

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100613; File No. SR-NASDAQ-2024-042)

July 29, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq Rule 5710(k)(i) Relating to Equity Index-Linked Securities

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 July 22, 2024, 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 its listing rules under Rule 5710(k)(i) related to the criteria for Equity Index-Linked 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.

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

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this proposal in order to bring its listing rules related to Equity Index-Linked Securities in line with those of NYSE Arca, Inc. (“Arca”) and Cboe BZX Exchange, Inc. (“BZX”).<sup>3</sup> Rule 5710(k) sets forth certain rules related to the listing and trading of Linked Securities<sup>4</sup> on the Exchange and Rule 5710(k)(i) relates specifically to the generic listing standards applicable to Equity Index-Linked Securities.<sup>5</sup> Specifically, Rule 5710(k)(i)(A) provides that each index underlying a series of Equity Index-Linked Securities must include at least 10 component securities and meet the requirements of either Rule 5710(k)(i)(A)(1) or (2). Rule 5710(k)(i)(A)(1) provides that each index must have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission’s approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied. Rule 5710(k)(i)(A)(2) provides certain quantitative standards related to the market cap, trading

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<sup>3</sup> See Arca Rule 5.2-E(j)(6)(B)(I) and BZX Rule 14.11(d)(2)(K)(i). See also Securities Exchange Act Release Nos. 81442 (August 18, 2017), 82 FR 40178 (August 24, 2017) (SR-NYSEArca-2017-54) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Generic Listing Criteria Applicable to Equity Index-Linked Securities); and 82895 (March 16, 2018), 83 FR 12633 (March 22, 2018) (SR-CboeBZX-2018-020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Listing Rules Under Rule 14.11(d)(2)(K)(i) Related to Equity Index-Linked Securities).

<sup>4</sup> Linked Securities are securities that qualify for Exchange listing and trading under Rule 5710 and include the following: Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities. See Rule 5710.

<sup>5</sup> See Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR-NASDAQ-2012-013) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of Listing Standards for Certain Securities).

volume, rebalancing, concentration, and surveillance sharing.<sup>6</sup> As noted above, where an index has at least 10 component securities and meets the criteria of either Rule 5710(k)(i)(A)(1) or (2), it meets the initial listing criteria for Equity Index- Linked Securities. Rule 5710(k)(i)(B) includes the continued listing criteria for Equity Index-Linked Securities and provides that Nasdaq will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security), if any of the standards set forth in Rule 5710(k)(i)(A) are not continuously met, with some additional concentration and trading volume criteria.

The Exchange proposes to amend Rule 5710(k)(i) related to Equity Index-Linked Securities in order to make it substantively identical to the comparable rules on Arca and BZX. In particular, the Exchange is proposing to make certain changes to its rules consistent with Arca's and BZX's rules such that: (i) Derivative Securities Products<sup>7</sup> and Linked Securities will be excluded from several initial and continued listing criteria; (ii) the rule text makes clear that Rule 5710(k)(i)(A)(1) includes a series of Index Fund Shares approved by the Commission under Section 19(b)(2) of the Act; (iii) the existing trading volume requirement under Rule 5710(k)(i)(A)(2)(b) is replaced with a more flexible trading volume standard; (iv) rules with standards applicable only to certain index weightings, including equal-dollar, modified equal-dollar, capitalization-weighted, and modified capitalization-weighted, are eliminated; and (v)

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<sup>6</sup> The Exchange notes that today, it does not use dollar weighting in Rule 5710(k)(i)(A)(2)(a) like Arca in Arca Rule 5.2-E(j)(6)(B)(I)(1)(b)(i). In this respect, the Exchange's current initial listing criteria aligns instead to BZX's listing criteria in BZX Rule 14.11(d)(2)(K)(i)(a)(2)(A).

<sup>7</sup> Derivative Securities Products include the following: Exchange Traded Fund Shares (Rule 5704); Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Trust Issued Receipts (Rule 5720); Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Shares (Rule 5711); and Managed Fund Shares (Rule 5735). See Rule 5705(b)(3)(A)(i)(a).

Rule 5710(k)(i)(A)(2)(g)<sup>8</sup> provides that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group (“ISG”) or a party to a comprehensive surveillance sharing agreement with the Exchange will not in the aggregate represent more than 50% of the dollar weight of the index, and (i) the securities of any one such market may not represent more than 20% of the dollar weight of the index, and (ii) the securities of any two such markets may not represent more than 33% of the dollar weight of the index.

The Exchange also proposes to amend the continued listing criteria for Equity Index-Linked Securities in Rule 5710(k)(i)(B) to exclude Derivative Securities Products and Linked Securities, similar to the changes being proposed in its initial listing criteria for Equity Index-Linked Securities in Rule 5710(k)(i)(A). The Exchange notes that Arca and BZX likewise exclude these products from their relevant continued listing standards.<sup>9</sup>

The Exchange believes that these proposed changes are non-controversial because the changes would make the Exchange’s listing rules related to Equity Index-Linked Securities substantively identical to the rules of other listing exchanges<sup>10</sup> and do not present any new or novel issues that have not been previously considered by the Commission.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is

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<sup>8</sup> Current Rule 5710(k)(i)(A)(2)(g) will be renumbered to Rule 5710(k)(i)(A)(2)(e) under this proposal.

<sup>9</sup> See supra note 3.

<sup>10</sup> See supra note 6.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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 changes to Rule 5710(k)(i) related to the listing of Equity Index-Linked Securities on the Exchange remain consistent with the Act because as noted above, the changes will make the Exchange's listing rules for Equity Index-Linked Securities substantively identical to those of Arca and BZX.<sup>13</sup>

As such, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, 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 because there are no substantive issues raised by this proposal that were not otherwise addressed by the Commission.

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 that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes that the proposal will allow the Exchange to better compete with Arca and BZX by putting Nasdaq on equal footing with the other two exchanges as it relates to listing standards applicable to Equity Index-Linked Securities.

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.

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<sup>13</sup> See supra note 6.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>16</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change, which modifies certain listing standards applicable to Equity Index-Linked Securities, conforms to substantially similar rules of other exchanges<sup>18</sup> and raises no unique or novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> In addition, Rule 19b-4(f)(6) requires a self-regulatory 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. See id. The Exchange has satisfied this requirement.

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> See, e.g., BZX Rule 14.11(d)(2)(K)(i)(a) and (b) (setting forth the initial and continued listing standards for Equity Index-Linked Securities). See also supra note 3 and accompanying text.

Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>19</sup>

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](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2024-042 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-2024-042. 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

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<sup>19</sup> 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).

all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also 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-2024-042 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.<sup>20</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>20</sup> 17 CFR 200.30-3(a)(12), (59).