



April 5, 2016

**Via Electronic Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

Mr. Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: File No. SR-NASDAQ-2016-035; File No. SR-NYSE-2016-18

Dear Mr. Fields:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> submits this letter to comment on the above-referenced proposed rule changes filed by The Nasdaq Stock Market LLC (“Nasdaq”) and the New York Stock Exchange LLC (“NYSE”) with the Securities and Exchange Commission (“Commission”). The proposals address the determination of official closing prices when the exchanges are unable to carry out a closing transaction. Nasdaq and NYSE developed these proposals after a July 8, 2015, systems outage at NYSE raised the question of how NYSE would determine its official closing prices if it could not run its closing transaction. Shortly after that event, Nasdaq and NYSE announced that they would develop a plan to provide each other with contingency facilities for closing transactions. SIFMA supported that initiative, which has led to the current proposals.<sup>2</sup> We support the Nasdaq and NYSE proposals, and we urge the Commission to approve them, with some minor modifications. In addition, we encourage Nasdaq and NYSE to continue working with industry participants on this issue and, as a next step, refine the backup mechanism to address additional circumstances.

The Nasdaq and NYSE proposals would establish similar protocols to address an exchange’s inability to conduct a closing transaction, and the protocol hinges on whether the determination about the closing transaction is made before or after 3:00 pm. If Nasdaq or NYSE determined at or before 3:00 pm that it was unable to conduct a closing transaction due to a systems or technical issue, it would designate an alternative exchange for the closing transaction

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> See [http://www.sifma.org/newsroom/2015/sifma\\_statement\\_on\\_the\\_nyse\\_and\\_nasdaq\\_framework\\_to\\_enhance\\_resiliency\\_of\\_the\\_closing\\_auction\\_process/](http://www.sifma.org/newsroom/2015/sifma_statement_on_the_nyse_and_nasdaq_framework_to_enhance_resiliency_of_the_closing_auction_process/)

and publicly announce that designation.<sup>3</sup> In such a case, the official closing price for the designating exchange would be the official closing price under the rules of the alternate exchange. For example, if NYSE designated NYSE Arca as the alternate exchange, the official closing price would be based on NYSE Arca Equities Rule 1.1(ggP), which defines how NYSE Arca establishes an official closing price, and if Nasdaq were designated as the alternate exchange, the official closing price would be the official closing price established in Nasdaq Rule 4754.

If Nasdaq or NYSE determined after 3:00 pm that it was unable to conduct a closing transaction due to a systems or technical issue, it would not conduct a closing transaction at all and would instead determine official closing prices on the following hierarchy:

- The official closing price would be the volume-weighted average price (“VWAP”) of the consolidated last-sale eligible prices of the last five minutes of trading during regular trading hours up to the time that the VWAP is processed, including any closing transactions on an exchange.
- If there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours in such security, the official closing price would be the last consolidated last-sale eligible trade during regular trading hours on that trading day.
- If the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in a security on a trading day in such security, the official closing price would be the prior day’s official closing price.<sup>4</sup>

Both Nasdaq and NYSE would also use this hierarchy if one of them designated an alternative exchange at or before 3:00 pm and the alternative exchange subsequently was unable to conduct a closing transaction.

SIFMA supports the proposed methodology for closing transaction contingencies, and we urge the Commission to approve it. In this regard, we request that Nasdaq and NYSE make three modifications to the proposals:

- First, the exchanges’ rules should specify that any designation of an alternative exchange should be ***publicly announced*** at or before 3:00 pm. If a determination is made at 3:00 pm, then the time between 3:00 pm and the time when member firms actually receive notice of the designation would cut into the critical time needed to re-direct closing

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<sup>3</sup> For Nasdaq, the alternative exchange would be NYSE Arca. For NYSE, the alternative exchange would be either Nasdaq or NYSE Arca.

<sup>4</sup> NYSE’s proposal provides further that, if an official closing price for a security cannot be determined under any of the alternatives and there is no prior day’s official closing price, NYSE would not publish an official closing price for such security.

interest to the alternative exchange. If the exchange is unable to make the public announcement of the alternative at or before 3:00 pm, then it should proceed to the post 3:00 pm alternative. In either case, the “announcement” should be made through the SIP feed in addition to any other forms of communication.

- Second, if either Nasdaq or NYSE determines not to carry out its own closing transaction it should ***expressly assume responsibility*** under its rules for the cancellation of all closing interest the exchange has already received. Member firms that have sent closing interest to the exchange should be given comfort under the exchange’s rules that they may treat the closing interest as canceled even if they have not received an official notification of cancellation. If the exchange then executed that closing interest despite cancelling the closing transaction, then the exchange should be responsible under its own rules for any resulting trading losses to the member firms. In this regard, the exchange rules also should state explicitly that the official closing transaction is canceled once an exchange determines that it is unable to conduct its own closing transaction so as to avoid confusion on whether the exchange might change course if it determines before 4:00 pm that it becomes able to conduct its own closing transaction.
- Third, if either Nasdaq or NYSE determines that it will use the VWAP methodology to determine its official closing price, then the ***VWAP calculation should not include any other exchange’s closing transaction***. This could be accomplished in one of two ways: either (a) the VWAP calculation could be formulated to exclude the closing transaction prices determined at any other exchange; or (b) when one of the exchanges determines to use the VWAP methodology, all other exchanges could agree not to conduct their own closing transactions on that day. In practice, a five-minute VWAP methodology should result in a price that is largely tradeable and achievable, which is important when traders need to guarantee closing prices for clients. But if a VWAP used as an exchange’s official closing price included auction prints from other exchanges’ “non-official” closing transactions, the ability to trade and achieve the official closing price process would be reduced.

While SIFMA supports the current Nasdaq and NYSE proposals, there are additional circumstances that the exchanges should consider in this regard. For example, after the proposals are approved, the exchanges should publish and maintain a translation matrix of order types to facilitate the re-direction of closing interest in cases where an alternative exchange is designated for a closing transaction. As a future step, the exchanges should consider how they would determine an official closing price if they were unable to carry out a closing transaction on a trading day with particularly high closing interest at the exchanges – such as on a major index rebalancing date. In addition, the exchanges should consider how they would determine an official closing price if they concluded very late in the trading day (*e.g.*, at 3:55 pm or later) that they were unable to conduct a closing transaction. And as market participants automate these contingency processes, the exchanges should work with member firms to determine whether the cut-off times could be moved to later in the trading day. SIFMA encourages Nasdaq and NYSE to continue its work with industry participants and to refine the contingency mechanisms.

Mr. Brent J. Fields, Securities and Exchange Commission  
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SIFMA greatly appreciates the Commission's consideration of the issues raised above. SIFMA would be pleased to discuss these comments in greater detail with the Commission and the Staff. If you have any questions, please contact either me (at 202-962-7383 or [tlazo@sifma.org](mailto:tlazo@sifma.org)) or Timothy Cummings (at 212-313-1239 or [tcummings@sifma.org](mailto:tcummings@sifma.org)).

Sincerely,

A handwritten signature in blue ink, appearing to read "Theodore R. Lazo", with a long horizontal flourish extending to the right.

Theodore R. Lazo  
Managing Director and  
Associate General Counsel

cc: The Honorable Mary Jo White, Chair  
The Honorable Michael S. Piwowar, Commissioner  
The Honorable Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets  
Gary Goldsholle, Deputy Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets