

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73418; File No. SR-NASDAQ-2014-038)

October 23, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Listing and Trading of Shares of the NASDAQ-100 DIVS Index ETF under Rule 5705

On April 10, 2014, The NASDAQ Stock Market LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Reality Shares NASDAQ-100 DIVS Index ETF (“Fund”) (formerly, Reality Shares NASDAQ-100 Isolated Dividend Growth Index ETF) under NASDAQ Rule 5705. The proposed rule change was published for comment in the Federal Register on April 30, 2014.³ On May 6, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.⁴ On June 4, 2014, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ On June 13, 2014, pursuant

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72014 (Apr. 24, 2014), 79 FR 24465 (“Notice”).

⁴ In Amendment No. 1, the Exchange confirmed the hours of the three trading sessions on the Exchange, clarified the valuation of investments for purposes of calculating net asset value, clarified what information would be available on the Fund’s website, and provided additional information relating to surveillance with respect to certain assets held by the Fund. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

⁵ The Exchange filed Amendment No. 2 to the proposal to reflect a name change to the Fund and the underlying index. Specifically, the Exchange replaced each reference to “Reality Shares NASDAQ-100 Isolated Dividend Growth ETF” in the proposal with

to Section 19(b)(2) of the Act,⁶ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁷ On July 29, 2014, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change.⁹ In response to the Order Instituting Proceedings, the Commission received one comment letter on the proposal.¹⁰

Section 19(b)(2) of the Act¹¹ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the

“Reality Shares NASDAQ-100 DIVS Index ETF” and replaced each reference to “Reality Shares NASDAQ-100 Isolated Dividend Growth Index” in the proposal with “Reality Shares NASDAQ-100 DIVS Index.” Amendment No. 2 is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

⁶ 15 U.S.C. 78s(b)(2).

⁷ See Securities Exchange Act Release No. 72384, 79 FR 35205 (Jun. 19, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated July 29, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 72715, 79 FR 45556 (Aug. 5, 2014) (“Order Instituting Proceedings”). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.” See id.

¹⁰ See Letter from Eric Ervin, President, Reality Shares ETF Trust and Reality Shares Advisors, LLC, and President and CEO, Reality Shares, Inc., to Kevin M. O’Neill, Deputy Secretary, Commission, dated August 22, 2014.

¹¹ 15 U.S.C. 78s(b)(2).

proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for that determination. The proposed rule change was published for notice and comment in the Federal Register on April 30, 2014.¹² The 180th day after publication of the notice of the filing of the proposed rule change in the Federal Register is October 27, 2014, and the 240th day after publication of the notice of the filing of the proposed rule change in the Federal Register is December 26, 2014.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, including the matters raised in the comment letter to the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹³ designates December 26, 2014 as the date by which the Commission shall either approve or disapprove the

¹² See supra note 3.

¹³ 15 U.S.C. 78s(b)(2).

proposed rule change (File No. SR-NASDAQ-2014-038).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(57).