

Notice of an Application for Exemptive Relief, however, “the Commission preliminarily believes that [Precidian’s] proposed ETFs do not meet the standard for exemptive relief under section 6(c) of the [1940] Act,”<sup>129</sup> and accordingly, “absent a request for a hearing that is granted by the Commission, the Commission intends to deny [Precidian’s] request for an exemption under section 6(c) of the [1940] Act as not necessary or appropriate in the public interest and as not consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the [1940] Act.”<sup>130</sup>

The purpose of the Exchange’s proposed rule change is to allow the listing and trading of the proposed Funds and future Funds of the same type. The Commission does not believe that approving this proposed rule change would be consistent with the requirement under the Exchange Act that an exchange’s rules be consistent with the protection of investors and the public interest, because the Commission has stated its intention to deny the Funds exemptive relief under the 1940 Act and because denying this exemptive relief would mean that the Funds could not legally operate.<sup>131</sup>

#### IV. Conclusion

For the reasons set forth above, the Commission does not find that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular,

6(c) of the 1940 Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the 1940 Act and rule 22c-1 under the 1940 Act; under sections 6(c) and 17(b) of the 1940 Act for an exemption from sections 17(a)(1) and 17(a)(2) of the 1940 Act; and under section 12(d)(1)(j) of the 1940 Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the 1940 Act.

<sup>129</sup> Notice of Application for Exemptive Relief, *supra* note 3, at 3.

<sup>130</sup> *Id.* at 29.

<sup>131</sup> The Commission’s determinations under Section 6(c) of the 1940 Act with respect to the Funds are preliminary and could change if a hearing were requested, the Commission were to grant the request, and persuasive new information were presented. Under Section 19(b)(2) of the Exchange Act, however, the last date on which the Commission can take final action to approve or disapprove the Exchange’s proposed rule change is no later than 240 days after notice of the proposed rule change was published in the **Federal Register**. As a result, the Commission must either approve or disapprove the proposed rule change by October 24, 2014, and it must do so on the basis of the facts as they currently exist, irrespective of any information that might be presented to or considered by the Commission at a later date in the context of its final determination under Section 6(c) of the 1940 Act.

with Section 6(b)(5) of the Exchange Act.<sup>132</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NYSEArca–2014–10) be, and it hereby is, disapproved.

By the Commission.

**Kevin M. O’Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73416; File No. SR–NASDAQ–2014–034]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to Proposed Changes To Remove From the Exchange Rules Fee Provisions Regarding Re-Transmission of “Third-Party Data”

October 23, 2014.

On April 7, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to remove, from the Exchange rules, fee provisions with respect to third-party data feeds that Nasdaq receives from multiple sources and then re-transmits to clients in connection with the Exchange’s co-location services. The proposed rule change was published for comment in the **Federal Register** on April 28, 2014.<sup>3</sup> On June 5, 2014, the Commission extended the time to act on the proposal until July 25, 2014.<sup>4</sup> On July 22, 2014, the Commission instituted proceedings to determine whether to disapprove the proposed rule change in an order published in the **Federal Register**.<sup>5</sup> The Commission

<sup>132</sup> Having found for the reasons explained above that the Exchange’s proposed rule change is not consistent with the requirements of the Exchange Act, the Commission does not believe it is necessary to address each of the particular objections raised by the commenter who opposes the proposed rule change.

<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. 71990 (April 22, 2014), 79 FR 23389 (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 72328, 79 FR 33605 (June 11, 2014).

<sup>5</sup> See Securities Exchange Act Release No. 72654, 79 FR 43808 (July 28, 2014) (“Order Instituting Proceedings”).

received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>6</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on April 28, 2014. October 25, 2014 is 180 days from that date, and December 24, 2014 is an additional 60 days from that date.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the issues raised in connection with the proposed rule change. Specifically, as the Commission noted in the Order Instituting Proceedings, the proposed rule change raises issues such as whether the proposed rule change is consistent with the statutory definition of the term “facility” and the statutory requirements applicable to national securities exchanges.<sup>7</sup>

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> designates December 24, 2014, as the date by which the Commission should either approve or disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

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<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Order Instituting Proceedings, *supra* note 5.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(31).