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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to implement a Proxy Price Protection threshold similar to existing mechanisms on other markets and would reduce the risk of and potentially prevent the erroneous execution of orders on the Exchange. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NASDAQ–2016–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–026. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–026, and should be submitted on or before March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04502 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77235; File No. SR–NASDAQ–2015–159]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Implement Additional Price Protections in the Opening Process

February 25, 2016.

I. Introduction

On December 23, 2015, the NASDAQ Stock Market LLC (''Exchange'' or ''Nasdaq'') 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 enhance the price protections for the Exchange's opening process. The proposed rule change was published for comment in the **Federal Register** on January 11, 2016.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes new paragraph (F) to Rule 4752(d)(2) to enhance the price protections for the Nasdaq Opening Cross.[5]

Background

Nasdaq Rule 4752(d) describes the Nasdaq Opening Cross process, and Rule 4752(d)(2)(A) through (E) sets forth the process for determining the price at which an Opening Cross occurs. Specifically, the Opening Cross occurs at 9:30 a.m. ET and occurs at the price that maximizes the number of shares of Market On Open orders (''MOO''), Limit On Open orders (''LOO''), Opening Imbalance Only orders (''OIO''), Early

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76833 (January 5, 2016), 81 FR 1240 (''Notice'').

[4] *See* letter from Kermit Kubitz to the Commission, dated February 1, 2016 (''Kubitz Letter'').

[5] The term ''Nasdaq Opening Cross'' (hereinafter also referred to as ''Opening Cross'') is defined in Nasdaq Rule 4752(a)(5).

Market Hours orders, and executable quotes and orders in the Nasdaq Market Center to be executed.[6] If more than one price exists that would maximize such quotes and orders to be executed, then the Opening Cross occurs at the price that minimizes any imbalance.[7] If more than one price exists that would minimize an imbalance, then the Opening Cross occurs at the entered price at which shares will remain unexecuted in the cross.[8] If more than one price exists at which shares will remain unexecuted in the cross, then the Opening Cross occurs at the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at 9:30 a.m.[9]

In addition to the calculation of the Opening Cross price pursuant to Rule 4752(d)(2)(A) through (D), the Exchange applies a price range within which the Opening Cross must execute in order to ensure that the Opening Cross price is reasonably tied to the prevailing market at the time.[10] Specifically, the Exchange applies a percentage based threshold (''Threshold Percentage'') to a benchmark (''Benchmark Value'') to determine a specific value.[11] That value is then applied to the spread for a particular security to determine the price range within which the Opening Cross for the security may occur (''Threshold Range''), and outside of which the Opening Cross for the security may not occur.[12] Currently, the Threshold Percentage is 10% and the Benchmark Value is the midpoint of the Nasdaq Best Bid and Offer (''QBBO'').[13] To establish the Threshold Range, the Exchange calculates 10% of the midpoint of the QBBO, and then adds the resulting value to the Nasdaq Best Offer and subtracts the resulting value from the Nasdaq Best Bid.[14] If the Opening Cross price of a security established pursuant to Rule 4752(d)(2)(A) through (D) falls outside the Threshold Range, then the Exchange adjusts the Opening Cross price to a price within the Threshold Range that best satisfies the conditions of Rule 4752(d)(2)(A) through (D).[15]

According to the Exchange, the current price adjustment process has been effective at ensuring that the Opening Cross price of a security falls within a certain range of the QBBO.[16] However, an order or quote entered by a participant in error that establishes one side of the QBBO could result in an excessively wide QBBO and significantly skew the Opening Cross price of a security.[17] The current price adjustment process would not prevent the Opening Cross from occurring at an erroneous price under these circumstances, because the price would still fall within the excessively wide Threshold Range, which would be calculated using the excessively wide QBBO.[18] Under these circumstances, the parties to the erroneously priced transactions would have to avail themselves of the Exchange's clearly erroneous trade nullification process.[19]

New Price Protections

In order to mitigate the potential for mispriced Opening Crosses and the resulting need to use the Exchange's clearly erroneous trade nullification process, the Exchange proposes additional price protections for its opening process to help ensure that the Opening Cross price is reasonably related to the market and not the product of erroneous order entry.[20] Specifically, in addition to the existing process for determining the Opening Cross price for a security, the Exchange would require the security to pass one of three new ''Opening Cross Price Tests'' in order for an Opening Cross in the security to occur.[21] Each Opening Cross Price Test would specify a range within which the Opening Cross price must fall and, as discussed in more detail below, each price range is calculated by applying a threshold to a specific reference measure.[22] The Exchange proposes to initially set the threshold for each Opening Cross Price Test at the greater of $0.50 or 10% of the reference measure, although the Exchange may adjust the thresholds for each Opening Cross Price Test independently of one another.[23] If a security's Opening Cross price fails all three tests, then all MOO, LOO, OIO, and Early Market Hours orders in the Nasdaq Opening Cross in that security would be cancelled back to the participants, no Opening Cross would occur in that security, and the security would open for regular market hours trading consistent with Rule 4752(c).[24]

Under Opening Cross Price Test A, for a Nasdaq-listed security, the Exchange would establish the Opening Cross price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq Official Closing Price of the security from the previous trading day. For non-Nasdaq-listed securities, the Exchange would establish the price range by adding the threshold amount to and subtracting the threshold amount from the consolidated closing price of the security from the previous trading day. For new Exchange Traded Products (''ETPs'') that do not have a Nasdaq Official Closing Price, the Exchange would establish the price range by adding the threshold amount to and subtracting the threshold amount from the offering price. If the Opening Cross price falls outside of the relevant price range, or if a security does not have a Nasdaq Official Closing Price or consolidated closing price from the previous trading day, then the security would fail Opening Cross Price Test A and the Exchange would perform Opening Cross Price Test B.[25]

Under Opening Cross Price Test B, the Exchange would establish the Opening Cross price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq last sale (either round lot or odd lot) after 9:15 a.m. ET but before the Opening Cross. If the Opening Cross price falls outside this price range, or if there is no Nasdaq last sale, then the security would fail Opening Cross Price Test B and the Exchange would perform Opening Cross Price Test C.[26]

Under Opening Cross Price Test C, if the Opening Cross price is higher than the closing price used under Test A, then the Exchange would establish the

[6] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(A). The MOO, LOO, and OIO order types are defined in Rules 4702(b)(8), (b)(9), and (b)(10), respectively; the Early Market Hours order type is defined in Rule 4752(a)(7).

[7] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(B).

[8] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(C).

[9] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(D).

[10] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(E).

[11] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(E).

[12] *See* Notice, 81 FR at 1241; *see also* Rule 4752(d)(2)(E).

[13] *See* Notice, 81 FR at 1241. The Threshold Percentage and Benchmark Value are set by Nasdaq officials in advance and are published via the NasdaqTrader Web site. *See id.*

[14] *See id.*

[15] *See id.; see also* Rule 4752(d)(2)(E).

[16] *See* Notice, 81 FR at 1242.

[17] *See id.* The Commission understands that such a scenario is most likely to arise with illiquid securities.

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See id.; see also* proposed Rule 4752(d)(2)(F).

[22] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F).

[23] *See* Notice, 81 FR at 1242. As proposed, Nasdaq management would set and modify the thresholds from time to time upon prior notice to market participants. *See id.; see also* proposed Rule 4752(d)(2)(F). In addition, the Exchange states that the thresholds for the proposed Opening Cross Price Tests would be published via the NasdaqTrader Web site. *See* Notice, 81 FR at 1242.

[24] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F).

[25] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F)(i).

[26] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F)(ii).

price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq Best Bid. If the Opening Cross price is lower than the closing price used under Test A, then the Exchange would establish the price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq Best Offer. If a security does not have a Nasdaq Official Closing Price or consolidated closing price, as applicable, then the Exchange would use a price of $0. If the Opening Cross price for a security falls outside of the relevant price range, then no Opening Cross would occur in the security; MOO, LOO, OIO, and Early Market Hours orders would be cancelled; and the Exchange would open that security for market hours trading consistent with Rule 4752(c).[27]

Implementation

The Exchange proposes to implement the Opening Cross Price Tests in stages over the course of approximately four weeks, beginning with a small number of securities.[28] The Exchange states that the implementation details would be published via an Exchange Trader Alert and be posted on the NasdaqTrader Web site.[29]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[30] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[31] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposal is designed to enhance the price protections for the Exchange's opening process, to mitigate the potential for mispriced trades, and to mitigate the need to use the Exchange's clearly erroneous trade nullification process. In particular, as discussed above, the proposed Opening Cross Price Tests are designed to mitigate the potential for a mispriced Opening Cross when an order or quote entered by a participant in error establishes one side of the QBBO and significantly skews the Opening Cross price for the security. As noted by the Exchange, the proposal would help ensure that the Opening Cross price for a security is reasonably related to the market and not the product of erroneous order entry. The Commission also notes that a commenter expressed support for the proposal, stating that the ''proposed change to avoid a biased or erroneous opening due to an inadvertent or mistaken submission of a pre-open order and price is a reasonable change by NASDAQ.'' [32] Based on the foregoing, the Commission believes that the proposed Opening Cross Price Tests are consistent with the Act.

The Commission also believes that the Exchange's proposal to implement the Opening Cross Price Tests in stages is consistent with the Act because it would help to limit potential market disruption if the Exchange experiences a technical issue with the implementation.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NASDAQ–2015–159) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–04505 Filed 3–1–16; 8:45 am]

BILLING CODE 8011–01–P

[27] *See* Notice, 81 FR at 1242; *see also* proposed Rule 4752(d)(2)(F)(iii).

[28] *See* Notice, 81 FR at 1243.

[29] *See id.*

[30] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(5).

[32] *See* Kubitz Letter, *supra* note 4. This commenter also expressed broader concerns regarding the availability of information about pre-market activities and regarding the circumstances under which pre-market activities would constitute manipulation, in light of the events of August 24, 2015. *See id.*

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77230; File No. SR–ISE Gemini–2016–01]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct the Text of ISE Gemini Rule 306

February 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2016, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

ISE Gemini proposes to correct, .08 of Supplementary Material to Rule 306, Registration Requirements, which describes the categories of registration and respective qualification examinations required for individual associated persons (''associated persons'') that engage in the securities activities of members on the Exchange. This amendment proposes to replace the inadvertent use of the term ''Permit Holder'' with ''Member'' which is the correct term used throughout the ISE Gemini Rulebook to describe a member of the Exchange. The text of the proposed rule change is available on the Exchange's Web site at *www.ise.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 self-regulatory organization 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,

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

[2] 17 CFR 240.19b–4.