

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76518; File No. SR-NASDAQ-2015-145)

November 24, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Include Managed Fund Shares in the Lead Market Maker Program

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 November 18, 2015, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 add Managed Fund Shares to the list of securities eligible to be Qualified Securities under the Lead Market Maker Program of Rule 7014(f). The Exchange will implement the proposed change no earlier than December 1, 2015 and no later than January 4, 2016. The implementation date will be announced by an Equity Trader Alert.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 is proposing to include Managed Fund Shares, as described under Rule 5735, to the list of securities eligible to be treated as a Qualified Security under the Lead Market Maker ("LMM") Program of Rule 7014(f). The LMM Program is designed to provide incentive to market makers to make markets in certain relatively illiquid exchange-traded products ("ETPs"). The Exchange provides credits to a designated LMM for execution of a Qualified Security. Under Rule 7014(f)(1), a Qualified Security is defined as an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares), 5710 (Securities Linked to the Performance of Indexes and Commodities, Including Currencies), or 5720 (Trust Issued Receipts), and it must have at least one LMM. A LMM is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. A LMM is selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded funds and index-linked securities, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and

history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of LMMs in a security, or modify a previously established limit, upon prior written notice to members.

As noted above, Nasdaq currently includes in the program Portfolio Depository Receipts, Index Fund Shares, Securities Liked to the Performance of Indexes and Commodities, and Trust Issued Receipts. Nasdaq is proposing to add another ETP, Managed Fund Shares, as eligible to be a Qualified Security under the LMM Program. A Managed Fund Share is a security that (a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.³ Managed Fund Shares are similar to other Exchange Traded Funds (“ETFs”) listed pursuant to Rule 5705(b), which, like Managed Fund Shares, are organized as an open-end investment company or similar entity. Unlike Rule 5705(b) ETFs that seek to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof, Managed Fund Share ETFs are actively-managed, in that they invest in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. Nasdaq has observed that Managed Fund Shares are generally less liquid than other ETPs. Consequently, Nasdaq has

³ See Rule 5735(c)(1).

determined to allow Managed Fund Shares to be considered Qualified Securities under the program, which the Exchange believes will improve market quality in these securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and 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 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that inclusion of Managed Fund Shares in the LMM Program is reasonable because they are currently relatively thinly-traded on Nasdaq, and the LMM Program is designed [sic] improve liquidity in ETPs. Specifically, the LMM Program allocates rebates to LMMs that quote at the national best bid and best offer for certain percentages of time. As additional incentive, the LMM Program also provides different levels of fee caps on the fees assessed for participation in the Opening and Closing Crosses on Nasdaq. The LMM Program has been successful at improving market quality in the securities covered by the program. As such, the Exchange believes the program will be effective at providing incentive to market makers on Nasdaq to become LMMs in a [sic] Managed Fund Shares thereby improving market

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4) and (5).

quality in those securities. The Exchange also believes that including Managed Fund Shares is reasonable because they are similar to other ETFs, which are currently included in the LMM Program. The Exchange believes that the proposed change to Rule 7014(f) is an equitable allocation and is not unfairly discriminatory because all market makers that voluntarily elect to be designated as LMMs and meet the minimum performance criteria have the opportunity to qualify for a rebate and fee cap under the program in Managed Fund Shares.

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 competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the change is designed to promote improved market quality through the application of an ETP incentive program to a type of ETP that is currently not part of the program, and has comparatively low liquidity. Such a change is designed to improve market quality in Qualified Securities on Nasdaq, and does not place a burden on competition between market participants as the changes are applied consistently to all participants. Lastly, to the extent market quality improves on Nasdaq in Managed Fund Shares, the proposed change may promote competition among exchanges for new Managed Fund Share listings and similar incentive programs, to the benefit of all market participants transacting in Managed Fund Shares.

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

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, 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 Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

At any time within 60 days of the filing of the proposed rule change, the Commission 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 change 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-2015-145 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.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

All submissions should refer to File Number SR-NASDAQ-2015-145. 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, 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 offices 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-2015-145 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.⁸

Robert W. Errett
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).