

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78384; File No. SR-Nasdaq-2016-002)

July 21, 2016

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, to List and Trade Shares of the First Trust Municipal High Income ETF of First Trust Exchange-Traded Fund III

On January 6, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the First Trust Municipal High Income ETF (“Fund”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the Federal Register on January 27, 2016.³ On February 16, 2016, the Exchange filed Amendment No. 1.⁴ On March 8, 2016, pursuant to Section 19(b)(2) of the Act,⁵ 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.⁶ On April 26, 2016, the Commission instituted proceedings under

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 76944 (Jan. 21, 2016), 81 FR 4712 (“Notice”).

⁴ Amendment No. 1 is available on the Commission’s website at:
<http://www.sec.gov/comments/sr-nasdaq-2016-002/nasdaq2016002-1.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 34-77320, 81 FR 13429 (Mar. 14, 2016). The Commission designated April 26, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.⁸ In the Order Instituting Proceedings, the Commission solicited comments to specified matters related to the proposal.⁹ On June 24, 2016, the Exchange filed Amendment No. 2, which replaced the originally filed proposed rule change in its entirety.¹⁰ The Commission has not received any comments on the proposed rule change.

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 the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the Federal Register on January 27, 2016.¹² The 180th day after publication of the notice of the filing of the proposed rule change in the Federal Register is July 25, 2016.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 77871, 81 FR 26265 (May 2, 2016) (“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., 81 FR at 26268.

⁹ See id.

¹⁰ Amendment No. 2 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2016-002/nasdaq2016002-2.pdf>.

¹¹ 15 U.S.C. 78s(b)(2).

¹² See supra note 3.

The Commission finds that it is 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, as modified by Amendment Nos. 1 and 2 thereto.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹³ designates September 23, 2016, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto (File No. SR-Nasdaq-2016-002).

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

Robert W. Errett
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(57).