

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79081; File No. SR-NASDAQ-2016-135)

October 11, 2016

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend the Continued Listing Requirements for Exchange-Traded Products

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 September 30, 2016, 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 amend the continued listing requirements for exchange-traded products (“ETPs”) in the Nasdaq Rule 5700 Series, as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department). The Exchange is also making housekeeping changes throughout the Nasdaq Rule 5700 Series and in Nasdaq Rule 5810 for improved clarity.

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

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

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

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 amend the listing rules for ETPs in the Nasdaq Rule 5700 Series (Other Securities) to add additional continued listing standards as well as a related amendment to Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department). The Exchange is also making housekeeping changes throughout the Nasdaq Rule 5700 Series and in Nasdaq Rule 5810 (e.g., punctuation, formatting, capitalization and renumbering) for improved clarity.

The proposed rule changes are being made in concert with discussions with the SEC. Citing their concern for potential manipulation of ETPs, staff (“Staff”) of the SEC’s Office of Trading and Markets (“T&M”) requested that the Exchange adopt certain additional continued listing standards for ETPs.

As a result, the proposed amended rules reflect the guidance provided by T&M Staff to clarify that most initial listing standards, as well as certain representations included in Exchange rule filings under SEC Rule 19b-4<sup>3</sup> to list an ETP (“Exchange Rule Filings”), are also considered continued listing standards. The Exchange Rule Filing representations that will also be required to be maintained on a continuous basis include: (a) the description of the fund; (b) the fund’s investment restrictions; and (c) the applicability of Nasdaq rules and surveillance procedures.

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<sup>3</sup> 17 C.F.R. 240.19b-4.

The proposed rule changes require that ETPs listed by the Exchange without an Exchange Rule Filing must maintain the initial index or reference asset criteria on a continued basis. For example, in the case of a domestic equity index, these criteria generally include: (a) stocks with 90% of the weight of the index must have a minimum market value of at least \$75 million; (b) stocks with 70% of the weight of the index must have a minimum monthly trading volume of at least 250,000 shares; (c) the most heavily weighted component cannot exceed 30% of the weight of the index, and the five most heavily weighted stocks cannot exceed 65%; (d) there must be at least 13 stocks in the index; and (e) all securities in the index must be listed in the U.S. There are similar criteria for international indexes, fixed-income indexes and indexes with a combination of components.

If an Exchange Rule Filing is made to list a specific ETP, the proposed rule change requires that the issuer of the security comply on a continuing basis with any statements or representations contained in the applicable rule proposal, including: (a) the description of the portfolio; (b) limitations on portfolio holdings or reference assets; and (c) the applicability of Nasdaq rules and surveillance procedures.

The Nasdaq listing rules will also be modified to require that issuers of securities listed under the Nasdaq Rule 5700 Series must notify the Exchange regarding instances of non-compliance. In addition, while listed ETPs are currently subject to the delisting process in the Rule 5800 Series, the rules will be clarified to make this explicit.<sup>4</sup> The Rule 5800 Series will also be clarified to make explicit that in cases where Listing Qualifications staff has notified an ETP that it is deficient under one or more listing standards, the ETP may submit a plan to regain compliance as set forth under the Listing Rules. In this regard, consistent with deficiencies from

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<sup>4</sup> ETPs are also subject to Nasdaq Rule 4120, which governs trading halts.

most other rules that allow issuers to submit a plan to regain compliance,<sup>5</sup> Nasdaq proposes to allow issuers of ETPs 45 calendar days to submit such a plan. Nasdaq staff will review the plan and may grant a limited period of time for the ETP to regain compliance as permitted under the Listing Rules. If Nasdaq staff does not accept the plan, Nasdaq staff would issue a Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> 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 changes accomplish these objectives by enhancing the current continued listing standards by clarifying that most initial listing standards, as well as certain representations included in Exchange Rule Filings to list an ETP, are considered continued listing standards. Additionally, the Nasdaq listing rules will be modified to require that issuers of securities listed under the Nasdaq Rule 5700 Series must notify the Exchange regarding instances of non-compliance and to clarify that deficiencies will be subject to potential trade

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<sup>5</sup> Pursuant to Rule 5810(c)(2)(A), a company is provided 45 days to submit a plan to regain compliance with Rules 5620(c) (Quorum), 5630 (Review of Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), and 5640 (Voting Rights). A company is generally provided 60 days to submit a plan to regain compliance with the requirement to timely file periodic reports contained in Rule 5250(c)(1).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

halts and the delisting process in the Rule 5800 Series. The Exchange believes that these amendments will enhance the Nasdaq listing rules, thereby serving to improve the national market system and protect investors and the public interest.

The Exchange does not believe that the housekeeping changes have any impact on the reasonable and equitable and not unfairly discriminatory nature of the proposal.

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

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, as amended. The Exchange believes that the proposed rule change to amend the listing rules for ETPs in the Nasdaq Rule 5700 Series and the notification requirement in Rule 5810 will have no impact on competition. Furthermore, since T&M Staff has provided the same guidance regarding ETP continued listing requirements to all exchanges, the Exchange believes that there will be no effect on competition.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or

- (B) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-135 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-135. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2016-135 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>8</sup>

Robert W. Errett  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).