

that no respondents will file Form N-8B-4 each year. There are currently only four existing face-amount certificate companies, and none have filed a Form N-8B-4 in many years. No new face-amount certificate companies have been established since the last OMB information collection approval for this form, which occurred in 2011. Accordingly, the staff estimates that, each year, zero face-amount certificate companies will file Form N-8B-4, and that the total burden for the information collection is zero hours. Although Commission staff estimates that there is no hour burden associated with Form N-8B-4, the staff is requesting an hour burden of one hour for administrative purposes. Estimates of the burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N-8B-4 is mandatory. The information provided on Form N-8B-4 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: March 6, 2014.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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amendments are filed with the Commission on the face-amount certificate company's Form S-1. Hence, respondents only file Form N-8B-4 for their initial registration statement and not for post-effective amendments.

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### Extension:

Rule 17f-5; OMB Control No. 3235-0269, SEC File No. 270-259.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension of the previously approved collections of information discussed below.

Rule 17f-5 (17 CFR 270.17f-5) under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act") governs the custody of the assets of registered management investment companies ("funds") with custodians outside the United States. Under rule 17f-5, a fund or its foreign custody manager (as delegated by the fund's board) may maintain the fund's foreign assets in the care of an eligible fund custodian under certain conditions. If the fund's board delegates to a foreign custody manager authority to place foreign assets, the fund's board must find that it is reasonable to rely on each delegate the board selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the performance of the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f-5 are intended to provide protection for fund assets

maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,<sup>1</sup> and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.<sup>2</sup>

Commission staff estimates that each year, approximately 130 registrants<sup>3</sup> could be required to make an average of one response per registrant under rule 17f-5, requiring approximately 2.5 hours of board of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule is up to approximately 325 hours (130 registrants × 2.5 hours per registrant). The staff further estimates that during each year, approximately 15

<sup>1</sup> See section 17(f) of the Act, 15 U.S.C. 80a-17(f).

<sup>2</sup> The staff believes that subcustodian monitoring does not involve "collection of information" within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) ("Paperwork Reduction Act").

<sup>3</sup> This figure is an estimate of the number of new funds each year, based on data reported by funds in 2012 on Forms N-1A, N-2, N-4, N-6, and S-6. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

global custodians<sup>4</sup> are required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories. The staff estimates that each response will take approximately 270 hours, requiring approximately 1,080 total hours annually per custodian. The total annual burden associated with these requirements of the rule is approximately 16,200 hours (15 global custodians × 1,080 hours per custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f-5 is estimated to be up to 16,525 hours (325 + 16,200). The total annual cost of burden hours is estimated to be \$5,609,200 (325 hours × \$4,000/hour for board of directors' time, plus 16,200 hours × \$266/hour for a trust administrator's time).<sup>5</sup> Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: March 6, 2014.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>4</sup> This estimate is based on staff research.

<sup>5</sup> The board hourly rate is based on fund industry representations. The \$266/hour figure for a trust administrator is from SIFMA's Management & Professional Earnings in the Securities Industry 2012, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71657; File No. SR-NASDAQ-2014-020]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Proposed Rule Change Relating to Listing and Trading of Exchange-Traded Managed Fund Shares

March 6, 2014.

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 February 26, 2014, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Pursuant to the provisions of Section 19(b)(1) of the Act,<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> Nasdaq is filing with the Commission a proposed rule change to list and trade under proposed Nasdaq Rule 5745 the shares of a proposed new type of open-end management investment company registered under the Investment Company Act of 1940, as amended ("1940 Act"), called an Exchange-Traded Managed Fund ("ETMF"), and to amend related references under Nasdaq Rules 4120, 5615 (and IM-5615-4) and 5940.

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq's principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to adopt Nasdaq Rule 5745 for the purpose of permitting the listing and trading of ETMF Shares. Similar to Managed Fund Shares as defined in Nasdaq Rule 5735,<sup>5</sup> ETMF Shares would be issued in specified aggregate unit quantities in return for a deposit of a specified basket of securities and/or a cash amount with a value equal to the product of the ETMF's net asset value per Share ("NAV") and the number of Shares issued. When aggregated in the same specified unit quantities, ETMF Shares could be redeemed in exchange for a specified basket of securities and/or cash with a value per Share equal to the ETMF's NAV. Unlike Managed Fund Shares, ETMF Shares would trade on Nasdaq using a new trading protocol called "NAV-Based Trading." In NAV-Based Trading, all bids, offers and execution prices would be expressed as a premium/discount (which may be zero) to the ETMF's next-determined NAV (e.g., NAV - \$0.01; NAV + \$0.01). An ETMF's NAV would be determined each business day, normally as of 4:00 p.m. Eastern Time. Trade executions using NAV-Based Trading would be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of the ETMF's NAV at the end of the business day.

##### Proposed Listing Rules for Exchange-Traded Managed Fund Shares

Proposed Nasdaq Rule 5745(b)(1) provides that Nasdaq will file separate proposals under Section 19(b) of the Act before the listing of ETMF Shares. Proposed Nasdaq Rule 5745(b)(2) provides that transactions in ETMF Shares will occur during Nasdaq's Regular Market Session through 4:00 p.m.<sup>6</sup> Proposed Nasdaq Rule 5745(b)(3) provides that ETMF Shares will trade on Nasdaq at market-determined premiums or discounts to the next-determined NAV, and that the minimum price variation for quoting and entry of orders in ETMF Shares will be \$0.01. Proposed Rule Nasdaq 5745(b)(4) provides that Nasdaq will implement written

<sup>5</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039).

<sup>6</sup> Nasdaq Rule 4120(b)(4) defines the Regular Market Session as the trading session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m. ETMF Shares will trade until 4:00 p.m.