

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77706; File No. SR-NASDAQ-2016-059)

April 26, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Require an Issuer of Securities Listed under the Rule 5700 Series to Notify Nasdaq about the Replacement of the Index, Portfolio, or Reference Asset Underlying the Security and Pay a Fee in Connection with the Change

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 April 20, 2016, 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 require that an issuer of securities listed under the Rule 5700 Series notify Nasdaq about the replacement of the index, portfolio, or reference asset underlying the security and pay a fee in connection with the change.

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.

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

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

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

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

Nasdaq rules require issuers to notify Nasdaq about substitution listing events and impose fees associated with those notifications. Specifically, Rule 5005(a)(40) defines a “Substitution Listing Event” as certain changes in the equity or legal structure of a company<sup>3</sup> and Rule 5250(e)(4) requires a listed company to provide notification to Nasdaq about these events no later than 15 days before implementation of the event. These events generally require Nasdaq to review the entity for compliance with the applicable listing requirements.

Nasdaq proposes to expand the definition of a Substitution Listing Event to include cases where an issuer of securities listed under the Rule 5700 Series replaces, or significantly modifies, the index, portfolio, or reference asset underlying its security (including, but not limited to, a significant modification to the index methodology, a change in the index provider, or a change in control of the index provider). This type of change requires that Nasdaq review the changes to the index, portfolio, or reference asset for compliance with the applicable listing requirements

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<sup>3</sup> A “Substitution Listing Event” means: a reverse stock split, re-incorporation or a change in the Company’s place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company’s listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, a business combination described in IM-5101-2 (unless the transaction was publicly announced in a press release or Form 8-K prior to October 15, 2013), or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights. See Rule 5005(a)(40).

and may require Nasdaq to make a rule filing with the Commission to continue listing the product with the revised index, portfolio, or reference asset.<sup>4</sup>

Nasdaq believes it is appropriate to require notification of these changes in the same manner as other Substitution Listing Events,<sup>5</sup> which will increase to 15 days the time available to Nasdaq to conduct its initial review of the revised index, portfolio, or reference asset underlying the security, evaluate compliance with the listing requirements, and determine if a rule filing is required.<sup>6</sup>

Nasdaq also proposes to modify Rule 5701 to highlight that a change to the index, portfolio, or reference asset underlying a security is a Substitution Listing Event that requires 15 calendar days' notice. The new language also emphasizes that such a change may affect the company's compliance with the listing requirements and may require Nasdaq to file a new rule filing pursuant to Section 19(b)(1) of the Act<sup>7</sup> and for such rule filing to be approved by the SEC or otherwise take effect (as applicable), before the product can be listed or traded. The new rule language also indicates that Nasdaq will halt trading if a company effectuates a change that requires such a filing before it is approved by the SEC or otherwise takes effect (as applicable). The new rule language would also indicate that Nasdaq will commence delisting proceedings if a

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<sup>4</sup> Other types of changes may also require Nasdaq to make a rule filing with the Commission to continue listing the changed product.

<sup>5</sup> Listed companies provide notification of a Substitution Listing Event via Nasdaq's Listing Center on the Company Event Notification Form.

<sup>6</sup> Currently, at a minimum, Nasdaq believes that an issuer must disclose such changes under Rule 5250(b)(1), which requires public disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions, and must notify Nasdaq's MarketWatch department 10 minutes prior to such announcement.

<sup>7</sup> 15 U.S.C. 78s(b)(1).

company effectuates a change in the case where Nasdaq determines not to submit a rule filing or withdraws a rule filing, or where the SEC disapproves a rule filing.<sup>8</sup>

Nasdaq also believes that it is appropriate in these instances to charge the \$5,000 fee assessed for Substitution Listing Events,<sup>9</sup> which will offset the costs associated with Nasdaq's listing review and, if necessary, rule filing, as well as the costs to maintain and revise Nasdaq's records, and distribute information to market participants about the change. Therefore, Nasdaq is adding language to Rules 5730 and 5740 to clarify that the existing Substitution Listing Event fee also applies to situations where a company changes the index, portfolio, or reference asset underlying its security.

Finally, Nasdaq proposes to remove transitional language within Rule 5005(a)(40), which excluded a business combination that was publicly announced prior to October 15, 2013, from being considered a Substitution Listing Event. Nasdaq does not believe that any company listed on Nasdaq has an uncompleted business combination announced prior to that date, which would be considered a Substitution Listing Event. As such, Nasdaq believes this is a technical change to remove an expired transition.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Sections 6(b)(4) and (5) of the Act,<sup>11</sup> in particular, in that it

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<sup>8</sup> The proposed rule change would also add language to Rule 5701 to encourage companies to consult with Nasdaq staff sufficiently in advance of such changes to allow review and preparation of a rule filing and SEC approval, if necessary, and to clarify that Nasdaq has sole discretion as to whether it chooses to submit a rule filing and, if submitted, whether to withdraw such rule filing.

<sup>9</sup> See Securities Exchange Act Release No. 76550 (December 3, 2015), 80 FR 76605 (December 9, 2015) (SR-NASDAQ-2015-146, adopting a Substitution Listing Event fee for securities listed under the Rule 5700 Series).

<sup>10</sup> 15 U.S.C. 78f.

provides for the equitable allocation of reasonable dues, fees, and other charges among its members, 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 the proposed requirement that the issuer of securities listed under the Rule 5700 Series notify Nasdaq 15 calendar days in advance of changes to the index, portfolio, or reference asset underlying the security is consistent with the investor protection objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest.

Specifically, the proposed change will help ensure that Nasdaq has sufficient time to review the revised index, portfolio, or reference asset and determine whether the product complies with Nasdaq's listing requirements and whether a rule filing must be filed by Nasdaq pursuant to Section 19(b)(1) of the Act and approved by the Commission or otherwise take effect (as applicable), which will help protect investors.

Moreover, by including this category of changes in the definition of a Substitution Listing Event, Nasdaq will charge a \$5,000 fee in connection with the changes, which will help ensure that adequate resources are available for Nasdaq to conduct this review. In addition, the

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<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

proposed change will clarify that Nasdaq will halt a security if the issuer implements a change that requires a rule filing before that rule filing is approved or effective (as applicable), and delist the security if Nasdaq determines not to file or withdraws the rule filing, or the SEC disapproves the rule filing, thereby protecting investors.

Including changes to the index, portfolio, or reference asset underlying a security in the list of Substitution Listing Events subject to a \$5,000 fee is reasonable and equitably allocated in that it is designed to compensate Nasdaq for the work required in connection with effecting changes that the issuer has initiated. As noted above, changes made to a security's underlying index, portfolio or reference assets require Nasdaq to review the issuer's listing compliance and may require Nasdaq to submit a rule filing to the Commission. It is reasonable and equitable to allocate the costs of these actions to the issuer that implements the change or event, just as Nasdaq does in connection with other Substitution Listing Events.

The proposed change to eliminate transitional language from Rule 5005(a)(40) will simplify Nasdaq's rules, thereby removing a potential impediment to a free and open market and national market system.

**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. This rule proposal is not primarily based on competition, but rather is designed to ensure that Nasdaq staff has adequate time and resources to review a change to an index, portfolio, or reference asset for compliance with the listing requirements and to file and obtain approval or effectiveness of a rule change, if necessary. As such, Nasdaq believes the proposed change will have no impact on competition.

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 Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to immediately receive the benefit of additional time to review changes to indices, portfolios, or reference assets underlying securities listed under the Rule 5700 Series for compliance with the listing requirements and federal securities law requirements. The Exchange further states that the additional notification time

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

required by the proposal relating to such changes will help to prevent potential disruptions to listings of securities listed under the Rule 5700 Series, thereby helping to protect investors and the public interest.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange states that the proposal will help ensure that the Exchange has sufficient time to review a revised index, portfolio, or reference asset underlying a security listed under the Rule 5700 Series to determine whether the product complies with the Exchange's listing requirements and whether a rule filing must be filed by the Exchange pursuant to Section 19(b)(1) of the Act. Accordingly, the Commission designates the proposed rule change to be operative upon filing.<sup>16</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 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:

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



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-2016-059 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-2016-059. 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 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-2016-059 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>17</sup>

Robert W. Errett  
Deputy Secretary

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