

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84488; File No. SR-NASDAQ-2018-082)

October 25, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Derivative Securities Traded Under Unlisted Trading Privileges

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 October 12, 2018, 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 5740 related to derivative securities traded under unlisted trading privileges (“UTP”) to remove the requirement in Rule 5740(a)(1) for the Exchange to file with the Commission a Form 19b-4(e) for each “new derivative securities product” as defined in Rule 19b-4(e) under the Act<sup>3</sup> (“Derivative Security”) traded under UTP and renumber the remaining provisions of Rule 5740(a) to maintain an organized rule structure. The Exchange has designated this rule change as “non-controversial” under Section

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

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

<sup>3</sup> 17 CFR 240.19b-4(e)

19(b)(3)(A) of the Act<sup>4</sup> and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.<sup>5</sup>

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 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 purpose of the proposed rule change is to amend Rule 5740 related to derivative securities traded under UTP by removing the requirement in Rule 5740(a)(1) for the Exchange to file with the Commission a Form 19b-4(e) for each Derivative Security, and renumbering the remaining rules of Rule 5740(a) to maintain an organized rule structure, as described below.

Rule 5740(a)(1) sets forth the requirement for Nasdaq to file with the Commission a Form 19b-4(e) with respect to each Derivative Security that is traded under UTP. However, Nasdaq believes that it should not be necessary to file a Form 19b-4(e) with the Commission if it begins trading a Derivative Security on a UTP basis, because Rule 19b-4(e)(1) under the Act

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<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

refers to the “listing and trading” of a “new derivative securities product.” The Exchange believes that the requirements of that rule refers to when an exchange lists and trades a Derivative Security, and not when an exchange seeks only to trade such product on a UTP basis pursuant to Rule 12f-2 under the Act.<sup>6</sup> Therefore, Nasdaq proposes to delete the requirement in current Rule 5740(a)(1) for Nasdaq to file a Form 19b-4(e) with the Commission with respect to each Derivative Security it begins trading on a UTP basis. In addition, as a result of the deletion of current Rule 5740(a)(1) Nasdaq proposes to renumber current Rules 5740(a)(2)-(6), as Rules 5740(a)(1)-(5) respectively.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>7</sup> of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. Specifically, eliminating the requirement to file a Form 19b-4(e) for each Derivative Security the Exchange begins trading on a UTP basis removes an unnecessary regulatory requirement thereby providing for a more efficient process for adding Derivative Securities to trading on the Exchange on a UTP basis.

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<sup>6</sup> 17 CFR 240.12f-2.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

In addition, the Exchange notes that a substantially identical proposed rule change by NYSE National, Inc. (“NYSE National”) was recently approved by the Commission.<sup>9</sup> In particular, the Commission noted in the approval order that it “believes that the filing of a Form 19b-4(e) is not required when an Exchange is trading a new derivative securities product on a UTP basis only”<sup>10</sup> and also found that the NYSE National’s proposed rule change is “consistent with the requirements of Section 6(b)(5) of the Act.”<sup>11</sup>

With respect to the renumbering of current Rules 5740(a)(2)-(6) as Rules 5740(a)(1)-(5), the Exchange believes that these changes are consistent with the Act because they will allow the Exchange to maintain a clear and organized rule structure, thus preventing investor confusion.

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**

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. To the contrary, removing the requirement to file a Form 19b-4(e) will serve to enhance competition by providing for the efficient addition of Derivative Securities for trading under UTP on Nasdaq. To the extent that a competitor marketplace believes that the proposed rule change places it at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

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<sup>9</sup> See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (Order Approving File No. SR-NYSE-NAT-2018-02).

<sup>10</sup> See supra note 9 at page 23975 at footnote 149.

<sup>11</sup> See supra note 9 at page 23975-6.

In addition, the proposal to renumber the current Rules 5740(a)(2)-(6) as Rules 5740(a)(1)-(5) does not impact competition in any respect since it merely maintains a clear and organized rule structure.

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

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal is similar to a proposal the Commission has previously approved.<sup>14</sup> Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

<sup>14</sup> See supra note 9.

public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.<sup>15</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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2018-082 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-2018-082. 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

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<sup>15</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).

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-2018-082 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>16</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).