

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84812; File No. SR-NASDAQ-2018-079)

December 13, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Nasdaq Rules 5705 and 5710 to Adopt a Disclosure Requirement for Certain Securities

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 November 29, 2018, 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 Nasdaq Rules 5705 and 5710 to adopt a disclosure requirement for certain securities that seek to provide a return based on a specified multiple or inverse multiple of an underlying index or reference asset. Nasdaq is also proposing to amend Nasdaq Rules 5705 and 5710 to include certain defined terms.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq rules allow the listing of securities that seek to exceed by a multiple the performance (leveraged) or exceed by a multiple the inverse of the performance (inverse) of an underlying index or reference asset. Some of these products are designed to track the daily performance of an underlying instrument and holding these products for longer than a day can result in investment returns that are significantly different than the target return. Nasdaq believes that some investors may not fully understand this risk and therefore proposes to amend Nasdaq Rules 5705(b) (Index Fund Shares) and 5710 (Securities Linked to the Performance of Indexes and Commodities (Including Currencies)) to adopt an additional disclosure requirement.

Specifically, the Exchange is proposing to amend Nasdaq Rule 5705(b)(1)(B) and Nasdaq 5710(d) to provide that issuers of leveraged or inverse products that seek returns on a daily basis ("Multiple/Inverse Daily Products") must provide additional website disclosure that highlights the daily return feature of these products including the risks associated with holding these products for longer than one day. The Exchange is also making clarifying changes to existing rule language.

Currently, Nasdaq Rule 5705(b)(1)(B)(iv), which applies to issuers of Index Fund Shares, requires that issuers make daily public website disclosure of the holdings of leveraged and inverse products.³ The Exchange proposes to amend this rule to require that issuers of Multiple/Inverse Daily Products include on the product website a statement that the product seeks returns for a single day and due to the compounding of returns, holding periods of longer than one day can result in investment returns that are significantly different than the product's target returns. The disclosure would also direct investors to consult the prospectus for further information on the calculation of the returns and other risks associated with investing in this type of product. While issuer websites already typically contain language similar to the disclosure proposed herein, Nasdaq believes that providing example language enhances the transparency of the proposed listing standard.

Additionally, the Exchange proposes to amend Nasdaq Rule 5705(b)(1)(B) to define certain terms and clarify the rules. Nasdaq also proposes to amend the preamble of Nasdaq Rule 5710 to include a definition for "Closing Indicative Value".

In addition, Nasdaq proposes to modify Nasdaq Rule 5710(d), which relates to Linked Securities, to include the same disclosure requirement for Multiple/Inverse Daily Products that are Linked Securities. Further, the Exchange proposes to amend Nasdaq Rule 5710(d) to clarify that the limitations on leverage and inverse multiples are based on the Closing Indicative Value

³ Nasdaq Rule 5705(b)(1)(B)(iv) requires: "Daily public website disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of such series, including, as applicable, the following instruments: a. The identity and number of shares held of each specific equity security; b. The identity and amount held for each specific fixed income security; c. The specific types of Financial Instruments and characteristics of such Financial Instruments; and d. Cash equivalents and the amount of cash held in the portfolio."

(definition as proposed herein) and measured on a daily basis, up to, and including the date of maturity or redemption, as applicable. Nasdaq believes that this more closely aligns the application of the listing standards to the proposed disclosure requirements, as well as the daily values that determine the daily performance of such products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵ in particular, because it 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 mechanisms 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 amendments requiring additional disclosure for Multiple/Inverse Daily Products would enhance investor protection and provide investors with valuable information regarding the investment risks associated with these products. Further, the additional proposed amendments, including amending Nasdaq Rule 5710(d) to include a definition of Closing Indicative Value, will provide for additional transparency around listing standards and more closely aligns the application of such listing standards to the proposed disclosure requirements.

As such, the Exchange believes the proposed amendment is consistent with the investor protection requirement of Section 6(b)(5).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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 proposed amendments are not intended to address competitive issues, but rather to provide additional website disclosure that highlights the daily return feature of Multiple/Inverse Daily Products, including the risks associated with holding these products for longer than one day. The Exchange believes that this change will provide additional investor protection through enhanced transparency around the investment risk associated with Multiple/Inverse Daily Products. Nasdaq also believes that adding a definition for Closing Indicative Value to Nasdaq Rule 5710 will provide for additional clarity around listing standards and more closely align the application of such listing standards to the proposed disclosure requirements.

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 Exchange consents, the Commission shall: (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. Please include File Number NASDAQ-2018-079 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 NASDAQ-2018-079. 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number NASDAQ-2018-079, 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.⁶

Eduardo A. Aleman
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).