

100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2021–001. 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 such filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>).

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–DTC–2021–001 and should be submitted on or before March 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021–03090 Filed 2–16–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91096; File No. SR–NASDAQ–2021–004]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Disseminate Abbreviated Order Imbalance Information, Amend Certain Cutoff Times for On-Open Orders Entered for Participation in the Nasdaq Opening Cross and Extend the Time Period for Accepting Certain Limit On-Open Orders

February 10, 2021.

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 February 3, 2021, 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 (i) disseminate abbreviated order imbalance information prior to the dissemination of the Order Imbalance Indicator, (ii) amend certain cutoff times for on-open orders entered for participation in the Nasdaq Opening Cross and (iii) extend the time period for accepting certain Limit On Open Orders.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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

In July 2017 the Exchange enhanced the Nasdaq Closing Cross (“Closing Cross”) process by allowing customers to enter Limit-On-Close (“LOC”) orders after the first Net Order Imbalance Indicator is disseminated.<sup>3</sup> These enhancements were designed to encourage greater participation and interaction opportunities within the Nasdaq Closing Cross process and support stability in the price discovery process. In March 2019, the Exchange continued to further improve price discovery in the Nasdaq Closing Cross process by creating an Early Order Imbalance Indicator (“EOII”) comprised of certain Net Order Imbalance Indicator (“NOII”) information that would disseminate ten minutes prior to the market close.<sup>4</sup> In conjunction with the adoption of an EOII, in August 2019, the Exchange also expanded the order entry submission time for LOC orders to allow entries after 3:55 p.m. Eastern Time (all times noted hereafter are Eastern Time) and established a second reference price for late LOC orders.<sup>5</sup> The Exchange did not receive public comments regarding any of its enhancements to the Closing Cross process. Given the improvements in stability and the price discovery process of the Closing Cross, the Exchange is proposing similar changes to the Nasdaq Opening Cross (“Opening Cross”).<sup>6</sup>

The Opening Cross is Nasdaq's process for matching orders at the launch of regular trading hours and is open to all System Securities.<sup>7</sup> The Opening Cross was designed to create a robust open that allows for efficient price discovery through a transparent automated auction process. Currently, beginning at 4:00 a.m. ET, Nasdaq

<sup>3</sup> See Securities Exchange Act Release No. 81188 (July 21, 2017), 82 FR 35014 (July 27, 2017) (NASDAQ–2017–061); see also Securities Exchange Act Release No. 81556 (September 8, 2017), 82 FR 43264 (September 14, 2017) (NASDAQ–2017–061).

<sup>4</sup> See Securities Exchange Act Release No. 85292 (March 12, 2019), 84 FR 9848 (March 18, 2019) (NASDAQ–2019–010).

<sup>5</sup> See Securities Exchange Act Release No. 86642 (August 13, 2019), 84 FR 42964 (August 19, 2019) (NASDAQ–2019–064).

<sup>6</sup> See Equity 4, Rule 4752.

<sup>7</sup> The term “System Securities” shall mean (1) all securities listed on Nasdaq and (2) all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan except securities specifically excluded from trading via a list of excluded securities posted on [www.nasdaqtrader.com](http://www.nasdaqtrader.com). Equity 1, Section 1.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>36</sup> 17 CFR 200.30–3(a)(12).

accepts Market On Open (“MOO”) Orders<sup>8</sup> and Limit On Open (“LOO”) Orders<sup>9</sup> executable for the Opening Cross until immediately prior to 9:28 a.m. Nasdaq also begins accepting Opening Imbalance Only (“OIO”) Orders<sup>10</sup> for the Opening Cross beginning at 4:00 a.m. until the time of execution of the Opening Cross. At 9:28 a.m., Nasdaq begins to disseminate by electronic means an Order Imbalance Indicator (also known as the “Net Order Imbalance Indicator” or “NOII”) every second until market open.<sup>11</sup> Nasdaq initiates an Opening Cross in all System Securities for which there are orders that will execute against contra-side orders at 9:30 a.m., at which time the opening book and the Nasdaq continuous book are brought together to create single Nasdaq opening prices for System Securities.

Nasdaq is proposing to (i) establish an Early Order Imbalance Indicator (“EOII”) for the Opening Cross, (ii) amend certain cutoff times for on-open orders entered for participation in the Opening Cross and (iii) extend the time period for accepting certain LOOs, as discussed in further detail below.

#### Establishment of an EOII

Currently, Nasdaq provides transparency into its Opening Cross auction via the NOII. The NOII is a message disseminated by electronic means containing information about MOO orders, LOO orders, OIO orders,

and Early Market Hours Orders<sup>12</sup> and information about the price at which those orders would execute at the time of dissemination.<sup>13</sup> MOO, LOO and OIO orders are on-open order types that are executable only during the Opening Cross. Specifically, the NOII consists of: (1) The Current Reference Price;<sup>14</sup> (2) the number of shares represented by MOO, LOO, OIO, and Early Market Hours that are paired at the Current Reference Price; (3) the size of any Imbalance;<sup>15</sup> (4) the buy/sell direction of any Imbalance; and (5) the indicative prices<sup>16</sup> at which the Nasdaq Opening Cross would occur if the Nasdaq Opening Cross were to occur at that time and the percent by which the indicative prices are outside the then current Nasdaq Market Center best bid or best offer, whichever is closer.<sup>17</sup> The NOII is useful because it helps participants to identify at what price and size the Opening Cross will commence, as well as the number of shares required to offset any order imbalances to optimize an auction.

Nasdaq is proposing new Equity 4, Rule 4752(a)(1) and Equity 4, Rule 4752(d)(1) to establish an EOII that would commence disseminating information at 9:25 a.m. until the NOII begins to disseminate at 9:28 a.m. The proposed EOII data will comprise of (1) the Current Reference Price, (2) the number of shares represented by MOO, LOO OIO and Early Market Hours orders that are paired at the Current

Reference price, (3) any imbalance size, and (4) any imbalance direction. The Exchange is also proposing to disseminate the EOII data every 10 seconds.

The Exchange believes that an early release of a subset of the NOII data would offer participants additional time and flexibility to react to imbalance information in advance of the 9:28 a.m. Opening Cross cutoff time (the “Cutoff”) and aid them in making informed decisions about whether and how to participate in the Opening Cross. In other words, early dissemination of the Current Reference Price, the number of paired shares at that price, any imbalance size, and any imbalance direction would help participants to make informed decisions as to whether, how, and at what prices they may interact with other orders in the Opening Cross. For example, if Nasdaq released an EOII indicating that a buy imbalance exists for a particular symbol, a participant could act on that information in advance of the Opening Cross Cutoff time to offset the imbalance with the full suite of Nasdaq on-open order options, while also providing additional liquidity in the Opening Cross. In addition, participants may continue to enter certain LOO and OIO orders after 9:28 a.m. ET, which allows participants to consider information in the EOII in making informed decisions about whether and how to participate in the Opening Cross. Nasdaq believes the EOII will also enhance price discovery and liquidity by attracting more participants to the Nasdaq Opening Cross, which establishes the Nasdaq Official Opening Price for a security. However, the Exchange believes that an early release of the NOII should exclude indicative prices, including Near and Far Clearing Prices.<sup>18</sup> Because participants may freely enter new orders that contribute to price discovery prior to the Opening Cross Cutoff, indicative prices may change more substantially than after the Cutoff. Nasdaq believes that the exclusion of the Near and Far Clearing Prices will enhance stability in the Opening Cross process because it will reduce the possibility of large indicative price movements during the early moments of the price formation

<sup>8</sup> A “Market On Open Order” or “MOO Order” is an Order Type entered without a price that may be executed only during the Opening Cross. Subject to certain qualifications, MOO Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 9:28 a.m. ET. An MOO Order may not be cancelled or modified at or after 9:28 a.m. ET. An MOO Order shall execute only at the price determined by the Opening Cross. *See* Equity 4, Rule 4702(b)(8)(A).

<sup>9</sup> A “Limit On Open Order” is an Order Type entered with a price that may be executed only in the Opening Cross, and only if the price determined by the Opening Cross is equal to or better than the price at which the LOO Order was entered. Subject to certain qualifications, LOO Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 9:28 a.m. ET. *See* Equity 4, Rule 4702(b)(9)(A).

<sup>10</sup> An “Opening Imbalance Only Order” or “OIO Order” is an Order Type entered with a price that may be executed only in the Opening Cross and only against MOO Orders, LOO Orders, or Early Market Hours Orders (as defined in Equity 4, Rule 4752). OIO Orders may be entered between 4:00 a.m. ET until the time of execution of the Opening Cross, but may not be cancelled or modified at or after 9:28 a.m. ET. If the entered price of an OIO Order to buy (sell) is higher than (lower than) the highest bid (lowest offer) on the Nasdaq Book, the price of the OIO Order will be modified repeatedly to equal the highest bid (lowest offer) on the Nasdaq Book; provided, however, that the price of the Order will not be moved beyond its stated limit price. *See* Equity 4, Rule 4702(b)(10)(A).

<sup>11</sup> *See* Equity 4, Rule 4752(d)(1).

<sup>12</sup> Market Hours Orders shall be designated as “Early Market Hours Orders” if entered into the system prior to 9:28 a.m. and shall be treated as MOO and LOO, as appropriate, for the purposes of the Opening Cross. *See* Equity 4, Rule 4752(a)(7).

<sup>13</sup> *See* Equity 4, Rule 4752(a)(2).

<sup>14</sup> Pursuant to Equity 4, Rule 4752(a)(2), the “Current Reference Price” means the following: (i) The single price that is at or within the current Nasdaq Market Center best bid and offer at which the maximum number of shares of MOO, LOO, OIO, and Early Market Hours orders can be paired; (ii) if more than one price exists under (i), the Current Reference Price shall mean the price that minimizes any Imbalance; (iii) if more than one price exists under (ii), the Current Reference Price shall mean the entered price at which shares will remain unexecuted in the cross; and (iv) if more than one price exists under (iii), the Current Reference Price shall mean the price that minimizes the distance from the bid-ask midpoint of the inside quotation prevailing at the time of the order imbalance indicator dissemination.

<sup>15</sup> An “Imbalance shall mean the number of shares of buy or sell MOO, LOO or Early Market Hours orders that may not be matched with other MOO, LOO, Early Market Hours, or OIO order shares at a particular price at any given time. *See* Equity 4, Rule 4752(a)(2).

<sup>16</sup> The indicative prices shall be the Near Clearing Price and Far Clearing Price (as defined in footnote 18 below). If marketable shares would remain unexecuted above or below the Near Clearing Price or Far Clearing Price, Nasdaq shall disseminate an indicator for “market buy” or “market sell”.

<sup>17</sup> *See* Equity 4, Rule 4752(a)(2).

<sup>18</sup> “Near Clearing Price” shall mean the price at which both the MOO, LOO, OIO, and Early Market Hours orders and Open Eligible Interest in the Nasdaq Market Center would execute. *See* Equity 4, Rule 4752(a)(2)(E)(i). “Far Clearing Price” shall mean the price at which the MOO, LOO, OIO, and Early Market Hours orders in the Nasdaq Opening Book would execute. *See* Equity 4, Rule 4752(a)(2)(E)(ii).

process.<sup>19</sup> Additionally, the Exchange believes disseminating the EOII data every 10 seconds provides participants more time to digest the information and enter MOO, LOO and OIO orders in between dissemination periods.

Whereas after the Opening Cross Cutoff, participants face order restrictions and time pressures that render more frequent refreshes of the NOII critical to guiding their decisions, such order restrictions and time pressures do not exist, or are less acute, prior to the Opening Cross Cutoff.

Establishment of the EOII will not affect the Cutoff for entering MOO or LOO orders.<sup>20</sup> However, a participant may no longer cancel or modify an MOO, LOO or OIO order once the Exchange commences dissemination of the EOII. Therefore, the Exchange is proposing to amend the time period for cancelling or modifying MOO, LOO or OIO orders from 9:28 a.m. to 9:25 a.m.

#### Change to LOO Orders

Currently, pursuant to Equity 4, Rule 4702(b)(9)(A), LOO orders may be executed only in the Opening Cross, and only if the price determined by the Opening Cross is equal to or better than the price at which the LOO Order was entered. Subject to certain qualifications, LOO orders may be entered, cancelled, and/or modified between 4 a.m. and immediately prior to commencement of the NOII dissemination at 9:28 a.m.<sup>21</sup>

The Exchange is proposing to establish a First Opening Reference Price and a Second Opening Reference Price through Equity 4, Rules 4753(a)(8) and (9), respectively. The First Opening Reference Price shall mean the previous day's Nasdaq Official Closing Price of the security for Nasdaq-listed securities or the consolidated closing price to cover non-Nasdaq-listed securities. For new Exchange Traded Products that do not have a Nasdaq Official Closing Price or a consolidated closing price, the First

Opening Reference Price will be the offering price. The Exchange is using the Nasdaq Official Closing Price as the First Opening Reference Price because the Nasdaq Official Closing price is a well-defined benchmark for the security's market price that serves as the most relevant price of a security at or before Regular Trading Hours. The Second Opening Reference Price shall mean the Current Reference Price in the Order Imbalance Indicator disseminated at 9:28 a.m. ET. The Exchange is proposing to use the Current Reference Price in the NOII disseminated at 9:28 a.m. as the Second Opening Reference Price because it is consistent with the Exchange's functionality with respect to the Closing Cross and Late Limit On Close Orders, and is intended to promote price stability of the Opening Cross.

Additionally, the Exchange is proposing to revise Equity 4, Rule 4702(b)(9)(A) to permit the entry of LOO orders until 9:29:30 a.m., provided that the security has a First Opening Reference Price or a Second Opening Reference Price. The Exchange also proposes to reject any LOO Orders entered after 9:29:30 a.m. ET that is designated as an IOC. The proposed rule would also prevent an LOO Order from being cancelled or modified at or after 9:25 a.m. However, the Exchange believes that allowing the entry of eligible LOO Orders after the Opening Cross Cutoff will enhance the price discovery and liquidity of a security in the Opening Cross, which establishes the Nasdaq Official Opening Price for a security. Also, the Exchange is proposing that an LOO Order entered between 9:28 a.m. ET and 9:29:30 a.m. ET would be accepted at its limit price, unless its limit price is higher (lower) than the higher (lower) of the First Opening Reference Price and the Second Opening Reference Price for an LOO Order to buy (sell), in which case the LOO Order would be handled consistent with the participant's instruction that the LOO Order is to be: (1) Rejected; or (2) re-priced to the higher (lower) of the First Opening Reference Price and the Second Opening Reference Price, provided that if either the First Opening Reference Price or the Second Opening Reference Price is not at a permissible minimum increment, the First Opening Reference Price or the Second Opening Reference Price, as applicable, will be rounded (i) to the nearest permitted minimum increment (with midpoint prices being rounded up) if there is no imbalance, (ii) up if there is a buy imbalance, or (iii)

down if there is a sell imbalance.<sup>22</sup> The default configuration for participants that do not specify otherwise will be to have such LOO Orders re-priced rather than rejected. The Exchange believes that the repricing of LOO orders entered after the Opening Cross Cutoff is designed to reduce order imbalances and volatility for securities that participate in the Opening Cross.

The Exchange believes that allowing Late LOO orders to be priced at the more aggressive of the two reference prices will provide flexibility to market participants by allowing participants to consider information in both the EOII and NOII within the context of the previous day's Nasdaq Official Closing Price or consolidated closing price to facilitate informed decisions about whether and how to participate in the Opening Cross.

#### Additional Conforming and Non-Substantive Changes

The Exchange is proposing to amend Equity 4, Rule 4702(b)(9)(B) to clarify that an Opening Cross/Market Hours Order, with a Time-in-Force<sup>23</sup> other than Immediate or Cancel,<sup>24</sup> entered between 9:29:30 a.m.<sup>25</sup> and the time of the Nasdaq Opening Cross, (i) held and entered into the System after the completion of the Nasdaq Opening Cross if it has been assigned a Pegging Attribute or Routing Attribute, (ii) treated as an Opening Imbalance Only Order and entered into the System after the completion of the Nasdaq Opening Cross if entered through RASH, QIX, or FIX but not assigned a Pegging Attribute or Routing Attribute, or (iii) treated as

<sup>22</sup> The Exchange proposes to use natural rounding when there is no imbalance. When there is an imbalance the Exchange will round such that more offsetting interest can participate. Thus, where there is a buy imbalance the Exchange will round the First Opening Reference Price or Second Opening Reference Price up to allow more sell interest to participate, and when there is a sell imbalance the Exchange will round the First Opening Reference Price or Second Opening Reference Price down to allow more buy interest to participate. For example, if there is a sell imbalance, a First Opening Reference Price of \$10.015 would be rounded down to \$10.01. Re-pricing based on a price of \$10.01 would allow additional buy orders to offset the sell imbalance at that price when they may be excluded at a price of \$10.02.

<sup>23</sup> The "Time-in-Force" assigned to an Order means the period of time that the Nasdaq Market Center will hold the Order for potential execution. Participants specify an Order's Time-in-Force by designating a time at which the Order will become active and a time at which the Order will cease to be active. See Equity 4, Rule 4703(a).

<sup>24</sup> By definition, Opening Cross/Market Hours Orders have a Time-In-Force other than IOC, therefore, this is a clarifying, non-substantive change.

<sup>25</sup> The Exchange is proposing to replace 9:28 a.m. with 9:29:30 a.m. as a conforming change because as discussed above, the Exchange is proposing to allow LOO orders to be entered until 9:29:30 a.m.

<sup>19</sup> The Exchange is including the Current Reference Price as it represents the Nasdaq best bid and best offer at the time of dissemination and is used to calculate any imbalance direction and imbalance size. Providing this information in the EOII data increases the transparency of the information and will allow participants to provide additional orders to improve the price discovery process in the opening auction.

<sup>20</sup> However, as discussed below, the Exchange is separately proposing to allow late LOO Orders to be entered after 9:28 a.m. Moreover, unlike MOO and LOO Orders, OIO Orders may be entered until the time of execution of the Opening Cross. See Equity 4, Rule 4702(b)(10)(A).

<sup>21</sup> As indicated throughout this filing, Market Hours Orders entered between 9:28 a.m. and 9:29:30 a.m. will be treated as late LOO orders, if applicable and rejected as MOO orders, if applicable.

an Opening Imbalance Only Order and cancelled after the Nasdaq Opening Cross if entered through OUCH or FLITE. An Opening Cross/Market Hours Order entered through RASH or FIX after the time of the Nasdaq Opening Cross will be accepted but the Nasdaq Opening Cross flag will be ignored.<sup>26</sup> The Exchange is also removing language from Equity 4, Rule 4702(b)(9)(B) explaining that a Routable Order flagged to participate in the Nasdaq Opening Cross with a Time-in-Force other than IOC and entered at or after 9:28 a.m. will be held and entered into the System after the Nasdaq Opening Cross. The Exchange believes that this language is duplicative to language already discussed in Equity 4, Rule 4702(b)(9)(B) and is therefore, proposing to remove the language. The Exchange is also proposing to exclude LOO Orders from being rejected and to add that certain LOO Orders will not be rejected if entered after 9:28 a.m. This proposed change conforms with the proposed change to allow LOO orders to be entered until 9:29:30 a.m.

Additionally, the Exchange is proposing to renumber certain provisions of Equity 4, Rule 4752 to conform with the new definitions added to the section. Finally, the Exchange is making a non-substantive change to the Market Hours Orders definition in Equity 4, Rule 4752(a)(7) to use the defined terms throughout the Exchange's rulebook. The Exchange is also making a conforming change to Equity 4, Rule 4752(a)(7) to indicate that Market Hours Orders entered into the System at 9:29:30 a.m. ET<sup>27</sup> or after with an Time-in-Force other than an IOC shall be designated as "Late Market Hours Orders." The Exchange is also making a conforming change to that rule to indicate that beginning at 9:25 a.m., requests to cancel or modify Market Hours Orders will be suspended until after completion of the Opening Cross at which time such requests shall be processed, to the extent that such orders remain available within the System.

Lastly, the Exchange is abbreviating the terms "market-on-open" and "limit-on-open" to conform with terms used in Rule 4752.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>28</sup> in general, and furthers the

objectives of Section 6(b)(5) of the Act,<sup>29</sup> in particular, in that it is designed 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. As the equities markets continue to evolve and become more efficient and automated, the Exchange believes that in some ways the current on-open order entry process is restrictive to market participants that wish to participate in the Nasdaq Opening Cross. Similar to the changes made to the closing auction,<sup>30</sup> the Exchange believes that the proposed changes will give participants additional methods of contributing to price discovery while still allowing participants to react to and offset Imbalances.

In particular, the proposal to establish the EOII will provide participants with additional information for price discovery, which increases market transparency and the price discovery process of the Opening Cross to the benefit of members and investors that participate in the Opening Cross. Furthermore, limiting the EOII data is reasonable because as discussed above, it will reduce the possibility of large indicative price movements during the early moments of the price formation process. The EOII will also enhance the price discovery and liquidity of a security by providing additional time and flexibility for participants to react to imbalance information and therefore increasing the number of participants in the Nasdaq Opening Cross, which establishes the Nasdaq Official Opening Price for a security. Additionally, the Exchange believes that disseminating the EOII at 10 second intervals is reasonable because it strikes the right balance between conveying material changes in imbalance information prior to the Opening Cross Cutoff time and avoiding excessive messaging traffic. Furthermore, the Exchange has established a similar EOII for the Closing Cross.

The Exchange also believes that it is reasonable to prohibit cancellation or modification of MOO, LOO and OIO orders, while allowing the entry of these orders, after 9:25 a.m. in order to enhance stability in the Opening Cross process by reducing the possibility of large indicative price movements due to participants cancelling or modifying orders in reaction to the EOII. The Exchange has established similar

prohibitions for its Closing Cross process.

Additionally, extending the time for members to submit LOO orders will increase participation in the Opening Cross as well as allow participants to retain control over their orders for a longer period of time, thereby assisting those market participants in managing their trading at the open. Moreover, repricing eligible LOO Orders entered after the 9:28 a.m. cutoff time is reasonable and equitable because repricing is designed to enhance price discovery and stability while reducing order imbalances by allowing more price forming orders that are priced no more aggressively than the First and Second Opening Reference Prices to offset imbalances and to participate in the Opening Cross.

Moreover, the Exchange believes it is reasonable to clarify in Equity 4, Rule 4702(b)(9)(B) that the treatment of an Opening Cross/Market Hours Order that has a Time-in-Force other than IOC and is entered between 9:29:30 a.m. and the commencement of the Opening Cross, in addition to clarifying that certain LOO Orders will not be rejected after 9:28 a.m., because these are conforming changes.<sup>31</sup> The changes to the Market Hours Orders in Equity 4, Rule 4752(a)(7) are also conforming changes to the proposed change of allowing the entry of Late LOO Orders.

## 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 not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change is evidence of the competitive forces in the equities markets insofar as the establishment of the EOII is designed to render the Opening Cross more transparent and flexible, as well as more attractive to participants. Additionally, the proposed EOII and the extended time period to enter LOO Orders will be equally available to all participants. Moreover, the proposed changes will equally affect all participants using MOO, LOO and OIO orders.

<sup>31</sup> The Exchange is also proposing to delete language in Equity 4, Rule 4702(b)(9)(B) stating that "[a] Routable Order flagged to participate in the Nasdaq Opening Cross with a Time-in-Force other than IOC and entered at or after 9:28 a.m. will be held and entered into the System after the Nasdaq Opening Cross" because this language is duplicative to similar language in the same Rule.

<sup>26</sup> The Nasdaq Book is a montage for quotes and orders that collects and ranks all quotes and orders submitted by Participants. Equity 4, Rule 4701(a)(1).

<sup>27</sup> This time is a proposed update from the previous time of 9:28 a.m.

<sup>28</sup> 15 U.S.C. 78f(b).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> See *supra* n. 4–5.

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

No written comments were either solicited or 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 (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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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-NASDAQ-2021-004 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-NASDAQ-2021-004. 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 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-NASDAQ-2021-004, and should be submitted on or before March 10, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-03089 Filed 2-16-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 34194; 812-15162]

**Blue Tractor ETF Trust and Blue Tractor Group, LLC**

February 10, 2021.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application to amend a prior order for exemptive relief.

**SUMMARY OF APPLICATION:** Applicants request an order ("Amended Order") that would amend a prior order to permit the Funds, as defined below, to use Creation Baskets (as defined below) that include instruments that are not included, or are included with different weightings, in the Fund's Dynamic SSR Portfolio (as defined below).

**APPLICANTS:** Blue Tractor ETF Trust and Blue Tractor Group, LLC.

**FLING DATES:** The application was filed on September 18, 2020, and amended on January 19, 2021.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving Applicants with a copy of the request by email.

Hearing requests should be received by the Commission by 5:30 p.m. on March 8, 2021 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Investment Company Act of 1940 ("Act"), hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing to the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov). Applicants: [MMundt@stradley.com](mailto:MMundt@stradley.com).

**FOR FURTHER INFORMATION CONTACT:** Marc Mehresand, Senior Counsel; Trace W. Rakestraw, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

**I. Introduction**

1. On December 10, 2019, the Commission issued an order ("Prior Order")<sup>1</sup> under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.<sup>2</sup> The Prior Order permitted Applicants to introduce a novel type of actively-managed

<sup>1</sup> See Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Release No. 33682 (Nov. 14, 2019) (notice) and Investment Company Act Release No. 33710 (Dec. 10, 2019) (order). Except as specifically noted in the application, all representations and conditions contained in the application previously submitted with the Commission (File No. 812-14625), as amended and restated, and filed with the Commission on October 23, 2019 (the "Prior Application") remain applicable to the operation of the Funds and will apply to any Funds relying on the Amended Order.

<sup>2</sup> The relief granted in the Prior Order under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the 1940 Act (the "Section 12(d)(1) Relief"), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, will expire one year from the effective date of rule 12d1-4. See Fund of Funds Arrangements, Investment Company Act Rel. No. 10871 (Oct. 7, 2020), at III.

<sup>32</sup> 17 CFR 200.30-3(a)(12).