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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80994; File No. SR-NASDAQ-2017-058)

June 21, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Initial and Continued Listing Standards for the Listing of Equity Investment Tracking Stocks

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 June 8, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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 adopt initial and continued listing standards for the listing of Equity Investment Tracking Stocks.

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

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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

Nasdaq proposes to adopt initial and continued listing standards for the listing of Equity Investment Tracking Stocks. An Equity Investment Tracking Stock is defined as a class of common equity securities that tracks on an unleveraged basis the performance of an investment by the issuer in the common equity securities of a single other company listed on the Exchange.<sup>3</sup> An Equity Investment Tracking Stock may track multiple classes of common equity securities of a single issuer, so long as all of those classes have identical economic rights and at least one of those classes is listed on the Exchange.

An Equity Investment Tracking Stock may be listed on the Nasdaq Global Select, Global, or Capital Markets under the Rule 5300, 5400 or 5500 Series, as applicable, provided it also meets the additional requirements set forth in the proposed Rule 5222. An Equity Investment Tracking Stock is only eligible to be listed on the same tier of Nasdaq (Global Select, Global or Capital) as the equity security it tracks.

Proposed Rule 5222(a) provides that, prior to the commencement of trading of any Equity Investment Tracking Stock, Nasdaq will distribute an information circular to its members that describes any special characteristics and risks of trading the Equity Investment Tracking

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<sup>3</sup> Nasdaq will determine whether a security tracks the performance of a single other company based on the facts and circumstances of the particular matter, including whether the security tracks substantial assets in addition to the other listed company. Nasdaq encourages any company considering listing a security that tracks the performance of another listed company, in whole or in part, to contact Nasdaq staff as early as possible to discuss.

Stock, and lists Exchange Rules that will apply to the Equity Investment Tracking Stock including rules that require members: (A) to use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer; and (B) in recommending transactions in the Equity Investment Tracking Stock to have a reasonable basis to believe that (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such members, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Equity Investment Tracking Stock.

Proposed Rule 5222(b) provides that in addition to the initial listing requirements of the Rule 5300 Series<sup>4</sup>, the Rule 5400 Series<sup>5</sup>, or the Rule 5500 Series<sup>6</sup> applicable to all securities,<sup>7</sup> the issuer of the Equity Investment Tracking Stock must own (directly or indirectly<sup>8</sup>) at least

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<sup>4</sup> The Rule 5300 Series generally requires that for initial listing on the Nasdaq Global Select Market a security must satisfy a price, publicly held shares, market maker, ownership, market value and valuation requirement.

<sup>5</sup> The Rule 5400 Series generally requires that for initial listing on the Nasdaq Global Market a security must satisfy a price, publicly held shares, round lot holder, market maker, and either an income, an equity, a market value of listed securities, or a total assets and total revenue requirement.

<sup>6</sup> The Rule 5500 Series generally requires that for initial listing on the Nasdaq Capital Market a security must satisfy a price, publicly held shares, round lot holder, market maker, and either an equity, a market value of listed securities, or a net income requirement.

<sup>7</sup> In addition to meeting the quantitative requirements of the Rule 5300 Series, the Rule 5400 Series, or the Rule 5500 Series, the issuer of Equity Investment Tracking Stock must meet the requirements of the Rule 5100 Series, the disclosure obligations set forth in the Rule 5200 Series, the Corporate Governance requirements set forth in the Rule 5600 Series, and pay any applicable fees in the Rule 5900 Series.

<sup>8</sup> An example of an indirect ownership would be where the listed company has a 100%-owned subsidiary and that subsidiary in turn owns the stock of the company whose

50% of both the economic interest and the voting power of all of the outstanding classes of common equity of the issuer whose equity is tracked by the Equity Investment Tracking Stock. Further, Nasdaq will not list an Equity Investment Tracking Stock if, at the time of the proposed listing, the issuer of the equity tracked by the Equity Investment Tracking Stock has received a Staff Delisting Determination or been notified about a deficiency, except for a corporate governance deficiency with a grace period provided under Rule 5810(c)(3)(E),<sup>9</sup> with respect to such security.

Proposed Rule 5222(c) provides that in addition to the continued listing requirements of the Rule 5400 Series<sup>10</sup> or the Rule 5500 Series,<sup>11</sup> as applicable, Nasdaq will also apply additional continued listing requirements. Specifically, if the listed equity security or securities whose value is tracked by the Equity Investment Tracking Stock is transferred to a different tier of Nasdaq (Global Select, Global or Capital), the Equity Investment Tracking Stock that tracks such security will be automatically transferred to the same tier of Nasdaq, provided the Equity Investment Tracking Stock meets the applicable listing standards for that tier. However, if the

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performance is being tracked. Another example would be where the listed company owns 100% of each of two subsidiaries, each of which owns stock in the company whose performance is being tracked.

<sup>9</sup> Rule 5810(c)(3)(E) provides that if a company fails to meet the majority board independence or the audit committee composition requirements due to one vacancy, or fails to meet the audit committee composition requirements because an audit committee member ceases to be independent for reasons outside her control, Nasdaq will provide the company with an automatic grace period for up to one year to regain compliance with the rule.

<sup>10</sup> The Rule 5400 Series generally requires that for continued listing on the Nasdaq Global Market, including the Nasdaq Global Select Market, a security must satisfy a price, publicly held shares, total holders, market maker, and either an equity, a market value of listed securities, or a total assets and total revenue requirement.

<sup>11</sup> The Rule 5500 Series generally requires that for continued listing on the Nasdaq Capital Market a security must satisfy a price, publicly held shares, public holders, market maker, and either an equity, a market value of listed securities, or a net income requirement.

Equity Investment Tracking Stock does not meet the applicable listing standards for that tier, Nasdaq will determine whether the Equity Investment Tracking Stock meets an applicable initial listing standard in place at that time and will halt trading in the Equity Investment Tracking Stock and issue a Staff Delisting Determination pursuant to Rule 5810(c)(1) if it does not. Similarly, if the listed equity security or securities whose value is tracked by the Equity Investment Tracking Stock ceases to be listed on Nasdaq or is suspended pending delisting, the issuer of the Equity Investment Tracking Stock owns less than 50% of the issuer whose equity is tracked by the Equity Investment Tracking Stock, or the Equity Investment Tracking Stock ceases to track the performance of the listed equity security or securities that was tracked at the time of initial listing, Nasdaq will determine whether the Equity Investment Tracking Stock meets an applicable initial listing standard in place at that time and will halt trading in the Equity Investment Tracking Stock and issue a Staff Delisting Determination pursuant to Rule 5810(c)(1) if it does not.

Nasdaq also proposes to amend Rule 5810(c)(1) to provide that an Equity Investment Tracking Stock's failure to comply with the additional continued listing requirements in Rule 5222(c) or the issuance of a Staff Delisting Determination with respect to the security such Equity Investment Tracking Stock tracks will constitute a deficiency that will immediately result in Nasdaq issuing a Delisting Determination with regard to the Equity Investment Tracking Stock.

Proposed Rule 5222(d) imposes additional disclosure and procedural requirements on the Equity Investment Tracking Stock when a listed equity security whose value is tracked by the Equity Investment Tracking Stock is subject to deficiency procedures. These requirements are designed to provide investors in the Equity Investment Tracking Stock with notice about the

potential delisting of the listed equity security or securities whose value is tracked by the Equity Investment Tracking Stock and to assure that the Equity Investment Tracking Stock is treated in the same manner as the equity security whose value it tracks during the deficiency administration process. Specifically, if the issuer of the security that the Equity Investment Tracking Stock tracks announces that it has received a deficiency notification then the issuer of the Equity Investment Tracking Stock must promptly publicly announce (either by filing a Form 8-K, where required by SEC rules, or by issuing a press release) that fact.<sup>12</sup>

In addition, proposed Rule 5222(d) provides that notwithstanding any provisions to the contrary, if the Staff Delisting Determination issued to the security such Equity Investment Tracking Stock tracks is stayed pursuant to the Rule 5800 Series, the suspension of the Equity Investment Tracking Stock also will be stayed and will remain stayed on the same terms that apply to the security such Equity Investment Tracking Stock tracks.

Nasdaq proposes to amend Rule 4120(a) governing Nasdaq's authority to initiate trading halts or pauses and Rule IM-5250-1 providing interpretive material regarding trading halts to provide that, in the event that the issuer of the common equity security tracked by an Equity Investment Tracking Stock intends to issue a material news release during the trading day and Nasdaq determines that a regulatory trading halt should be implemented, including a trading halt pending dissemination of the news, Nasdaq will also halt trading in the Equity Investment Tracking Stock simultaneously with the halt in the security it tracks and will also recommence trading at the same time. In addition, Nasdaq will halt trading in the Equity Investment Tracking

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<sup>12</sup> In addition, the issuer of the Equity Investment Tracking Stock that receives a notification of deficiency or Staff Delisting Determination is required by Rule 5810(b) to make a public announcement disclosing receipt of the notification.

Stock if the security it tracks is suspended from trading, such as while the security is pending delisting.<sup>13</sup>

Nasdaq proposes to amend Rules 5401 and 5501 to update the preamble to these rules and Rule 5305 to provide that an Equity Investment Tracking Stock may be listed as a primary equity security or as a secondary class of common stock, as applicable, provided it must also meet the requirements set forth in Rule 5222.

Nasdaq represents that it will monitor activity in Equity Investment Tracking Stocks to identify and deter any potential improper trading activity in such securities. The Exchange will adopt surveillance procedures, and make any enhancements necessary, sufficient to enable it to monitor Equity Investment Tracking Stocks alongside the securities whose value they track. Additionally, the Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>14</sup>

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened,

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<sup>13</sup> If the security that an Equity Investment Tracking Stock tracks is suspended pending delisting Nasdaq would also follow the procedures in Rule 5222(c) and initiate delisting proceedings for the Equity Investment Tracking Stock unless it meets another applicable listing standard. The trading halt in the Equity Investment Tracking Stock would remain in place until the Equity Investment Tracking Stock is requalified or is suspended pending its delisting pursuant to the procedural requirements of the Rule 5800 Series.

<sup>14</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

Given the novel investment characteristics of Equity Investment Tracking Stocks, the Exchange will conduct a review of the trading and compliance with continued listing standards of Equity Investment Tracking Stocks and their issuers over the initial two year period for which the proposed listing standard is in operation.

The Exchange will furnish two reports to the SEC based on this review, one to be provided no later than sixty days after the first anniversary of the adoption of the proposed rule, which will cover the first year, and the second to be provided one year later, which will cover the second year. At a minimum, the reports will address the relationship between the trading prices of listed Equity Investment Tracking Stocks and those of the securities whose values they track, the liquidity of the market for the two securities, and any manipulation concerns arising in connection with the trading of securities listed under the standard and the securities whose values are being tracked. The reports will also discuss any recommendations the Exchange may have for enhancements to the listing standard based on its review.

Nasdaq proposes to make a conforming change to Rule 5950(e)(3) to allow for the renumbering of the defined terms in Rule 5005(a).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</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

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed listing standards are designed to protect investors and the public interest by ensuring that Equity Investment Tracking Stocks listed on the Exchange meet stringent quantitative and qualitative listing standards to qualify for initial and continued listing. The Exchange notes that trading in an Equity Investment Tracking Stock will be halted and subject to delisting if it does not meet another applicable initial listing standard and (i) the equity security or securities whose value is tracked by the Equity Investment Tracking Stock ceases to be listed on the Exchange or is suspended pending delisting; (ii) the issuer of the Equity Investment Tracking Stock owns (directly or indirectly) less than 50% of either the economic interest or the voting power of all of the outstanding classes of common equity of the issuer whose equity is tracked by the Equity Investment Tracking Stock; or (iii) the Equity Investment Tracking Stock ceases to track the performance of the listed equity security that was tracked at the time of initial listing. If the security whose value is tracked by an Equity Investment Tracking Stock changes tiers (e.g., from Capital Market to Global Market), Nasdaq will halt trading and initiate delisting of the Equity Investment Tracking Stock unless the Equity Investment Tracking Stock meets the applicable listing requirements for the new tier or qualifies for listing under another applicable initial listing standard.

The Equity Investment Tracking Stocks will have to meet the requirements of the proposed Listing Rule 5222 in addition to the other listing requirement applicable to equity securities. The issuer of an Equity Investment Tracking Stock must fully comply with the requirements of the Rule 5100 Series, the disclosure obligations set forth in the Rule 5200 Series, the quantitative requirements set forth in the Rule 5300 Series, the Rule 5400 Series or the Rule

5500 Series, and the Corporate Governance requirements set forth in the Rule 5600 Series, subject to applicable exemptions such as those for controlled companies.

The proposed rule change is designed to provide equivalent treatment to an Equity Investment Tracking Stock as is provided to the security or securities it tracks, and therefore it will not permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes that it is proposing to amend Rule 4120(a) governing Nasdaq's authority to initiate trading halts or pauses and Rule IM-5250-1 providing interpretive material regarding trading halts to provide that, in the event that the issuer of the common equity security tracked by an Equity Investment Tracking Stock intends to issue a material news release during the trading day and Nasdaq determines that a regulatory trading halt should be implemented pending dissemination of the news or if Nasdaq determines that any other required regulatory trading halt should be implemented, the Exchange will also halt trading in the Equity Investment Tracking Stock simultaneously with the halt in the security whose values is being tracked and will also recommence trading at the same time. The Exchange believes that this proposed amendment will protect investors and the public interest by preventing market participants from gaining an advantage in trading in an Equity Investment Tracking Stock based on their possession of material nonpublic information with respect to the company whose value is being tracked by the Equity Investment Tracking Stock. In addition, Nasdaq will halt trading in the Equity Investment Tracking Stock if the security whose value is being tracked is suspended from trading, such as while the security is pending delisting.

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. The proposed

rule change is designed to provide listing standards for Equity Investment Tracking Stocks that are appropriately protective of investors and is not designed to limit the ability of the issuers of those securities to list them on any other national securities exchange. The market for listing services is extremely competitive.<sup>17</sup> Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed listing standards impose a burden 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

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)(iii) of the Act<sup>18</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or

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<sup>17</sup> See Securities Exchange Act Release No. 78153 (June 24, 2016), 81 FR 42762 (June 30, 2016) (SR-NYSE-2016-22) (adopting listing standards for Equity Investment Tracking Stocks).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). 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. The Exchange has satisfied this requirement.

(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-2017-058 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-2017-058. 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 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-2017-058, 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>20</sup>

Eduardo A. Aleman  
Assistant Secretary

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

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