

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91492; File No. SR-NASDAQ-2021-013)

April 7, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Insert Language Concerning an Initial Listing Requirement Applicable to American Depositary Receipts or 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 March 24, 2021, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 revise Listing Rule 5315(e) and Rule 5405(a), which outline the initial listing requirements for primary equity securities for Nasdaq Global Select and Global Market, respectively, to insert language concerning the requirement for there to be at least 400,000 ADRs issued for initial listing of such securities.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Nasdaq is proposing to revise Listing Rule 5315(e) and Rule 5405(a), which outline the initial listing requirements for primary equity securities for Nasdaq Global Select and Global Market, respectively, to insert language concerning the requirement for there to be at least 400,000 ADRs issued for initial listing of such securities.

In 2009, Nasdaq moved the listing rules from the Rule 4000 Series of the Nasdaq Listing Rules and restated them in Rule 5000 Series in order to reduce redundancies and improve the organization of the rules by presenting them in a simpler, more transparent and reader-friendly format.³ Prior to the reorganization, Nasdaq Listing Rule 4320 provided the requirements for listing on Nasdaq applicable to the security of a non-Canadian foreign issuer, ADR or similar security issued in respect of a security of a foreign issuer. The rule further provided that issuers that met the requirements in Rule 4320, but that were not listed on the Nasdaq Global Market

³ See Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR-Nasdaq-2009-018). The listing rules contained in the Rule 4000 Series as of April 13, 2009, are available at https://listingcenter.nasdaq.com/assets/rulebook/nasdaq/rules/old_listing_rules.pdf

(including the Nasdaq Global Select Market), were listed on the Nasdaq Capital Market. Prior Rule 4320(e)(6) stated that “in the case of ... ADRs for initial listing only, at least 400,000 shall be issued.” As part of Rule 4320, this requirement applied to ADRs listed on the Nasdaq Global Market (including the Nasdaq Global Select Market) as well as companies listed on the Nasdaq Capital Market.

However, in the 2009 restatement of the listing rules, the 400,000 ADR requirement from Rule 4320(e)(6) was restated under Rule 5505(a), which only applies to the Nasdaq Capital Market. Nasdaq inadvertently omitted this requirement from Rule 5315(e) and Rule 5405(a), which outline the initial listing requirements for primary equity securities on the Nasdaq Global Select Market and Nasdaq Global Market, respectively. As a result, there is currently no stated minimum ADRs requirement for the Nasdaq Global Select Market and Nasdaq Global Market. This change was inadvertent and in connection with the 2009 restatement Nasdaq specifically indicated that it was “not making any substantive changes to the Listing Rules.”⁴

Accordingly Nasdaq now proposes to insert language concerning the initial listing requirement for there to be a minimum of 400,000 ADRs issued for all Nasdaq market tiers, which was inadvertently deleted from the Nasdaq Global Select and Global Markets.⁵

⁴ Id.

⁵ Since the 2009 restatement Nasdaq has not listed any ADRs on the Nasdaq Global Select or Global Markets with fewer than 400,000 ADRs outstanding at the time of listing. The requirements for a minimum number of round lot holders and publicly held shares in Rule 4320(e)(6) have been carried over to the Nasdaq Global Select and Global Market rules pursuant to the 2009 restatement.

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. The proposed rule change is consistent with the investor protection provisions of the Act because it will insert language concerning the initial listing requirement for there to be a minimum of 400,000 ADRs issued, which Nasdaq inadvertently omitted from the Nasdaq Global Select and Global Markets, to ensure consistency across the market tiers. This requirement is designed to help ensure that there is sufficient liquidity in the issue to promote orderly trading.

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 will have no material impact on competition as it merely inserts language concerning a requirement, which Nasdaq inadvertently omitted, to provide consistency across the Nasdaq market tiers and help ensure orderly trading in ADRs.

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.

⁶ 15 U.S.C. 78f(b).

⁷ 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) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may immediately insert language in the Listing Rules concerning the initial listing requirement for the minimum number of ADRs that must be issued for a company to list on the Nasdaq Global Select and Global Market. The Exchange stated that the proposed rule change would provide transparency to the requirement's application to all market tiers in the same manner as before it was inadvertently omitted. The Commission notes that previous Nasdaq Listing Rule 4320(e)(6) had applied this same minimum ADRs issued requirement to companies listing on the Nasdaq Global Select and Global Market and that the Exchange states that it had inadvertently omitted the requirement in the Global Select and Global

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 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.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

Market rules in its 2009 restatement of its Listing Rules.¹² For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹³

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 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-2021-013 on the subject line.

¹² See supra note 4 and accompanying text.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2021-013. 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-2021-013 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

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).