

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80708; File No. SR-NASDAQ-2017-040)

May 17, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Continued Listing Standards 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 May 3, 2017, 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 the previously approved continued listing requirements for exchange-traded products (“ETPs”) in the Nasdaq Rule 5700 Series, as well as Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department), to make a number of conforming and housekeeping changes.<sup>3</sup>

The Exchange also proposes to delay the implementation date of the previously approved changes to the continued listing standards from August 1, 2017 to October 1, 2017.

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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> See Securities Exchange Act Release No. 79784 (Jan. 12, 2017), 82 FR 6664 (Jan. 19, 2017) (SR-NASDAQ-2016-135).

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

Earlier this year, the Commission approved a Nasdaq filing (the “Prior Filing”) to amend the continued listing requirements for ETPs.<sup>4</sup> The Exchange now proposes to make a number of housekeeping changes, as well as conform the language in the Nasdaq Rule 5700 Series (Other Securities) and Nasdaq Rule 5810 (Notification of Deficiency by the Listing Qualifications Department) to either the current rule language for NYSE Arca, Inc. (“Arca”) and Bats BZX Exchange, Inc. (“Bats”) or to the rule language included in approved filings for both Arca<sup>5</sup> and Bats<sup>6</sup> (the “Arca and Bats Filings”).

Most of the proposed changes are to the Nasdaq Rule 5700 Series where the current rule

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<sup>4</sup> Id.

<sup>5</sup> See Securities Exchange Act Release No. 80189 (Mar. 9, 2017), 82 FR 13889 (Mar. 15, 2017) (SR-NYSEArca-2017-01).

<sup>6</sup> See Securities Exchange Act Release No. 80169 (Mar. 7, 2017), 82 FR 13536 (Mar. 13, 2017) (SR-BatsBZX-2016-80).

text refers to statements or representations regarding the applicability of Nasdaq rules and surveillance procedures. The proposed changes revise this language from “the applicability of Nasdaq rules and surveillance procedures” to “the applicability of Nasdaq listing rules specified in such proposals”. These changes are consistent with the language in the Arca<sup>7</sup> and Bats<sup>8</sup> Filings.

The amendment to Nasdaq Rule 5810(c)(2)(A) changes the language therein to specify that a failure to meet a continued listing requirement contained in the Rule 5700 Series does not require a company to pay a compliance plan review fee of \$5,000. This change is consistent with the practice of Arca and Bats in that neither imposes such a fee.

The proposed change to Nasdaq Rule 5720(c)(7)(F) (Trust Issued Receipts) is to reinsert a word deleted by the Prior Filing. Specifically, the word “initially” will be reinserted into the following rule language: “the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.” Adding the word “initially” back into the designated rule properly reflects the intended meaning of the language and is in keeping with language as it was initially adopted and conforms to the rules of Arca and Bats.

The proposed change to Nasdaq Rule 5745(d)(2)(C)(iv)(c) to delete the word “portfolio” from the phrase “dissemination and availability of the portfolio, reference asset, or intraday indicative values” is because it is not applicable in this context as to Exchange-Traded Managed Fund Shares (“NextShares”).

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<sup>7</sup> Supra note 5.

<sup>8</sup> Supra note 6.

Additionally, the Exchange proposes to delay the implementation date of the previously approved changes to the continued listing standards<sup>9</sup> from August 1, 2017 to October 1, 2017. Given the scope of the proposed rule changes, the Exchange believes that this will ensure that Nasdaq has adequate time to develop and put into operation the new processes and systems necessitated by them. Also, an implementation date of October 1, 2017 will match the implementation dates set forth in the Arca and Bats Filings. This will benefit those impacted by the amended continued listing standards by providing for a single implementation date across the exchanges, which will promote clarity in the timing of these significant changes to the continued listing standards and lessen potential confusion.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</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 Exchange believes that the proposed rule changes to conform the Nasdaq Rule 5700 Series and Nasdaq Rule 5810 with either the current rule language for Arca and Bats or to the rule language included in the Arca and Bats Filings will promote just and equitable principles of trade, and, in general to protect investors and the public interest since it will promote the application of consistent listing standards across the exchanges. Also, the proposed rule change to reinsert the word “initially” into Nasdaq Rule 5720(c)(7)(F), as well as to delete the word

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<sup>9</sup> Supra note 3.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

“portfolio” in Nasdaq Rule 5745(d)(2)(C)(iv)(c), will provide clarity and accurately reflect the intent of the rule to the benefit of investors and the public interest. Changing the implementation date to October 1, 2017 also will provide clarity and lessen confusion to the benefit of investors and the public interest.

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. Instead, the Exchange believes that the proposed rule change to conform the Nasdaq Rule 5700 Series and Nasdaq Rule 5810 with either the current rule language for Arca and Bats or the approved rule text included in the Arca and Bats Filings may enhance competition since the exchanges will have substantially similar and consistent listing requirements for ETPs.

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

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

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

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-040 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-2017-040. 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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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.

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 such 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-2017-040 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>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).