

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75815; File No. SR-NASDAQ-2015-103)

September 2, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq Rule 5745

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 August 31, 2015, The NASDAQ Stock Market LLC (“Nasdaq” or the “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 Nasdaq. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq Rule 5745 entitled “Exchange-Traded Managed Fund Shares” in connection with a type of open-end management investment company registered under the Investment Company Act of 1940, as amended (“1940 Act”), called an Exchange-Traded Managed Fund (“ETMF”). The shares of an ETMF are collectively referred to herein as “ETMF Shares” or “Shares.”

The Exchange has designated that the amendments be operative on October 1, 2015 so that they are in place by the expected launch of the initial ETMFs on that date.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq's principal office, 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 Nasdaq Rule 5745 in connection with the trading of ETMF Shares.⁵ Specifically, the Exchange proposes to add to Nasdaq Rule 5745 subsections (b)(6), (b)(6)(A) and (b)(6)(B) to clarify that all order attributes ("Order Attributes"), as described in Nasdaq Rule 4703, are applicable to ETMF Shares other than for certain exceptions. The first exception is that any order⁶ with respect to ETMF Shares received with a routing instruction (as defined in Nasdaq Rule 4758) prior to the opening trading in the applicable ETMF security will be automatically canceled and returned. Since ETMFs are not permitted to trade prior to 9:30 a.m. (Eastern Time), the Exchange believes that allowing routing to occur only during Regular Market Session⁷ through 4:00 p.m. (Eastern Time) is the best way to eliminate

⁵ The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34-73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR-NASDAQ-2014-020).

⁶ See Nasdaq Rule 4701(e).

⁷ Nasdaq Rule 4120(b)(4)(D) defines the Regular Market Session as the trading session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m. ETMF Shares will trade until 4:00 p.m.

any possible confusion regarding system availability for trading ETMFs.

The other exception is that certain Time-in-Force Order Attributes, as defined in Nasdaq Rule 4703, are not applicable to orders in ETMF securities. These include orders designated to deactivate one year after entry and referred to as a “Good-till-Cancelled” or “GTC” Orders.⁸ If a GTC Order is designated as eligible for execution during Market Hours only, it may be referred to as having a Time-in-Force of “Market Hours Good-till-Cancelled” or “MGTC”.⁹ If a GTC is designated as eligible for execution during System Hours, it may be referred to as having a Time-in-Force of “System Hours Good-till-Cancelled” or “SGTC”.¹⁰ GTC, MGTC and SGTC Order Attributes should not be used with ETMF Share orders for the following reasons.

ETMF Shares will trade on Nasdaq using a new trading protocol called “NAV-Based Trading.” In NAV-Based Trading, all bids, offers and execution prices will be expressed as a premium/discount (which may be zero) to the ETMF’s next-determined NAV (e.g., NAV-\$0.01; NAV+\$0.01). An ETMF’s next-determined NAV will be represented at the beginning of each trading day by a proxy price of 100.00. An ETMF’s NAV will be determined each business day, normally no later than 6:45 p.m. Eastern Time. At this time, the day’s premiums/discounts associated with the day’s transactions will be applied to the day’s NAV to create the final transaction price. Trade executions using NAV-Based Trading will be binding at the time orders are matched on Nasdaq’s facilities, with the transaction prices contingent upon the determination of the ETMF’s NAV at the end of the business day.

As such, GTC, MGTC and SGTC Order Attributes that allow an order to be activated or deactivated in a manner that is inconsistent with a standard trading day create a possibility for

⁸ See Nasdaq Rule 4703(a)(3).

⁹ Id.

¹⁰ Id.

error and confusion. The daily price function and format of order entry, in premium or discount to the NAV, which is characteristic of NAV-Based Trading, represent the value a participant is willing to purchase or sell an ETMF. Since a GTC, MGTC or SGTC Order Attribute allows for an order to deactivate after the day it was entered, the price at which it is entered in premium or discount would not represent the same value for an order on a subsequent day where the value of NAV may have changed significantly from the time it was entered.

Instead of modifying and limiting each applicable Order Attribute that allows for orders to be either activated or deactivated during a time when ETMF's are not permitted to trade, the Exchange believe it is in the best interests of Exchange members to allow the use of only those Order Attributes that pertain to orders that expire during a standard trading day. The Exchange believes that this approach both simplifies and clarifies the treatment of Order Attributes.

Additionally, since trading in ETMF Shares will occur only during the regular trading hours of between 9:30 a.m. and 4 p.m. (Eastern Time),¹¹ any orders for ETMF Shares submitted to the Exchange prior to market open will not be accepted. Also, orders received after market close will be rejected. All orders to buy or sell ETMF Share that are not executed on the day the order is submitted would be automatically cancelled as of the close of trading on such day.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act¹² in general and Section 6(b)(5) of the Act¹³ in particular in that it is 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 facilitating transactions in securities, and

¹¹ See Nasdaq Rule 5745(b)(2).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange is proposing to clarify Nasdaq Rule 5745 by adding subsections (b)(6), (b)(6)(A) and (b)(6)(B) to clarify that all Order Attributes (as described in Nasdaq Rule 4703) are applicable to ETMF Shares other than for certain exceptions, including that any order¹⁴ received with a routing instruction (as defined in Nasdaq Rule 4758) prior to the opening of trading in the ETMF security will be automatically canceled and returned. Also, the proposed rule seeks to clarify that certain Time-in-Force Order Attributes (as defined in Nasdaq Rule 4703) are not applicable for ETMF securities and include the following orders: GTC, MGTC, and SGTC Orders.¹⁵

The Exchange believes that, because this proposed rule change clarifies for all market participants exactly what types of Order Attributes are permissible for ETMF Shares and thereby reduces possible confusion in the trading of ETMF Shares, it will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, help to protect investors and the public interest. The proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.¹⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on

¹⁴ See Nasdaq Rule 4701(e).

¹⁵ See Nasdaq Rule 4703(a)(3).

¹⁶ 15 U.S.C. 78f(b)(5).

competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will assist in the introduction of ETMFs through clarifying for all market participants exactly what types of Order Attributes are permissible for ETMF Shares and will reduce possible confusion in the trading of ETMF Shares.

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 foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

¹⁷ 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.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2015-103 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 20549-1001.

All submissions should refer to File Number SR-NASDAQ-2015-103. This file number should be included on the subject line if e-mail 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, D.C. 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 Nasdaq. 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-2015-103, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).