SECURITIES AND EXCHANGE COMMISSION

[Release No 34–87012; File No. SR–NASDAQ–2019–060]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rules 4120 and 4753

September 19, 2019.

On July 18, 2019, The Nasdaq Stock Market LLC (''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 Rules 4120 and 4753 to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter market prior to its initial pricing on the Exchange and to allow for the initial pricing of such securities through the IPO Cross. The proposed rule change was published for comment in the **Federal Register** on August 6, 2019.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is September 20, 2019.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates November 4, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2019–060).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20699 Filed 9–24–19; 8:45 am]

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86537 (July 31, 2019), 84 FR 38321.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87013; File No. SR–CBOE–2019–048]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rule 6.49C

September 19, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 6, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt Rule 6.49C. The text of the proposed rule change is provided below. (additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 6.49C. In-Kind Exchange of Options Positions and ETF Shares

Notwithstanding the prohibition set forth in Rule 6.49, positions in options listed on the Exchange may be transferred off the Exchange by a Trading Permit Holder in connection with transactions to purchase or redeem creation units of ETF shares between an authorized participant and the issuer of such ETF shares, which transfer occurs at a price related to the net asset value of such ETF shares. For purposes of this Rule:

(a) an ''authorized participant'' is an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (i.e., specified numbers of ETF shares); and

(b) an ''issuer of ETF shares'' is an entity registered with the Commission as an open-end management investment company under the Investment Company Act of 1940.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to adopt Rule 6.49C to add a new exception to the Exchange's general requirement that transfers of options contracts listed on the Exchange be effected on an exchange, as set forth in Rule 6.49.[3] Rule 6.49A specifies the circumstances under which Trading Permit Holders may currently effect transfers of positions off the trading floor, notwithstanding the prohibition in Rule 6.49.

Background

As discussed further below, the ability to effect ''in kind'' transfers is a key component of the operational structure of an exchange-traded fund

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

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

[3] Rule 6.49(a) (Transactions Off the Exchange) generally requires transactions of option contracts listed on the Exchange for a premium in excess of $1.00 to be effected on the floor of the Exchange or on another exchange.

(''ETF''). Currently, in general, ETFs can effect in-kind transfers with respect to equity securities and fixed-income securities. The in-kind process is a major benefit to ETF shareholders and, in general, the means by which assets may be added to or removed from ETFs. In-kind transfers protect ETF shareholders from the undesirable tax effects of frequent ''creations and redemptions'' (described below) and improve the overall tax efficiency of the products. However, currently, the Exchange Rules do not allow ETFs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for ETFs that hold them. As a result, the use of options by ETFs is substantially limited.

Current Rule 6.49A(a) lists the circumstances under which Trading Permit Holders may transfer their positions off of the Exchange. The circumstances currently listed include: (1) The dissolution of a joint account in which the remaining Trading Permit Holder assumes the positions of the joint account; (2) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership assumes the positions; (3) positions transferred as part of a Trading Permit Holder's capital contribution to a new joint account, partnership, or corporation; (4) the donation of positions to a not-for-profit corporation; (5) the transfer of positions to a minor under the Uniform Gifts to Minors Act; and (6) a merger or acquisition where continuity of ownership or management results.[4]

The Exchange proposes to add a new circumstance under which off-floor transfers of options positions would be permitted to occur. Specifically, under proposed Rule 6.49C, positions in options listed on the Exchange would be permitted to be transferred off the Exchange by a Trading Permit Holder in connection with transactions to purchase or redeem ''creation units'' of ETF shares between an ''authorized participant'' [5] and the issuer [6] of such ETF shares,[7] which transfer would occur at the price used to calculate the net asset value (''NAV'') of such ETF shares. The NAV for ETF shares is represented by the traded price for ETFs holding options positions on days of creation or redemption, and an options pricing model on days in which creations and redemptions do not occur. This proposed new exception, although limited in scope, would have a significant impact in that it would help protect ETF shareholders from undesirable tax consequences and facilitate tax-efficient operations. The frequency with which ETFs and authorized participants would rely on the proposed exception would depend upon such factors as the number of ETFs holding options positions traded on the Exchange, the market demand for the shares of such ETFs, the redemption activity of authorized participants, and the investment strategies employed by such ETFs.

As described in further detail below, while ETFs do not sell and redeem individual shares to and from investors, they do sell large blocks of their shares to, and redeem them from, authorized participants in conjunction with what is known as the ETF creation and redemption process. Although currently prohibited in light of Rule 6.49, under the proposed exception, ETFs that hold options listed on the Exchange would be permitted to effect creation and redemption transactions with authorized participants on an ''in-kind'' basis, which is the process that may generally be utilized by ETFs for other asset types. This ability would allow such ETFs to function as more tax-efficient investment vehicles to the benefit of investors that hold ETF shares. In addition, it may also result in transaction cost savings for the ETFs, which may be passed along to investors.

While the Exchange recognizes that, in general, the execution of options transactions on exchanges provides certain benefits, such as price discovery and transparency, based on the circumstances under which proposed Rule 6.49C would apply, the Exchange does not believe that such benefits would be compromised. In this regard, as discussed more fully below, the Exchange notes that in conjunction with the creation and redemption process, positions would be transferred at a price related to the NAV of ETF shares. In addition, although options positions would be transferred off of the Exchange, they would not be closed or ''traded.'' Rather, they would reside in a different clearing account until closed in a trade on the Exchange or until they expire. Further, as discussed below, proposed Rule 6.49C would be clearly delineated and limited in scope, given that the proposed exception would apply only to transfers of options effected in connection with the creation and redemption process.

The ETF Creation and Redemption Process [8]

Due to their ability to effect in-kind transfers with authorized participants in conjunction with the creation and redemption process described below, ETFs have the potential to be significantly more tax-efficient than other pooled investment products, such as mutual funds. ETFs issue shares that may be purchased or sold during the day in the secondary market at market-determined prices. Similar to other types of investment companies, ETFs invest their assets in accordance with their investment objectives and investment strategies, and ETF shares represent interests in an ETF's underlying assets. ETFs are, in certain respects, similar to mutual funds in that they continuously offer their shares for sale. In contrast to mutual funds, however, ETFs do not sell or redeem individual shares. Rather, through the creation and redemption process referenced above, authorized participants that have contractual arrangements with an ETF and/or its service provider (*e.g.,* its distributor)

[4] The Exchange notes that other options exchanges have adopted rules that provide for off-floor transfers under similar circumstances. *See, e.g.,* Nasdaq OMX PHLX LLC Rule 1058(a); and NYSE Arca, Inc. Rule 6.78–O(d)(1). The Exchange recently proposed changes to Rule 6.49A, which rule filing is currently pending with the Securities and Exchange Commission (the ''Commission''). *See* Securities Exchange Act Release No. 86400 (July 17, 2019), 84 FR 35438 (July 23, 2019) (SR–CBOE–2019–035).

[5] The Exchange is proposing that, for purposes of proposed Rule 6.49C, the term ''authorized participant'' would be defined as an entity that has a written agreement with the issuer of ETF shares or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units (*i.e.,* specified numbers of ETF shares). While an authorized participant may be a Trading Permit Holder and directly effect transactions in options on the Exchange, an authorized participant that is not a Trading Permit Holder may effect transactions in options on the Exchange through a Trading Permit Holder on its behalf.

[6] The Exchange is proposing that, for purposes of proposed 6.49C, any issuer of ETF shares would be registered with the Commission as an open-end management investment company under the Investment Company Act of 1940 (the ''1940 Act'').

[7] An ETF share is a share or other security traded on a national securities exchange and defined as an NMS stock, as set forth in Rule 5.3, Interpretation and Policy .06, which includes open-end management investment companies registered with the Commission. *See* Rule 1.1.

[8] The following summary of the ETF creation and redemption process is based largely on portions of the discussion set forth in Investment Company Act Release No. 33140 (June 28, 2018), 83 FR 37332 (July 31, 2018) (the ''Proposed ETF Rule Release'') in which the Commission proposed a new rule under the 1940 Act that would permit ETFs registered as open-end management investment companies that satisfy certain conditions to operate without the need to obtain an exemptive order. The proposed rule is currently pending.

purchase and redeem shares directly from that ETF in large aggregations known as ''creation units.'' In general terms, to purchase a creation unit of ETF shares from an ETF, in return for depositing a ''basket'' of securities and/or other assets identified by the ETF on a particular day, the authorized participant will receive a creation unit of ETF shares. The basket deposited by the authorized participant is generally expected to be representative of the ETF's portfolio [9] and, when combined with a cash balancing amount (*i.e.,* generally an amount of cash intended to account for any difference between the value of the basket and the NAV of a creation unit), if any, will be equal in value to the aggregate NAV of the shares of the ETF comprising the creation unit. After purchasing a creation unit, an authorized participant may then hold individual shares of the ETF and/or sell them in secondary market transactions. Investors may purchase individual ETF shares in the secondary market. In connection with effecting redemptions, the creation process described above is reversed. More specifically, the authorized participant will redeem a creation unit of ETF shares to the ETF in return for a basket of securities and/or other assets (along with any cash balancing amount).

The ETF creation and redemption process, coupled with the secondary market trading of ETF shares, facilitates arbitrage opportunities that are intended to help keep the market price of ETF shares at or close to the NAV per share of the ETF. Authorized participants play an important role because of their ability, in general terms, to add ETF shares to, or remove them from, the market. In this regard, if shares of an ETF are trading at a discount (*i.e.,* below NAV per share), an authorized participant may purchase ETF shares in the secondary market, accumulate enough shares for a creation unit and then redeem them from the ETF in exchange for the ETF's more valuable redemption basket. Accordingly, the authorized participant will profit because it paid less for the ETF shares than it received for the underlying assets. The reduction in the supply of ETF shares available on the secondary market, together with the sale of the ETF's basket assets, may cause the price of ETF shares to increase, the price of the basket assets to decrease, or both, thereby causing the market price of the ETF shares and the value of the ETF's holdings to move closer together. In contrast, if the ETF shares are trading at a premium (*i.e.,* above NAV per share), the transactions are reversed (and the authorized participant would deliver the creation basket in exchange for ETF shares), resulting in an increase in the supply of ETF shares which may also help to keep the price of the shares of an ETF close to the value of its holdings.

In comparison to other pooled investment vehicles, one of the significant benefits associated with an ETF's in-kind redemption feature is tax efficiency. In this regard, by effecting redemptions on an in-kind basis (*i.e.,* delivering certain assets from the ETF's portfolio instead of cash), there is no need for the ETF to sell assets and potentially realize capital gains that would be distributed to shareholders. As indicated above, however, because there is currently no applicable exception from Rule 6.49(a), ETFs that invest in options traded on the Exchange are generally required to substitute cash in lieu of such options when effecting redemption transactions with authorized participants. Because they must sell the options to obtain the requisite cash, such ETFs (and, therefore, investors that hold shares of those ETFs) are not able to benefit from the tax efficiencies afforded by in-kind transactions.

An additional benefit associated with the in-kind feature is the potential for transaction cost savings. In this regard, by transacting on an in-kind basis, ETFs may avoid certain transaction costs they would otherwise incur in connection with purchases and sales of securities and other assets. Again, however, without an exception to Rule 6.49(a), this benefit is not available to ETFs with respect to their options holdings.

Discussion

The Exchange notes that the Commission approved Rule 6.49A in 1995 because the Exchange recognized, and the Commission agreed, that under certain circumstances, off-floor transfers were justified.[10] The Exchange believes that it is appropriate to permit off-floor transfers of options positions in connection with the creation and redemption process and recognizes that the prevalence and popularity of ETFs have increased greatly since the adoption of Rule 6.49A. Currently, ETFs serve both as popular investment vehicles and trading tools [11] and, as discussed above, the creation and redemption process, along with the arbitrage opportunities that accompany it, are key ETF features. Accordingly, the Exchange believes that providing an additional, narrow exception to the prohibition of off-exchange transfers of option positions to make it possible for ETFs that invest in options to effect creations and redemptions on an in-kind basis is justified.

The Exchange submits that the proposed exception is clearly delineated and limited in scope and not intended to facilitate ''trading'' options off of the Exchange in order to circumvent the current prohibition of Rule 6.49. In this regard, the proposed exception would be available solely in the context of transfers of options positions effected in connection with transactions to purchase or redeem creation units of ETF shares between ETFs and authorized participants.[12] As a result of this process, such transfers would occur at a price related to the NAV of the applicable ETF shares (as discussed above), which removes the need for price discovery on an Exchange for pricing these transfers. Moreover, as described above, ETFs and authorized participants are not seeking to effect the opening or closing of new options positions in connection with the creation and redemption process. Rather, the options positions would reside in a different clearing account until closed in a trade on the Exchange or until they expire.

The proposed transfers, while occurring between two different parties, will occur off the Exchange and will not be considered transactions (as is the case for current off-floor transfers

[9] Under certain circumstances, however, and subject to the provisions of its exemptive relief from various provisions of the 1940 Act obtained from the Commission, an ETF may substitute cash and/or other instruments in lieu of some or all of the ETF's portfolio holdings. For example, currently, because there is no applicable exception from Rule 6.49(a), positions in options traded on the Exchange would be generally substituted with cash.

[10] *See* Exchange Act Release No. 36647 (December 28, 1995), 61 FR 566 (January 8, 1996) (Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and 2 to a Proposed Rule Change Relating to the Transfer of Positions on the Floor of the Exchange in Cases of Dissolution and other Situations) (File No. SR–CBOE–95–36).

[11] As noted in the Proposed ETF Rule Release, during the first quarter of 2018, trading in U.S.-listed ETFs comprised approximately 18.75% of U.S. equity trading by share volume and 28.2% of U.S. equity trading by dollar volume (based on trade and quote data from the New York Stock Exchange and Trade Reporting Facility data from the Financial Industry Regulatory Authority, Inc. (FINRA)). *See* the Proposed ETF Rule Release at 83 FR 37334.

[12] *See supra* note 3. The term ''authorized participant'' is specific and narrowly defined. As noted in the Proposed ETF Rule Release, the requirement that only authorized participants of an ETF may purchase creation units from (or sell creation units to) an ETF ''is designed to preserve an orderly creation unit issuance and redemption process between ETFs and authorized participants.'' Furthermore, an ''orderly creation unit issuance and redemption process is of central importance to the arbitrage mechanism.'' *See* Proposed ETF Rule Release at 83 FR 37348.

permitted by Rule 6.49A).[13] While the prices of options transactions effected on the Exchange are disseminated to OPRA, back-office transfers of options positions in clearing accounts held at The Options Clearing Corporation (''OCC'') (in accordance with OCC Rules) [14] are not disseminated to OPRA or otherwise publicly available, as they are considered position transfers, rather than executions.[15] The Exchange believes that price transparency is important in the options market. However, the Exchange expects any transfers pursuant to the proposed rule will constitute a minimal percentage of average daily volume of options. Additionally, as noted above, the NAV for the transfers will generally be based on the disseminated closing price for an option series on the day of a creation or redemption, and thus the price (although not the time or quantity of the transfer) at which these transfers will generally be effected will be publicly available. Further, the Exchange generally expects creations or redemptions to include corresponding transactions by the authorized participant that will occur on an exchange and be reported to OPRA.[16] Therefore, the Exchange expects that any impact the proposed rule change could have on price transparency in the options market would be de minimis.

Other than the transfers covered by the proposed exception, transactions involving options, whether held by an ETF or an authorized participant, would be fully subject to Rule 6.49 (except as provided by any other applicable exceptions) and all other applicable trading Rules.[17] Accordingly, the Exchange does not believe that the proposed new exception would compromise price discovery or transparency.

Further, the Exchange believes that providing an additional exception to make it possible for ETFs that invest in options to effect creations and redemptions on an in-kind basis is justified because, while the proposed exception would be limited in scope, the benefits that may flow to ETFs that hold options and their investors may be significant. Specifically, the Exchange expects such ETFs and their investors would benefit from increased tax efficiencies and potential transaction cost savings. By making such ETFs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other ETFs that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction.

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.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] 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.

The Exchange believes that permitting off-floor transfers in connection with the in-kind ETF creation and redemption process promotes just and equitable principles of trade and helps remove impediments to and perfect the mechanism of a free and open market and a national market system, as it would permit ETFs that invest in options traded on the Exchange to utilize the in-kind creation and redemption process that is available for ETFs that invest in equities and fixed-income securities. This process represents a significant feature of the ETF structure generally, with advantages that distinguish ETFs from other types of pooled investment vehicles. In light of the associated tax efficiencies and potential transaction cost savings, the Exchange believes the ability to utilize an in-kind process would make such ETFs more attractive to both current and prospective investors and enable them to compete more effectively with other ETFs that, based on their portfolio holdings, may effect in-kind creations and redemptions without restriction. In addition, the Exchange believes that because it would permit ETFs that invest in options traded on the Exchange to benefit from tax efficiencies and potential transaction cost savings afforded by the in-kind creation and redemption process, which benefits the Exchange expects would generally be passed along to investors that hold ETF shares, the proposed rule change would protect investors and the public interest.

Moreover, the Exchange submits that the proposed exception is clearly delineated and limited in scope and not intended to facilitate ''trading'' options off the Exchange in order to circumvent the current prohibition of Rule 6.49. Other than the transfers covered by the proposed exception, transactions involving options, whether held by an ETF or an authorized participant, would be fully subject to Rule 6.49 (except as provided by any other applicable exceptions) and all other applicable trading Rules. Additionally, the transfers covered by the proposed exception would occur at a price related to the NAV of the applicable ETF shares, which removes the need for price discovery on an Exchange. Accordingly, the Exchange does not believe that the proposed rule change would compromise price discovery or transparency.

When Congress charged the Commission with supervising the development of a ''national market system'' for securities, Congress stated its intent that the ''national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.[20] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the

[13] For this reason, the Exchange notes that Rule 6.51(c) does not require reporting of off-floor transfers effected pursuant to Rule 6.49A, or that would be effected pursuant to proposed Rule 6.49C.

[14] OCC has informed the Exchange that it has the operational capabilities to effect the proposed position transfers. All transfers pursuant to proposed Rule 6.49C would be required to comply with OCC rules. *See* Rule 4.2 (which requires all TPHs that are members of OCC to comply with OCC's Rules).

[15] For example, any transfers effected pursuant to the current exemptions to Rule 6.49 contained in Rule 6.49A are not disseminated to OPRA.

[16] The Exchange notes that for in-kind creations, an authorized participant will acquire the necessary options positions in an on-exchange transaction that will be reported to OPRA. For in-kind redemptions, the Exchange generally expects that an authorized participant will acquire both the shares necessary to effect the redemption and an options position to offset the position that it will receive as proceeds for the redemption. Such an options position would likely be acquired in an on-exchange transaction that would be reported to OPRA. Such transactions are generally identical to the way that creations and redemptions work for equities and fixed income transactions—while the transfer between the authorized participant and the fund is not necessarily reported, there are generally corresponding transactions that would be reported, providing transparency into the transactions.

[17] As indicated above, the operation of the arbitrage mechanism accompanying the creation and redemption process generally contemplates ongoing interactions between authorized participants and the market in transactions involving both ETF shares and the assets comprising an ETF's creation/redemption basket.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.).

securities markets.[21] This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition among exchanges. The fact that an exchange proposed something new is a reason to be receptive, not skeptical — innovation is the life-blood of a vibrant competitive market — and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public.

Currently, the Exchange Rules do not allow ETFs to effect in-kind transfers of options off of the Exchange, resulting in tax inefficiencies for ETFs that hold them. As a result, the use of options by ETFs is substantially limited. While the proposed exception would be limited in scope, the Exchange believes the benefits that may flow to ETFs that hold options and their investors may be significant. Specifically, the Exchange expects that such ETFs and their investors could benefit from increased tax efficiencies and potential transaction cost savings. By making such ETFs more attractive to both current and prospective investors, the proposed rule change would enable them to compete more effectively with other ETFs that, due to their particular portfolio holdings, may effect in-kind creations and redemptions without restriction. This may lead to further development of ETFs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public.

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 Exchange does not believe 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. Utilizing the proposed exception would be voluntary, and the exception is not intended as a competitive trading tool. As an alternative to the normal auction process, the proposed rule change would provide market participants with an efficient and effective means to transfer positions under the specified circumstances. The proposed exception would enable all ETFs that hold options to enjoy the benefits of in-kind creations and redemptions already available to other ETFs (and to pass these benefits along to investors). The proposed rule change would apply in the same manner to all entities that meet the definition of ''authorized participant.''

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, it is intended to provide an additional clearly delineated and limited exception to the requirement that options positions be transferred on the floor of an exchange. Further, the Exchange believes the proposed rule change will eliminate a significant competitive disadvantage for ETFs that invest in options. Finally, as indicated above, in light of the significant benefits provided (*e.g.,* tax efficiencies and potential transaction cost savings), the proposed exception may lead to further development of ETFs that invest in options, thereby fostering competition and resulting in additional choices for investors, which ultimately benefits the marketplace and the public. Other options exchanges in their discretion may pursue the adoption of similar exceptions.

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 written comments on the proposed rule change.

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

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

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–048 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–CBOE–2019–048. 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

[21] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (''The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.''); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.''); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation ''has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies'').

inspection and copying at the principal office 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–CBOE–2019–048, and should be submitted on or before October 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–20708 Filed 9–24–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87030; File No. SR–NASDAQ–2019–077]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Order Routing Rule in NOM Chapter VI, Section 11

September 19, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 12, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend The Nasdaq Options Market LLC Rules at Chapter VI, Section 11, titled ''Order Routing''.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it 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 NOM Chapter VI, Section 11, titled ''Order Routing'' to conform the rule text of NOM's Chapter VI, Section 11, where applicable, to Nasdaq Phlx LLC (''Phlx'') Rule 1093 and Nasdaq BX, Inc. (''BX'') Chapter VI, Section 11 where the routing behavior is identical. Phlx and BX recently amended their routing rules.[3] The Exchange notes that the proposed amendments to NOM Chapter VI, Section 11 reflect the current operation of the System. The Exchange proposes to provide additional scenarios and outcomes when routing on NOM.

The Exchange proposes to provide rule text within proposed NOM Chapter VI, Section 11(a)[4] similar to Phlx Rule 1093(a) and BX Chapter VI, Section 11(a). Phlx offers FIND and SRCH routing strategies, NOM and BX offer SEEK and SRCH routing strategies.[5] Some other differences among the three markets include: (1) Phlx's All-or-None[6] Order type differs from NOM;[7] (2) unlike Phlx and BX, NOM does not have an exposure notification;[8] (3) unlike Phlx and BX where Immediate or Cancel Orders will not route, NOM Immediate or Cancel (''IOC'') Orders are considered for routing and will cancel if not executed on NOM or an away market[9] and (4) NOM defines a Public Customer at Chapter I, Section 1(a)(49) similar to BX, while Phlx defines Public Customer within Rule 1093(a).[10]

Further, the Exchange is amending NOM Chapter VI, Section 11 to add more clarity to the current Rule. The proposed changes will be discussed below in greater detail. The Exchange notes that the amendments to NOM Chapter VI, Section 11 reflect the current operation of the System.

The Exchange proposes to capitalize the term ''system'' as that term is defined within Chapter VI, Section 1(a) throughout the rule.

Chapter VI, Section 11(a)

Current NOM Chapter VI, Section (a)(1)(C) language concerning the Route Timer is being relocated into proposed NOM Chapter VI, Section 11(a). The SEEK and SRCH routing functions describe the manner in which the Order Book is checked, this sentence is not necessary in this introductory paragraph.

The Exchange proposes a new second paragraph at NOM Chapter VI, Section

[22] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 85655 (April 16, 2019), 77 FR 16709 (April 22, 2019) (SR–Phlx–2019–06); and 86060 (June 6, 2019), 84 FR 27374 (June 12, 2019) (SR–BX–2019–017).

[4] Proposed NOM Chapter VI, Section 11(a) would provide, ''NOM offers two routing strategies, SEEK and SRCH. Each of these routing strategies will be explained in more detail below. An order may in the alternative be marked Do Not Route or ''DNR''. The Exchange notes that for purposes of this rule the System will route SEEK and SRCH Orders with no other contingencies. The System checks the Order Book for available contracts for potential execution against the SEEK or SRCH orders. After the System checks the Order Book for available contracts, orders are sent to other available market centers for potential execution. For purposes of this rule, a Route Timer shall not exceed one second and shall begin at the time orders are accepted into the System, and the System will consider whether an order can be routed at the conclusion of each Route Timer. For purposes of this rule, NOM's opening process is governed by Chapter VI, Section 8 and includes an opening after a trading halt (''Opening Process'').''

[5] NOM and BX do not have a FIND routing strategy similar to Phlx.

[6] *See* Phlx Rule 1078. Phlx's All-or-None Order is non-displayed. This order type could cause Phlx's Order Book to differ from the displayed PBBO. NOM has no such non-displayed order type.

[7] *See* NOM Chapter VI, Section 1(e)(10). ''All-or-none'' shall mean a market or limit order which is to be executed in its entirety or not at all. All-or-None Orders are treated as having a time-in-force designation of Immediate or Cancel. All-or-None Orders received prior to the opening cross or after market close will be rejected.

[8] Both Phlx and BX offer an exposure notification during the Route Timer. This notification alerts options participants that interest is available and currently subject to a Route Timer. The notification provides information on price, size, and side of interest that is available for execution.

[9] *See* NOM Chapter VI, Section 1(g)(2). ''Immediate Or Cancel'' or ''IOC'' shall mean for orders so designated, that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. IOC Orders shall be available for entry from the time prior to market open specified by the Exchange on its website until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between the time specified by the Exchange on its website and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable.

[10] BX and NOM Rules at Chapter 1, Section 1(a)(49) provide, ''The term ''Public Customer'' means a person that is not a broker or dealer in securities.''