

takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>10</sup> of the Act to determine whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2018-09 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 SR-NYSE-2018-09. 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 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 SR-NYSE-2018-09, and

should be submitted on or before April 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

#### *Extension:*

Rule 11a-3, SEC File No. 270-321, OMB Control No. 3235-0358

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

Section 11(a) of the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a-11(a)) provides that it is unlawful for a registered open-end investment company ("fund") or its underwriter to make an offer to the fund's shareholders or the shareholders of any other fund to exchange the fund's securities for securities of the same or another fund on any basis other than the relative net asset values ("NAVs") of the respective securities to be exchanged, "unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers." Section 11(a) was designed to prevent "switching," the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the purpose of exacting additional sales charges.

Rule 11a-3 (17 CFR 270.11a-3) under the Act of 1940 is an exemptive rule that permits open-end investment companies ("funds"), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment

companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

The staff estimates that there are approximately 1,606 active open-end investment companies registered with the Commission as of September 2017. The staff estimates that 25 percent (or 402) of these funds impose a non-nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time per fund, for a total of 402 hours for all funds.

The staff estimates that 5 percent of these 1,606 funds (or 80) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time and 2 hours of clerical time per fund, for a total of approximately 240 hours for all funds to comply with the notice requirement. The staff estimates that such notices will be enclosed with other written materials sent to shareholders, such as annual shareholder reports or account statements, and therefore any burdens associated with mailing required notices are accounted for in the burdens associated with Form N-1A registration statements for funds. The recordkeeping and notice requirements together therefore impose a total burden of 642 hours on all funds. The total number of respondents is 482, each responding once a year. The burdens associated

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N-1A registration statement for funds.

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

The public may view the background documentation for this information collection at the following website, [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) Pamela Dyson, Director/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 22, 2018.

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82921; File No. SR-NASDAQ-2018-020]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4370 Regarding the Requirements for the Listing of Securities That Are Issued by the Exchange or Any of Its Affiliates

March 22, 2018.

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 March 20, 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 Rule 4370 regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates.

The text of the proposed rule change is set forth below. Proposed new language is italicized; deleted text is in brackets.

\* \* \* \* \*

#### 4370. Additional Requirements for Nasdaq-Listed Securities Issued by Nasdaq or Its Affiliates

(a) For purposes of this Rule 4370, the terms below are defined as follows:

(1) No change.

(2) “Affiliate Security” means any security issued by a Nasdaq Affiliate *or any Exchange-listed option on any such security*, with the exception of Portfolio Depository Receipts as defined in Rule 5705(a)(1)(A) and Index Fund Shares as defined in Rule 5705(b)(1)(A).

(b) Upon initial and throughout continued listing *and trading* of the Affiliate Security on The Nasdaq Stock Market, Nasdaq shall:

(1) [file a report quarterly with the Commission] *provide a quarterly report to Nasdaq’s Regulatory Oversight Committee* detailing Nasdaq’s monitoring of:

(A)–(B) No change.

(2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5300, 5400, 5500, and 5600 Series and promptly [forward to the Commission] *provide Nasdaq’s Regulatory Oversight Committee with a copy of the report prepared by the independent accounting firm.*

(c) No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

\* \* \* \* \*

#### 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Rule 4370 (Additional Requirements for Nasdaq-Listed Securities Issued by Nasdaq or its Affiliates) regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates.

Rule 4370 sets forth certain monitoring requirements that must be met throughout the continued listing of securities issued by Nasdaq or its affiliates. More specifically, Rule 4370 provides that, upon initial and throughout continued listing of the Affiliate Security<sup>3</sup> on The Nasdaq Stock Market, Nasdaq shall:

- File a report quarterly (“Quarterly Report”) with the Commission detailing Nasdaq’s monitoring of (a) the Nasdaq Affiliate’s compliance with the listing requirements; and (b) the trading of the Affiliate Security; and
- engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq Affiliate is in compliance with the listing requirements (“Annual Report”) and promptly forward to the Commission a copy of the report prepared by the independent accounting firm.

In discussions with the Commission Staff regarding the Exchange’s Rule 4370, it was determined that the Exchange no longer needs to provide to the Commission copies of the reports specified in paragraphs (b)(1) and (b)(2) thereunder; instead, the Exchange must provide these reports to the Exchange’s

<sup>3</sup> Pursuant to Rule 4370(a)(2), “Affiliate Security” means any security issued by a Nasdaq Affiliate, with the exception of Portfolio Depository Receipts as defined in Rule 5705(a)(1)(A) and Index Fund Shares as defined in Rule 5705(b)(1)(A), and pursuant to Rule 4370(a)(1), “Nasdaq Affiliate” means The Nasdaq Stock Market, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with The Nasdaq Stock Market, Inc., where “control” means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

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

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