

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83395; File No. SR-NASDAQ-2018-041)

June 7, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Listing Standard for Paired Share Units

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 30, 2018, 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 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 adopt a listing standard for Paired Share Units.

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

* * * * *

The Nasdaq Stock Market Rules

* * * * *

5225. Listing Requirements for Units (other than Paired Share Units)

No change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

5226. Paired Share Units

A “Paired Share Unit” is a security consisting of a share of the common stock of a Company (the “Parent”) and a share of the common stock of that Company’s controlled subsidiary, which: (1) are attached together; and (2) only can be traded together as a unit pursuant to a pairing agreement. Instead of the requirements in Rule 5225 (except as indicated below), a Paired Share Unit can list on the Nasdaq Global or Global Select Markets if it meets the following requirements:

- (a) For initial and continued listing, the controlled subsidiary must be a real estate investment trust (the “REIT”) and the Parent must maintain ownership control, including voting control, over the REIT.
- (b) For initial listing, the Parent and the REIT must each separately satisfy the entity-level requirements of Rule 5315(f)(3) or Rule 5405(b) (e.g., the stockholders’ equity, income, market capitalization, assets, revenue and operating history requirements), as applicable, and the Paired Share Unit must satisfy the security-level requirements of Rule 5315 or Rule 5405 (e.g., the price, publicly held shares, holder, market value of publicly held shares and market maker requirements), as applicable.
- (c) For continued listing, the Parent and the REIT must each separately satisfy the applicable entity-level requirements of Rule 5450(b) and the Paired Share Unit must satisfy the applicable security-level requirements of Rules 5450(a) and 5450(b).
- (d) For initial and continued listing, the Parent and the REIT must each separately satisfy all other requirements of the listing rules applicable to a Company listing its primary equity security, including, without limitation, the corporate governance requirements in the Rule 5600 Series.

- (e) For initial and continued listing, the common stock of the Parent, the common stock of the REIT and the Paired Share Unit must each be registered pursuant to Section 12(b) of the Act.
- (f) For initial and continued listing, the common stock of the Parent and the common stock of the REIT, as attached and traded together in the Paired Share Unit, must be the only securities of each of the Parent and the REIT available to public investors.
- (g) The provisions of Rules 5225(a)(2) and 5225(a)(3) are applicable to Paired Share Units.
- (h) In the event the common stock of the REIT becomes separately tradable from the common stock of the Parent, Nasdaq will immediately issue a Staff Delisting Determination for the Paired Share Unit pursuant to Listing Rule 5810(c)(1), and each of the Parent and the REIT must apply, and each of the Parent and the REIT, and their respective securities, must separately qualify for initial listing to remain listed on Nasdaq.

* * * * *

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) – (4) No change.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) – (b) No change.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- a Company fails to timely solicit proxies;
- an Equity Investment Tracking Stock fails to comply with the additional continued listing requirements in Rule 5222(c) or a Staff Delisting Determination has been issued with respect to the security such Equity Investment Tracking Stock tracks;
- the common stock of the REIT in a Paired Share Unit listed under Rule 5226 becomes separately tradable from the common stock of the Parent; or
- Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern.

(2) - (4) No change.

(d) No change.

* * * * *

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq Listing Rule 5225 provides the requirements to list units on the Nasdaq Stock Market. Listing Rule 5225(a)(1)(C) provides that all components of a unit listed on the Nasdaq Global or Global Select Market must be issued by the same issuer.

Nasdaq notes that in limited circumstances the securities of a company and its controlled subsidiary are attached and only can be traded together as a “Paired Share.” Nasdaq proposes to adopt new Listing Rule 5226 to allow the listing of this specific type of unit, called a Paired Share Unit, on the Nasdaq Global or Global Select Markets³ under limited circumstances, even though one component of the unit is issued by a controlled subsidiary of the issuer of the other security in the unit and they are, therefore, not technically issued by the same issuer.

Under the proposed rule, a Paired Share Unit, consisting of a share of the common stock of a company (the “Parent”) and a share of the common stock of that company’s controlled subsidiary, which are attached together and can only be traded together as a unit pursuant to a

³ A Paired Share Unit would not be eligible to list on the Nasdaq Capital Market.

pairing agreement, can be listed on the Nasdaq Global or Global Select Market provided it meets the following requirements.

First, the controlled subsidiary must be a real estate investment trust (the “REIT”) and the Parent must maintain ownership control, including voting control, over the REIT. Ownership control will be determined based on an analysis of the facts and circumstances surrounding the relationship between the Parent and the REIT, but will require that the Parent control at least a majority (i.e., over 50%) of the voting power of the REIT. In addition, the common stock of the Parent and the common stock of the REIT, as attached and traded together in the Paired Share Unit, must be the only security of each of the Parent and the REIT available to public investors, and the common stock of the Parent and the REIT must not trade separately. Thus, an investment in the Paired Share Unit represents an investment in the combined company and the only way for a public shareholder to invest in either company.

For initial listing, the Parent and the REIT must each separately satisfy the entity-level requirements of Rule 5315(f)(3) or Rule 5405(b), as applicable, and the Paired Share Unit must satisfy the security-level requirements of Rule 5315 or Rule 5405, as applicable.⁴ For continued listing, the Parent and the REIT must each separately satisfy the entity-level requirements of Rule 5450(b), and the Paired Share Unit must satisfy the security-level requirements of Rules 5450(a) and (b). For these purposes the entity-level requirements include the stockholders’ equity, income, market capitalization, asset, revenue and operating history requirements, and the security-level requirements include the price, publicly held shares, holder, market value of publicly held shares and market maker requirements. While the Parent and the REIT may satisfy

⁴ The provisions of Rule 5315(b), (c) and (d) would not apply because neither the Parent nor the REIT would be a closed end management investment company or a business development company.

different entity-level listing standards, in such a case the Paired Share Unit must satisfy the higher security-level requirements of those different standards.⁵ In addition, for both initial and continued listing, the Parent and the REIT must each separately satisfy all other requirements of the listing rules applicable to a Company listing its primary equity security, including, without limitation, the corporate governance requirements in the Rule 5600 Series.

While proposed Rule 5226 is a new rule for listing a specific type of unit on the Nasdaq Global or Global Select Markets, the provisions of Rule 5225(a)(2), which provides the minimum listing period and notice of withdrawal requirements for units, and Rule 5225(a)(3), which provides disclosure requirements for units, are applicable to Paired Share Units. The other provisions of Rule 5225(a) are either separately incorporated in the requirements for a Paired Share Unit or are not applicable. Specifically, the first sentence of Rule 5225(a)(1)(A), which requires all units to have at least one equity component, is incorporated in the definition of a Paired Share Unit because a Paired Share Unit must contain the common stock of the Parent and the REIT. Rule 5225(a)(1)(B) is not applicable because a Paired Share Unit does not contain debt components. As described above, the first sentence of Rule 5225(a)(1)(C) is not applicable because the Paired Share Unit is a special type of unit, which contains the common stock of a company and its controlled subsidiary. The remainder of the requirements in Rules 5225(a)(1)(A) and (C) are addressed by the requirements of proposed Rules 5226(b), (c) and (d) that for initial and continued listing, respectively, the Parent and the REIT must each separately satisfy the entity-level requirements and all other requirements applicable to a company listing

⁵ For example, if the Parent only satisfies the entity-level requirements of the income standard in Rule 5405(b)(1) and the REIT only satisfies the entity-level requirements of the market value standard in Rule 5405(b)(3), the Paired Share Unit must satisfy the higher market value of publicly held shares and market maker requirements in Rule 5405(b)(3).

its primary equity security, and that the Paired Share Unit must satisfy the security-level requirements for listing on the Nasdaq Global or Global Select Market.

Rule 5225(a)(4), which imposes market maker requirements for units, is incorporated in the requirement that the Paired Share Unit must satisfy the highest applicable market maker requirement under the listing standard that each the Parent and the REIT qualify. The minimum market maker requirements under any of those standards are at least as high as in Rule 5225(a)(4): three market makers for initial listing and two market makers for continued listing.

For initial and continued listing, the common stock of the Parent, the common stock of the REIT and the Paired Share Unit must each be registered pursuant to Section 12(b) of the Act. Finally, in the event the common stock of the REIT becomes separately tradable from the common stock of the Parent, Nasdaq will immediately issue a Staff Delisting Determination for the Paired Share Unit. Nasdaq proposes to modify Rule 5810(c)(1) to include this situation in the list of deficiencies where a company's securities are immediately subject to suspension and delisting. Each of the Parent and the REIT must apply, and each of the Parent and the REIT, and their respective securities, must separately qualify for initial listing to remain listed on Nasdaq.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ 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, by allowing a unit to list on the Nasdaq Global or Global Select Markets where it includes the securities of a company and a REIT that is that company's

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

controlled subsidiary if those entities each separately satisfy the entity-level listing requirements, the combined security satisfies the security-specific listing requirements, and the securities do not trade separately.

In these situations, the security to be listed is substantially similar to a traditional unit in that one of the companies maintains ownership and voting control of the other, and the proposed rule would adopt additional protections ensuring that both entities and the combined security have achieved sufficient size and market interest for listing on Nasdaq to be appropriate. Under the proposed rule, each company with securities in the Paired Share Unit must satisfy all listing requirements applicable to a company listing its primary equity security on the Nasdaq Global or Global Select Markets and the security itself must satisfy all applicable requirements for listing as a primary equity security. In addition, the common stock of the Parent, the common stock of the REIT and the Paired Share Unit must each be registered pursuant to Section 12(b) of the Act. Accordingly, the proposed rule change continues to impose Nasdaq's existing listing requirements, which are designed protect investors and the public interest. Further, the additional requirements proposed will supplement those existing requirements with investor protections designed to ensure that one company controls the other in the combined security. In the event the common stock of the REIT becomes separately tradable from the common stock of the Parent, Nasdaq would immediately issue a Staff Delisting Determination for the Paired Share Unit, which would be subject to suspension and delisting. Each of the Parent and the REIT must apply, and each of the Parent and the REIT, and their respective securities, must separately qualify for initial listing to remain listed on Nasdaq. Thus, adopting the proposed rule to address this unique situation with appropriate investor protections will eliminate the impediment to listing such a unit on the Nasdaq Global and Global Select Markets.

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. Nasdaq believes that the New York Stock Exchange currently lists securities similar to the Paired Share Unit described in the proposed rule change. Further, other markets could adopt comparable rules to the extent they believe it appropriate.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the 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.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹²

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ In addition, Rule 19b-4(f)(6)(iii) 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, Nasdaq has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to allow Nasdaq to immediately list units issued by a company and its controlled subsidiary and compete with other exchanges for such listing. As noted above, Nasdaq states that the proposed rule will continue to impose all of the existing listing requirements applicable to units, supplemented by additional requirements and investor protections designed to address this specific type of unit.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the Paired Share Units for which Nasdaq proposes to adopt initial and continued listing requirements are substantially similar to the traditional units that may be listed pursuant to Nasdaq Rule 5225 and the additional requirements in the proposal address the specific characteristics of Paired Share Units and how Nasdaq's existing listing rules will be applied. The Commission notes that a Paired Share Unit would consist of a share of common stock of a Company and a share of the common stock of a REIT that is that Company's controlled subsidiary, which are attached and only can be traded together. The proposed listing requirements would be substantially similar to existing listing requirements for units, but with clarification about how certain aspects will apply to a Paired Share Unit and its components and additional requirements designed to address issues relating to this specific type of unit. Therefore, the Commission designates the proposed rule change operative upon filing.¹³

¹³ For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹⁴ of the Act 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-2018-041 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-2018-041. 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

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-041, 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.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).