

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80810; File No. SR-NASDAQ-2017-052)

May 30, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 5735

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 May 24, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “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 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 correct rule language added by a previous filing³ that, in part, amended Nasdaq Rule 5735 (Managed Fund Shares).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 80708 (May 17, 2017), 82 FR 23690 (May 23, 2017) (SR-NASDAQ-2017-040).

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

Earlier this year, the Commission approved a Nasdaq filing (the “Initial Filing”) to amend, among other things, the continued listing requirements for exchange-traded products (“ETPs”) in the Nasdaq Rule 5700 Series.⁴ Subsequently, the Exchange submitted a filing⁵ (the “Subsequent Filing”) containing a number of housekeeping and conforming changes to the Initial Filing. The proposed amendment makes a correction to language added as part of the Subsequent Filing.

Specifically, the Exchange proposes to correct under the applicability section of Nasdaq Rule 5735(b)(1) (Managed Fund Shares)⁶ that any of the statements or representations regarding not just the description of the portfolio, but also of reference assets, among other things, will constitute continued listing requirements for listing of shares. This correction will result in the language mirroring that added by the Subsequent Filing in the initial and continued listing requirements section of Nasdaq Rule 5735⁷ as intended.

⁴ See Securities Exchange Act Release No. 79784 (Jan. 12, 2017), 82 FR 6664 (Jan. 19, 2017) (SR-NASDAQ-2016-135).

⁵ Supra note 3.

⁶ See Nasdaq Rule 5735(b)(1).

⁷ See Nasdaq Rule 5735(d)(2)(C)(iv).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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.

The Exchange believes that the proposed rule change to correct Nasdaq Rule 5735(b)(1) to require that any of the statements or representations regarding not just the description of the portfolio, but also of reference assets, will constitute continued listing requirements for listing of shares will provide clarity and accurately reflect the intent of the rule to the benefit of investors and the public interest.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that the proposed rule change may enhance competition since it corrects and makes more consistent the applicability of listing requirements for ETPs.

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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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)¹⁰ of the Act and Rule 19b-4(f)(6) thereunder.¹¹

The Exchange has asked the Commission to waive the 30-day operative delay, making this proposal operative upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. The proposal will modify Nasdaq Rule 5735(b)(1) to provide that any of the statements or representations regarding not just the description of the portfolio, but also the description of reference assets, among other things, constitute continued listing requirements for Managed Fund Shares. This aligns the requirements in Nasdaq Rule 5735(b)(1) with the requirements in Nasdaq Rule 5735(d)(2)(C)(iv)¹² and ensures that the listing requirements for Managed Fund Shares are consistent across the Exchange's rules, reducing potential investor confusion. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹³

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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.

¹² See Securities Exchange Act Release No. 79784, supra note 4.

¹³ 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). The Commission notes that the changes in the Subsequent Filing become operative on October 1, 2017. See Securities Exchange Act Release No. 80708, supra note 3, at 23691. Since this filing proposes to modify rule text in the Subsequent Filing,

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2017-052 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.

All submissions should refer to File Number SR-NASDAQ-2017-052. 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

the change proposed herein will also be operative October 1, 2017.

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 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-2017-052 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).