

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77080; File No. SR-NASDAQ-2016-019)

February 8, 2016

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

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 2, 2016, The NASDAQ Stock Market LLC (“Nasdaq”) 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 Nasdaq. 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

Nasdaq proposes to add NextShares to the list of securities eligible to be Qualified Securities under the Lead Market Maker Program of Rule 7014(f) and to make a technical change to the rule. Nasdaq will implement the proposed rule change on February 26, 2016.

The text of the proposed rule change is available on the Nasdaq’s website at <http://nasdaq.cchwallstreet.com>, at the principal office of Nasdaq, 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

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

<sup>2</sup> 17 CFR 240.19b-4.

rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Background

Nasdaq is proposing to include NextShares, listed under Rule 5745, 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"). To achieve this goal, Nasdaq provides credits to a designated LMM for execution of a Qualified Security. Under Rule 7014(f)(1), a security may be designated as a "Qualified Security" if: (A) it is an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, 5720, or 5735; and (B) it has at least one LMM.

An LMM is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards, which are based on certain percentages of time that the LMM is quoting at the national best bid and offer ("NBBO"). An LMM is selected by Nasdaq based on several 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.

Proposed Change to Rule 7014(f)

As previously noted, Nasdaq currently includes in the program Portfolio Depository Receipts, Index Fund Shares, Securities Linked to the Performance of Indexes and Commodities (Including Currencies), Trust Issued Receipts, and Managed Fund Shares. Nasdaq is proposing to add another ETP, NextShares, as eligible to be a Qualified Security under the LMM Program.

The term NextShares means a security that (a) represents an interest in a registered investment company (“NextShares Fund”) organized as an open-end management investment company that invests in a portfolio of securities and other assets selected and managed by the NextShares Fund’s investment adviser consistent with the NextShares Fund’s investment objectives and policies; (b) is issued in a specified aggregate unit quantity in return for a deposit of a specified portfolio of securities and/or a cash amount with a value per NextShare equal to the NextShares Fund’s net asset value; (c) when aggregated in the same specified unit quantity, may be redeemed for a specified portfolio of securities and/or cash with a value per NextShare equal to the NextShares Fund’s net asset value; and (d) is traded on Nasdaq or another national securities exchange using net asset value (“NAV”)-Based Trading.<sup>3</sup> NextShares 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 NextShares’ next-determined NAV (e.g., NAV-\$ 0.01; NAV+\$ 0.01). A NextShares’ next-determined NAV will be represented at the beginning of each trading day by a proxy price of 100.00. A NextShares’ NAV will be determined each business day, normally no later than 6:45

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<sup>3</sup> See Rule 5745(c)(1).

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 NextShares' NAV at the end of the business day. Nasdaq represents that an [sic] NextShares' next-determined NAV will be represented by a proxy price (e.g., 100.00) and a premium/discount of a stated amount to the next-determined NAV to [sic] be represented by the same increment/decrement from the proxy price used to denote NAV (e.g., NAV-\$0.01 would be represented as 99.99; NAV+\$0.01 as 100.01). To convert proxy prices used to represent intraday bids, offers, and execution prices into prices expressed in relation to the next-determined NAV, member firms would subtract from the reported proxy price (e.g., 99.99) the proxy for NAV (e.g., 100.00) and insert "NAV" in front of the calculated number expressed in dollars (e.g.,  $99.99 - 100.00 = -0.01$ , expressed as "NAV-\$0.01"). Nasdaq will report intraday bids, offers, and trades for NextShares in real-time to the Consolidated Tape using the proxy price format. In addition, Nasdaq will disseminate intraday NextShares bids, offers, and trades through a proprietary exchange data feed using the NAV + \$.01 / NAV - \$.01 format. Nasdaq will also provide the member firms participating in each NextShares trade with a contemporaneous notice of trade execution, indicating the number NextShares bought or sold and the executed premium/discount to NAV. All orders to buy or sell NextShares that are not executed on the day the order is submitted would be automatically cancelled as of the close of trading on such day.<sup>4</sup>

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<sup>4</sup> For a description of NAV-Based Trading and proxy price, see Rule 5745(b)(3); see also Securities Exchange Act Release No. 73562 (November 7, 2014), 79 FR 68309 (November 14, 2014) (SR-NASDAQ-2014-020) and Securities Exchange Act Release No. 75815 (September 2, 2015), 80 FR 54349 (September 9, 2015) (SR-NASDAQ-2015-103).

As a new and novel ETP, Nasdaq is proposing to include NextShares in its LMM Program to provide incentive to market makers to make markets in NextShares, which will help to ensure that adequate liquidity is provided in the novel product. This will benefit market participants interested in buying or selling these ETPs. As noted above, the LMM Program's performance criteria are based on an LMM's quoting at the NBBO. For purposes of the LMM Program, Nasdaq will use a NextShares' best proxy price bid and offer in comparison to an LMM's quoting at the time to determine whether it meets the performance criteria. Nasdaq will list and trade the first NextShares product on February 26, 2016 and plans to include NextShares in the LMM Program as Qualified Securities effective that day.

Nasdaq is also proposing to make a technical change to rule text in Rule 7014(f). Currently, Nasdaq describes Qualified Securities as being "exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, 5720, or 5735."<sup>5</sup> Nasdaq is proposing to replace references to exchange-traded funds and index-linked securities under subparagraphs (f)(1)(A) and (f)(2) of Rule 7014 with the term "exchange-traded product," which is a broader term that incorporates exchange-traded funds, index-linked securities, and NextShares within its meaning. The new term does not change what is eligible to be a Qualified Security under the rule.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its

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<sup>5</sup> Rule 7014(f)(1)(A).

<sup>6</sup> 15 U.S.C. § 78f.

<sup>7</sup> 15 U.S.C. § 78f(b)(4) and (5).

members and issuers and other persons using its facilities, 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.

Nasdaq believes that inclusion of NextShares in the LMM Program is reasonable because the new ETP is novel, and offering incentives to market makers to provide liquidity in the product will help ensure its successful launch. The LMM Program is designed to improve liquidity in ETPs by allocating 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. Thus Nasdaq believes the program will be effective at providing incentive to market makers on Nasdaq to become LMMs in NextShares thereby improving market quality in those securities. Nasdaq believes that the proposed change to Rule 7014(f) is an equitable allocation and is not unfairly discriminatory because all market makers that are elected 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 NextShares. Nasdaq believes that the proposed rule change will protect investors and the public interest because it may increase market maker participation in NextShares, which would in turn make the market in NextShares deeper and more liquid than it would be if NextShares were not included in the

program. Deep and liquid markets protect investors and promote the public interest by allowing market participants to buy and sell securities quickly at competitive prices.

Lastly, Nasdaq believes that the proposed use of the term exchange-traded product in lieu of the terms exchange-traded fund and index-linked security is consistent with the protection of investors and the public interest because it clarifies the rule text with a more commonly-used term to describe the securities eligible to be Qualified Securities under the LMM Program and does not change the type of securities eligible to be included in the program.

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

Nasdaq 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 improve market quality through the application of an ETP incentive program to a type of ETP that is currently not part of the program. A new ETP product, NextShares, may have comparatively low liquidity upon listing. Including NextShares in the LMM Program is designed to improve market quality in NextShares. Lastly, to the extent market quality in NextShares improves from inclusion in the LMM Program, the proposed change may promote competition among exchanges for new NextShares listings and similar incentive programs, to the benefit of all market participants trading NextShares.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that NextShares may be included as Qualified Securities in the LMM Program on February 26, 2016, the first day of trading for NextShares on Nasdaq. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it could allow NextShares investors to benefit from potential increased liquidity that an LMM could provide in a Qualified Security as early as the first day of trading for NextShares on Nasdaq. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>12</sup>

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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 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.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-019 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-2016-019. 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 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-2016-019 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.<sup>13</sup>

Robert W. Errett  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).