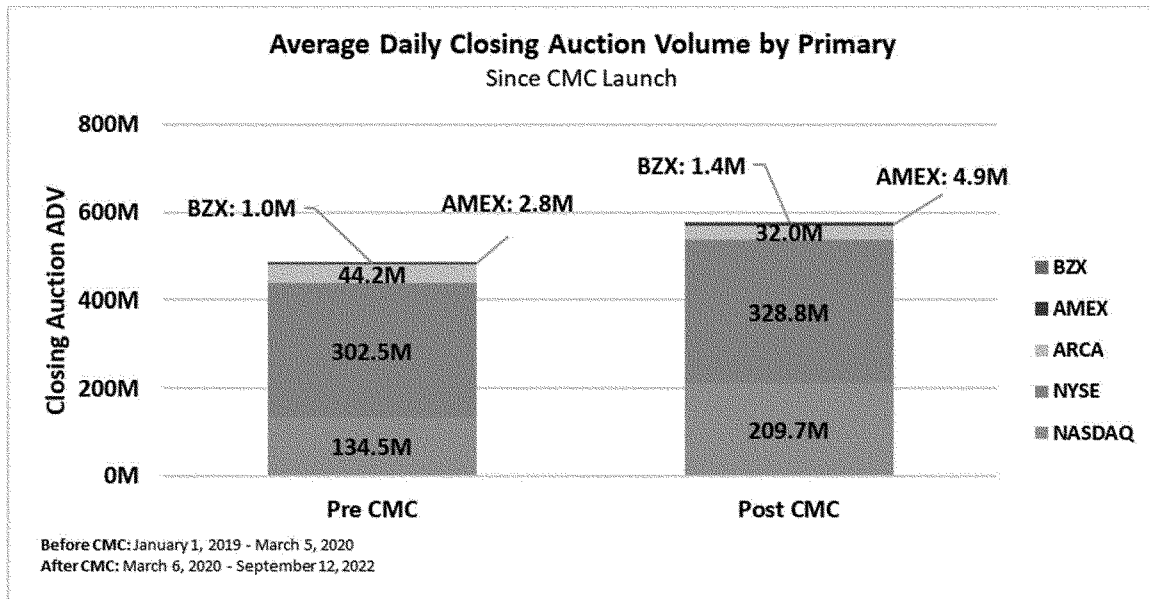
<sup>61</sup> *Supra* note 20.

Moreover, by attracting such order flow, CMC can help to increase the amount of volume at the close executed on systems subject to the resiliency requirements of Regulation SCI.<sup>62</sup>

Indeed, an analysis by the Exchange shows that the closing auction volume on both NYSE and Nasdaq has increased despite the launch of CMC on March 6,

2020. 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 significantly fragment the marketplace. In any event, the proposed extension of the MOC Cut-Off Time to 3:49 p.m. is not likely to

materially increase market fragmentation and have a negative impact on the market because the 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.



Source: Internal Exchange Data.

#### Market Complexity and Operational Risk<sup>63</sup>

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 seeks only to extend the MOC Cut-Off Time to 3:49 p.m., leaving all other aspects of the CMC process intact. Members 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. Rather, Members may continue to monitor the same data feed as they do today, the Cboe Auction Feed, and simply look for the publication of the

CMC information at the new proposed MOC Cut-Off Time.

Additionally, as discussed more fully above, the Exchange discussed this proposal with current CMC users prior to submitting this proposal and learned that CMC's current users are technologically equipped<sup>64</sup> to manage a MOC Cut-Off Time closer to the primary exchanges' cut-off times, and that they can respond to CMC's publication of matched shares and quickly reroute any unmatched MOC orders to the respective primary closing auction. Moreover, CMC is a voluntary offering, and Members may freely decide whether to participate.

Furthermore, as noted throughout, 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, as mentioned above, 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.<sup>65</sup> Similarly, in 2018 the NYSE received approval from the SEC to extend their cut-off times for order entry and cancellation for participation their closing auction, from 3:45 p.m. to 3:50 p.m.<sup>66</sup> NYSE also offers discretionary orders, which unlike MOC/LOC orders that are subject to NYSE's 3:50 p.m. cut-off, may be entered for participation in the closing auction until 3:59:50.<sup>67</sup> Additionally, market participants may enter MOC orders for participation in NYSE Arca's closing auction up to 3:59 p.m.<sup>68</sup> Finally, various off-exchange venues offer closing match processes with cut-off times aligned with those of

<sup>62</sup> 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.")

<sup>63</sup> *Supra* note 51.

<sup>64</sup> *Supra* note 41.

<sup>65</sup> *Supra* note 25.

<sup>66</sup> *Id.*

<sup>67</sup> See NYSE Rule 7.31(c)(2)(C); see also "The Floor Broker's Modern Trading Tool", available at: <https://www.nyse.com/article/trading/d-order> ("While D Orders are available for use throughout the trading day, most executions occur in the closing auction, where they're known as Closing D Orders. At 3:55 p.m., Closing D Order interest

eligible to participate in the closing auction is added to the order imbalance feed at their discretionary price range. Closing D Orders can also be submitted, modified or cancelled up to 3:59:50 p.m. These distinct features of Closing D Orders are designed to facilitate the Floor Broker's traditional agency role on behalf of larger institutional interest, allowing Floor Brokers to work in conjunction with their customer to find larger liquidity opportunities.")

<sup>68</sup> See "Closing Auction Timeline", available at: <https://www.nyse.com/markets/nyse-arca/trading-info>.



the primary exchanges, and even as close to 30-seconds before market close, 4:00 p.m.<sup>69</sup>

Accordingly, the Exchange believes that market participants are well accustomed to managing the various cut-off times in today's marketplace, and in 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 extension of CMC's MOC Cut-Off Time should not present market participants with any novel operational or technological complexities.

#### Manipulation <sup>70</sup>

As a general matter, the Exchange notes that the value to market participants in extending the MOC Cut-Off Time to 3:49 p.m. is not the proximity of CMC's matched shares message to the cut-off times of the primary exchanges. Rather, the value of the proposed amendment is the ability of users to trade their orders for a longer period of time before deciding whether to commit their MOC orders to CMC. Nevertheless, the Exchange does not expect that the proposed extension of the MOC Cut-Off Time to 3:49 p.m. will result in an increase of manipulative activity due to information asymmetries, or raise any unique manipulation concerns relative to how CMC exists today with a current MOC Cut-Time of 3:35 p.m.

The Exchange notes that any information CMC participants may be able to glean from their paired-off MOC orders, or from their unmatched MOC orders, is still limited in nature. For instance, any information that CMC participants may learn from receiving unmatched MOC order messages is still limited in nature because the CMC participant would still only know the unexecuted size of its own order.<sup>71</sup>

Moreover, 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 closer in time to the primary exchanges' cut-off times, this change does not suddenly make such information more valuable or useful in terms of enhancing opportunities for gaming and manipulating the official closing price. The proposed MOC Cut-Off Time is one-minute prior to NYSE's cut-off time of 3:50 p.m., and six-minutes prior to Nasdaq's cut-off time of 3:55 p.m. As noted above, 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 Time and that 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 3:49 p.m.

Furthermore, as with the current MOC Cut-Off Time, the proposed extension does 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.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup> 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

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 20.

<sup>69</sup> The Exchange also notes that in its 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.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

demand for a security, is subject to change, and is only one relevant piece of information.<sup>75</sup> Similarly, because any information gleaned by a CMC participant is limited only to the unexecuted size of their order, and relative to the depth of only the BZX pool of liquidity, the Exchange believes that the proposed extension of the MOC Cut-Off Time does not create an increased risk of manipulative trading activity.

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

#### 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. Rather, the proposed rule change seeks merely to extend the MOC Cut-Off Time from 3:35 p.m. to 3:49 p.m., enabling all Members to manage their trading for a longer period. The Exchange is not proposing to make any other changes to the CMC process. Moreover, CMC is a voluntary closing match process, and Members are not required to participate in the CMC. Additionally, the proposed rule change applies equally to all Members. Importantly, based on feedback from CMC users, the proposed MOC Cut-Off Time will not prevent CMC's current user's from participating in CMC, as CMC's current users are technologically equipped to manage a 3:49 p.m. MOC Cut-Off Time, and should they choose to do so, reroute MOC orders not matched in CMC to the primary exchanges' closing auctions.

Furthermore, the Exchange 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 rule change more closely aligns the CMC MOC Cut-Off Time to the cut-off times of other exchanges, while still providing CMC participants with an opportunity to reroute any of their unpaired MOC orders to the

<sup>75</sup> *Id.*

<sup>69</sup> *Supra* note 27.

<sup>70</sup> *Supra* note 51.

<sup>71</sup> 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

primary exchanges. In this regard, the proposed rule change may make CMC a more viable alternative to the primary auctions and “should foster price competition and thereby decrease costs for market participants.”<sup>76</sup>

Additionally, the proposed MOC Cut-Off Time may also enable the Exchange to more effectively compete 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.

*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. Proceedings To Determine Whether To Approve or Disapprove SR–ChoeBZX–2022–038, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration**

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>77</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1, to further inform the Commission’s analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>78</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis, and input from commenters with respect to, the consistency of the proposal with Sections 6(b)(5)<sup>79</sup> and 6(b)(8)<sup>80</sup> of the Act. Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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. Section 6(b)(8) of the Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in Amendment No. 1,<sup>81</sup> in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 1. In particular, the Commission seeks comment on the following aspects of the proposal and asks commenters to submit data where appropriate to support their views:

1. The Exchange states that CMC users are technologically equipped to handle a 3:49 p.m. MOC Cut-Off Time and that, if a CMC user receives a message that their MOC order was not matched in CMC, such CMC user will have more than enough time to reroute their MOC order to the primary exchange.<sup>82</sup> While the Exchange acknowledges that there are market participants that may not currently possess internal high-speed routing and trading technology, the Exchange states that 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.<sup>83</sup> 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.<sup>84</sup> What are commenters’ views on whether the proposed MOC Cut-Off Time (3:49 p.m.), which would be one minute from NYSE’s MOC cut-off time of 3:50 p.m. and six minutes from Nasdaq’s MOC cut-off time of 3:55 p.m., would provide enough time for CMC users to reroute unmatched MOC orders to the primary exchanges should they choose to do so?

2. The Exchange states that total matched share information would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at the new proposed MOC Cut-Off Time of 3:49 p.m.<sup>85</sup> The Exchange states that, 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.<sup>86</sup> What are commenters’ views on whether the dissemination of total matched share information at an MOC Cut-Off Time of 3:49 p.m. would provide enough time for market participants, including market makers, to access and incorporate such information into their closing trading strategies and processes should they choose to do so?

3. The Exchange states that, with an MOC Cut-Off Time at 3:49 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, thus enhancing intermarket competition.<sup>87</sup> In particular, the Exchange states that, by extending the MOC Cut-Off Time to 3:49 p.m., CMC will be better positioned as a viable alternative to the primary exchanges’ closing auctions, “foster[ing] price competition and thereby decrease[ing] costs for market participants.”<sup>88</sup> The Exchange also states that the proposed MOC Cut-Off Time may enable the Exchange to more effectively compete 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.<sup>89</sup> What are commenters’ views on the extent to which an extension of the MOC Cut-Off Time to 3:49 p.m. would promote competition among MOC order execution venues and foster price competition for MOC order execution fees?

**IV. Procedure: Request for Written Comments**

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to

<sup>76</sup> *Supra* note 20.

<sup>77</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>78</sup> *Id.*

<sup>79</sup> 15 U.S.C. 78f(b)(5).

<sup>80</sup> 15 U.S.C. 78f(b)(8).

<sup>81</sup> *See supra* note 6.

<sup>82</sup> *See supra* Item II.A.1.

<sup>83</sup> *See supra* Item II.A.2.

<sup>84</sup> *See id.*

<sup>85</sup> *See id.*

<sup>86</sup> *See id.*

<sup>87</sup> *See supra* Item II.A.1.

<sup>88</sup> *See id.* (quoting the Final Approval Order).

<sup>89</sup> *See supra* Item II.B.

Rule 19b-4 under the Act,<sup>90</sup> any request for an opportunity to make an oral presentation.<sup>91</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by December 16, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 30, 2022.

Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2022-038 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-2022-038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments

<sup>90</sup> 17 CFR 240.19b-4.

<sup>91</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2022-038 and should be submitted on or before December 16, 2022. Rebuttal comments should be submitted by December 30, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>92</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2022-25669 Filed 11-23-22; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96357; File No. SR-CboeBZX-2022-055]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule

November 18, 2022.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 10, 2022, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

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

<sup>92</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

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

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to amend its Fee Schedule to modify the required criteria of the Tape B Volume and Quoting Tier 1 and to clarify that fee code X<sup>3</sup> is applicable to certain routed orders that add or remove liquidity.<sup>4</sup>

The Exchange first notes that its listing business also operates in a highly-competitive market in which market participants, which includes issuers of securities, Lead Market Makers (“LMMs”), and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. Footnote 13 of the Fee Schedule provides for the Tape B Volume and Quoting Tiers, which are designed to incentivize market participants to enroll in LMP Securities,<sup>5</sup> which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

The Exchange currently offers two Tape B Volume and Quoting Tiers under Footnote 13, which provide an additional rebate of \$0.0001 (Tier 1) and

<sup>3</sup> Fee code X is appended to routed orders.

<sup>4</sup> The Exchange initially filed the proposed fee changes on November 1, 2022 (SR-CboeBZX-2022-054). On November 10, 2022, the Exchange withdrew that filing and submitted this filing.

<sup>5</sup> “LMP Securities” means a list of securities included in the Liquidity Management Program, the universe of which is determined by the Exchange and published in a circular distributed to Members and on the Exchange's website. Such LMP Securities include all Cboe-listed Exchange-Traded Products (“ETPs”) and certain non-Cboe-listed ETPs for which the Exchange wants to incentivize Members to provide enhanced market quality.