

Laws in the manner set forth in Section 1. Furthermore, the Exchange has always intended to allow amendments to the By-Laws by either the Company Member or the Board, as evidenced by the discussions of this provision in both the Governance Approval Order and Notice of Filing.⁷ The existing language in Section 1 itself, however, provides that the By-Laws may be amended by the Company Member and by the majority of the Exchange's Board of Directors, so the Exchange is now seeking to make the non-substantive change from "and" to "or" in Section 1 to reflect the rule's original intent.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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 investors and the public interest, by permitting the Exchange to align the implementation date of its Governance Proposal with its affiliates Nasdaq GEMX, LLC and Nasdaq MRX, LLC, and to make non-substantive corrections to the proposed By-Laws. The Exchange's proposal does not significantly affect the protection of investors or the public interest because this proposal does not make any substantive changes to the Governance Proposal itself; the only changes are to extend the implementation date and to make non-substantive corrections to the proposed By-Laws, as discussed above. As noted above, the Exchange will provide advance notice to members with respect to the specific implementation date through a Regulatory Alert. In addition, the Exchange believes that the non-substantive amendments to the By-Laws proposed herein will alleviate potential confusion as to the applicability of the Exchange's rules, which will protect investors and the public interest.

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 Exchange's proposal does not impose any significant burden on competition because the Governance Proposal and

the proposed non-substantive changes to the By-Laws will apply to all market participants in a uniform manner once implemented.

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 Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

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 (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 email to rule-comments@sec.gov. Please include File Number SR-ISE-2017-80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 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.

and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-80. 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 all comments on the Commission's Internet Web site (<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 Web site 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-ISE-2017-80, and should be submitted on or before October 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32812; 812-14781]

Innovator ETFs Trust, et al.

September 11, 2017.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32),

¹² 17 CFR 200.30-3(a)(12).

⁷ *Id.*

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

APPLICANTS: Innovator Capital Management, LLC ("Innovator"), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, Innovator ETFs Trust (formerly, Academy Funds Trust) (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Quasar Distributors, LLC (the "Distributor"), a Delaware limited liability company and broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

FILING DATES: The application was filed on June 7, 2017, and amended on September 8, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 5, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: The Trust and Innovator, 120 N. Hale Street, Suite 200, Wheaton, Illinois 60187; the Distributor, 615 East Michigan Street, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Attorney-Adviser, at (202) 551-7345, or Andrea Ottomaneli Magovern, Acting Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds ("ETFs").¹ Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant," which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.²

¹ Applicants request that the order apply to the initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term "Fund"), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by Innovator or an entity controlling, controlled by, or under common control with Innovator (each, an "Advisor") and (b) comply with the terms and conditions of the application.

² Prior to May 9, 2017, Innovator Management LLC ("Innovator Management") served as the Trust's investment adviser. (Innovator and Innovator Management are not affiliated persons of each other.) Innovator Management entered into an agreement with Innovator pursuant to which Innovator Management transferred the assets of its investment advisory business and related intellectual property to Innovator (the "Transaction"). The closing of the Transaction (the "Closing") occurred on May 9, 2017. The Commission previously granted relief to Innovator Management and the Trust that, other than the identity of the investment adviser, was identical in all material respects to that requested in the application. Innovator Management LLC, et al.,

2. Each Fund will consist of a portfolio of securities and other assets and investment positions ("Portfolio Instruments"). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent

Investment Company Act Release Nos. 31209 (Aug. 13, 2014) (notice) and 31248 (Sep. 9, 2014) (order) ("Existing Order"). On May 5, 2017, the Commission staff provided oral no-action relief to Innovator, the Trust, and the Distributor to rely on the Existing Order until the earlier of the receipt of any order granted by the Commission on the application or 150 days from the date of the Closing.

shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.³

³ The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or a second-tier affiliate, of a Fund of Funds because an Advisor or an entity

The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81556; File No. SR-NASDAQ-2017-061]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; 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 Rules 4702 and 4754 Relating to the Nasdaq Closing Cross and To Make Other Related Changes

September 8, 2017.

I. Introduction

On July 13, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant

controlling, controlled by or under common control with an Advisor provides investment advisory services to that Fund of Funds.

to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rules 4702 and 4754 relating to the Nasdaq Closing Cross and to make other related changes. The proposed rule change was published for comment in the **Federal Register** on July 27, 2017.³ On August 22, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1⁵

As described in more detail below, the Exchange proposes to enhance the operation of the Nasdaq Closing Cross by extending the time period during which members may submit LOC Orders,⁶ and to make other changes relating to the Nasdaq Closing Cross and the Nasdaq Opening Cross.

A. Acceptance of LOC Orders and Related Changes

Currently, Exchange Rule 4702(b)(12)(A) provides that LOC Orders may be entered between 4:00 a.m. ET and immediately prior to 3:50 p.m. ET. The Exchange proposes to amend this rule to permit LOC orders to be entered between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, provided that there is a First Reference Price.⁷ The Exchange proposes to define the First Reference Price to mean the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81188 (July 21, 2017), 82 FR 35014 (“Notice”).

⁴ In Amendment No. 1, the Exchange proposes to remove a reference to Retail Order from Exchange Rule 4702(b)(12)(B) and to remove a reference to Retail Orders and RPI Orders from Exchange Rule 4703(l), as these two order types are no longer available on the Exchange. The Exchange also provides an example to illustrate its assertion that permitting members to submit Limit On Close (“LOC”) Orders until immediately prior to 3:55 p.m. would facilitate price discovery in the Nasdaq Closing Cross. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2017-061/nasdaq2017061.htm>.

⁵ For a more detailed description of the proposal, see Notice, *supra* note 3 and Amendment No. 1, *supra* note 4.

⁶ See Exchange Rule 4702(b)(12) (defining LOC Order).

⁷ The Exchange proposes a related change to Exchange Rule 4702(b)(12)(B) to provide that LOC Orders and Closing Cross/Extended Hours Orders entered at or after 3:55 p.m. ET would be rejected.