

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86399; File No. SR-NASDAQ-2019-054)

July 17, 2019

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Generic Listing Standards for Fixed Income Securities Included in the Portfolio of a Series of Managed Fund Shares

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 July 3, 2019, 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 amend Nasdaq Rule 5735(b)(1)(B)(v) relating to generic listing standards applicable to fixed income securities included in the portfolio of a series of Managed Fund Shares listed on the Exchange.

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.

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 proposes to amend Nasdaq Rule 5735(b)(1), which sets forth generic listing standards for the listing and trading of Managed Fund Shares.³ Nasdaq Rule 5735(b)(1)(B) sets forth generic listing standards applicable to fixed income securities included in the portfolio of a series of Managed Fund Shares listed on the Exchange.⁴ Nasdaq Rule 5735(b)(1)(B)(v) provides that non-agency, non-GSE and privately-issued mortgage related and other asset-backed securities ("ABS" and, collectively, "non-agency ABS") components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Nasdaq proposes to amend Nasdaq Rule 5735(b)(1)(B)(v) by deleting the words "fixed income portion" to provide that such 20% limitation would apply to

³ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the "1940 Act") organized as an open-end management investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end management investment company that issues Index Fund Shares that may be listed and traded on the Exchange under Nasdaq Rule 5705(b) seeks to provide investment results that correspond generally to the performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁴ Nasdaq Rule 5735(b)(1)(B) provides that fixed income securities are debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

the entire portfolio rather than to only the fixed income portion of the portfolio. Thus, Nasdaq Rule 5735(b)(1)(B)(v) would provide that non-agency, non-GSE and privately-issued mortgage related and other ABS components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

Nasdaq believes this amendment is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. The Exchange notes that application of the 20% limitation only to the fixed income portion of a fund's portfolio may impose a much more restrictive percentage limit on permitted holdings of non-agency ABS for funds that have a more diversified investment portfolio than for funds that hold principally or exclusively fixed income securities. For example, a fund holding 100% of its assets in fixed income securities can hold 20% of its entire portfolio's weight in non-agency ABS. In contrast, a fund holding 25% of its assets in fixed income securities, 25% in U.S Component Stocks, and 50% in cash and cash equivalents is limited to a 5% ($25\% * 20\% = 5\%$) allocation to non-agency ABS. Nasdaq, therefore, believes application of the 20% limitation to a fund's entire portfolio would be more equitable for Managed Fund Shares issuers with different investment objectives and holdings.

The Commission has previously approved a proposed rule change by NYSE Arca, Inc. that is substantively identical to the amendment to Nasdaq Rule 5735(b)(1)(B)(v) proposed herein.⁵ Therefore, Nasdaq believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS

⁵ See Securities Exchange Act Release No. 86017 (June 3, 2019), 84 FR 26711 (June 7, 2019) (SR-NYSEArca-2019-06) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Certain Generic Listing Standards for Managed Fund Shares Applicable to Holdings of Fixed Income Securities).

components of a portfolio in Nasdaq Rule 5735(b)(1)(B)(v) to a fund's total assets. Non-agency ABS would otherwise satisfy all generic listing requirements of Nasdaq Rule 5735(b)(1)(B).

Nasdaq believes the proposed amendments would provide issuers of Managed Fund Shares with additional investment choices for fund portfolios for funds permitted to list and trade on the Exchange pursuant to Rule 19b-4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace.

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 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange notes that Nasdaq or FINRA, on behalf of Nasdaq, or both, would communicate as needed regarding trading in Managed Fund Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and Nasdaq or FINRA, on behalf of Nasdaq, or both, could obtain trading information regarding trading in Managed Fund Shares from such markets and other

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

entities. In addition, Nasdaq could obtain information regarding trading in Managed Fund Shares from markets and other entities that are members of ISG or with which Nasdaq has in place a comprehensive surveillance sharing agreement.

Nasdaq believes that the proposed amendment to Nasdaq Rule 5735(b)(1)(B)(v) is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. As noted above, application of the 20% limitation to only the fixed income portion of a fund's portfolio may impose a much lower percentage limit on permitted holdings of non-agency ABS for funds that have a more diversified investment portfolio than for funds that hold principally or exclusively fixed income securities. Nasdaq, therefore, believes application of the 20% limitation to a fund's entire portfolio would be more equitable for issuers of Managed Fund Shares with different investment objectives and holdings.

The Exchange notes that the Commission has previously approved a rule change by NYSE Arca, Inc. that is substantively identical to the amendment to Nasdaq Rule 5735(b)(1)(B)(v) proposed herein.⁸ Therefore, Nasdaq believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio in Nasdaq Rule 5735(b)(1)(B)(v) to a fund's total assets. Non-agency ABS would otherwise satisfy all generic listing requirements of Nasdaq Rule 5735(b)(1)(B).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and

⁸ See supra note 5.

trading of additional types of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

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. The proposed rule change would permit Exchange listing and trading under 19b-4(e) of additional types of Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace.

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 Act⁹ 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 prior to 30 days after the date of the filing. However, pursuant to Rule 19b-

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). 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, 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.

¹¹ 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii),¹² 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. The Exchange states its belief that the proposed rule change does not raise any novel regulatory issues, noting that the Commission approved a substantively identical proposed rule change by NYSE Arca, Inc.¹³ For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁴

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 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

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ See supra note 5.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-054 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-2019-054. 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 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-2019-054 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

Jill M. Peterson
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).