

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106625; File No. SR-NASDAQ-2026-085]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 5740 Regarding Information Circular Requirements

October 7, 2026.

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 September 28, 2026, 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: (i) amend Rule 5740 to add express cross-references to General 9, Section 10 and Equity 2, Section 20, replace the cross-reference to Rule 4630 with Equity 10, Section 8, and specify Equity 4 for Rule 4120; (ii) delete Rule 5740(a)(1) in its entirety, thereby removing the requirement that the Exchange distribute an information circular to Exchange members (“Members”) prior to the commencement of trading in each UTP Derivative Security (as defined below) that generally includes the same information as contained in the information circular provided by the listing exchange; (iii) amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser; and (iv) renumber Rules 5740(a)(2) through (5) as Rules 5740(a)(1) through (4), respectively, and make other technical and non-substantive changes.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, and at the principal office of the Exchange.

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 Exchange proposes to eliminate the requirement that the Exchange distribute an information circular to Members prior to the commencement of trading in each UTP Derivative Security³ that generally includes the same information as contained in the information circular provided by the listing exchange as provided in Rule 5740(a)(1). The Exchange also proposes to amend the introductory paragraph of Rule 5740 to add express cross-references to General 9, Section 10 (Recommendations to Customers (Suitability)) and Equity 2, Section 20 (Customer

³ A "UTP Derivative Security" is any security that is a "new derivative securities product" as defined in Rule 19b-4(e) under the Act. See Rule 5740(a).

Disclosures), replace the cross-reference to Rule 4630 with Equity 10, Section 8, and specify Equity 4 for Rule 4120. The Exchange also proposes to amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser.⁴ Lastly, the Exchange proposes to renumber Rules 5740(a)(2) through (5) as Rules 5740(a)(1) through (4), respectively, and make other technical and non-substantive changes. The proposal is similar to a proposal that Cboe BZX Exchange, Inc. (“Cboe BZX”) filed with the Commission.⁵

Rule 5740 governs the trading of UTP Derivative Securities on the Exchange – securities listed on another national securities exchange that trade on the Exchange pursuant to unlisted trading privileges (“UTP”). Under current Rule 5740(a)(1), the Exchange must distribute an information circular prior to the commencement of trading in each UTP Derivative Security that generally mirrors the information circular issued by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Exchange rules that will apply to the new derivative securities product, including Rule 2310;⁶ (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the applicable trading hours for the UTP Derivative Security and the risks of trading during the period from 8:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intra-Day Indicative Value (as defined in Rule 5705(a)(3)(C)) or

⁴ As further described below, the Exchange will notify Members of the written description requirement under Rule 5740(a)(2) by means of an information circular. Such written description will only be required when required by the listing exchange.

⁵ See Securities Exchange Act Release No. 105715 (June 17, 2026), 91 FR 37477 (June 23, 2026) (SR-CboeBZX-2026-054).

⁶ As discussed later in this filing, Rule 5740(a)(1) presently refers to Rule 2310, which is an obsolete reference to the suitability provisions. The suitability provisions are now set forth in General 9, Section 10, so the Exchange is updating the obsolete rule reference in Rule 5740(a)(1).

a similar value. The Exchange proposes to delete Rule 5740(a)(1) in its entirety.

The information circular requirement is unnecessary because the primary listing exchange's information circular already provides Members with the same disclosures the Exchange would otherwise be required to produce. Members have access to the primary listing exchange's information circular prior to the commencement of UTP trading and may rely upon it for the same purposes.⁷ The Exchange's issuance of a separate, duplicative circular therefore serves no independent investor protection function.

The Exchange also proposes to amend the introductory paragraph of Rule 5740 to add express cross-references to General 9, Section 10 (Recommendations to Customers (Suitability)) and Equity 2, Section 20 (Customer Disclosures), replace the cross-reference to Rule 4630 with Equity 10, Section 8, and specify Equity 4 for Rule 4120. Current Rule 5740(a)(1) references both the recommendations to customers / suitability provisions addressed by General 9, Section 10 and the risk of trading outside of Regular Market Hours⁸ addressed by Equity 2, Section 20.⁹ Because the Exchange proposes to delete Rule 5740(a)(1) in its entirety, the Exchange is adding express cross-references to those rules in the introductory paragraph of Rule 5740 to preserve their visibility in the context of UTP Derivative Securities. These rules already apply to Members by operation of the Exchange's rulebook. The cross-references are intended to make the applicable framework explicit in the context of UTP Derivative Securities. General 9, Section

⁷ Such information circulars are generally available on the primary listing market's website.

⁸ "Regular Market Hours" means the trading sub-session of the Day Session that operates from 9:30 a.m. until 4:00 p.m. or 4:15 p.m. on Business Days. See Equity 4, Rule 4120(a)(19).

⁹ The Exchange notes that the rule currently references Rule 2310, which is an obsolete reference to the provisions addressing recommendations to customers and suitability. The Exchange previously replaced Rule 2310 with Rule 2111A, and subsequently relocated Rule 2111A to General 9, Section 10. See Securities Exchange Act Release Nos. 68389 (December 10, 2012), 77 FR 74538 (December 14, 2012) (SR-NASDAQ-2012-122); and 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

10, which incorporates FINRA Rule 2111 by reference, independently requires Members to ensure that any recommendation of a UTP Derivative Security is suitable for the customer based on the customer's investment profile, a standing obligation that applies regardless of whether the Exchange has issued a product-specific information circular. Similarly, Equity 2, Section 20 independently requires Members to provide customers with a written disclosure of the risks of trading outside of Regular Market Hours before accepting any order for execution during such sessions, a standing obligation not contingent on the Exchange's issuance of a product-specific information circular.

Because Rule 5740(a)(1) has historically served as the mechanism through which the Exchange satisfies the notification obligation under Rule 5740(a)(2), deletion of Rule 5740(a)(1) necessitates a conforming amendment to Rule 5740(a)(2). The Exchange proposes to amend Rule 5740(a)(2) to require that the written description referenced therein be provided in a form approved by the listing exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. The Exchange will notify Members by information circular that such written description will only be required when mandated by the listing exchange. This amendment is consistent with the broader purpose of the proposed rule change: where the listing exchange's information circular already provides Members with the information necessary to assess a UTP Derivative Security, a duplicative written description obligation serves no independent investor protection function. Members may rely on the listing exchange's information circular in the same manner and to the same effect.

Finally, the Exchange proposes a number of technical and non-substantive changes to Rule 5740. First, the Exchange proposes to renumber existing Rules 5740(a)(2) through (5) as

Rules 5740(a)(1) through (4), respectively. Second, the Exchange proposes to update a number of obsolete rule citations. Specifically in the introductory paragraph of Rule 5740 and in proposed Rule 5740(a)(3), the Exchange proposes to update the current cite to Rule 4630 to Equity 10, Section 8.¹⁰ The Exchange also proposes in the introductory paragraph of Rule 5740 and in proposed Rule 5740(a)(2) to update the current cite to Rule 4120 to Equity 4, Rule 4120.¹¹

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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 Exchange believes that the proposed deletion of Rule 5740(a)(1) is consistent with the Act because the primary listing exchange's information circular already provides Members with the same disclosures that the Exchange's information circular would contain. The investor protection functions historically served by the information circular requirement are independently addressed through the primary listing exchange's information circular and the Member-level obligations imposed by General 9, Section 10 and Equity 2, Section 20, to which the Exchange proposes to add express cross-references in the introductory paragraph of Rule 5740. The proposed amendment to Rule 5740(a)(2) ensures that where a written description

¹⁰ The Exchange relocated Rule 4630 to Equity 10, Section 8. See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

¹¹ The Exchange relocated Rule 4120 to Equity 4, Rule 4120. See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

is required, it is provided in a form approved by the listing exchange, thereby aligning the Exchange's requirements with those of the primary listing market. The Exchange will further notify Members by information circular that such written description will only be required when mandated by the listing exchange, ensuring that no duplicative obligation is imposed where the listing exchange has not determined one to be warranted. The renumbering of Rules 5740(a)(2) through (5) and to update the obsolete rule cites as discussed above is ministerial. Additionally, as discussed above, the proposal does not raise any novel issues not previously considered by the Commission.¹⁴ For these reasons, the Exchange believes that the proposed rule change is consistent with the Act.

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 eliminates duplicative procedural obligations applicable to the Exchange in its capacity as a UTP trading venue. It does not alter the terms or conditions under which UTP Derivative Securities may be traded on the Exchange, impose any new requirements on Members, or affect the ability of any market participant to access the Exchange's markets. Members will continue to have access to the primary listing exchange's information circular prior to the commencement of UTP trading and may rely upon it for the same purposes as the Exchange's information circular. The proposed amendment to Rule 5740(a)(2) aligns the written description obligation with the primary listing market's requirements and does not impose any burden on Members beyond what the primary listing market itself requires. Accordingly, the Exchange does not believe the proposed rule change imposes any burden on competition not

¹⁴ See supra note 5.

necessary or appropriate in furtherance of the purposes of the Act.

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 Act¹⁵ and Rule 19b-4(f)(6)¹⁶ thereunder. 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; or (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 Act¹⁷ and Rule 19b-4(f)(6)¹⁸ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ 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 proposed rule change may become operative immediately upon filing. The Exchange states that the proposed rule change eliminates duplicative procedural obligations applicable to the Exchange in its capacity as a UTP trading

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

venue because the primary listing exchange's information circular already provides Members with the same disclosures the Exchange would otherwise be required to produce.²¹ The Exchange also notes that the proposed rule change does not alter the terms or conditions under which UTP Derivative Securities may be traded on the Exchange. For these reasons, the Commission finds that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.²²

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2026-085 on the subject line.

²¹ The Exchange represents that such information circulars are generally available on the primary listing exchange's website. See supra note 7.

²² 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).

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-2026-085. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2026-085 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Sherry R. Haywood,
Assistant Secretary.

²³ 17 CFR 200.30-3(a)(12), (59).