

consistent with the Section 17A(b)(3)(F) of the Act.<sup>38</sup>

*B. Consistency With Rules 17Ad-22(b)(2) and 17Ad-22(b)(3)*

Rule 17Ad-22(b)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.<sup>39</sup> Rule 17Ad-22(b)(3) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions.<sup>40</sup>

As discussed above, the Commission believes that the proposed rule change would help ensure the soundness of the Model by formalizing ICC's process for conducting back-testing, reporting the results of back-testing, and remediating poor results. The Commission believes that the proposed rule change would therefore help ICC to maintain margin requirements to limit its credit exposures to participants under normal market conditions. Moreover, as discussed above, the Back-Testing Framework would also require that ICC Risk conduct monthly parameter reviews and parameter sensitivity analyses. The Commission believes that this aspect of the Back-Testing Framework would help ICC to review margin requirements and the related risk-based models and parameters at least monthly. Finally, as discussed above, the Back-Testing Framework would also require reporting the results of the back-testing process. The Commission believes that this aspect of the proposed rule change would help ICC to use risk-based models and parameters to set margin requirements by helping assure that ICC personnel are informed of the results of back-testing and therefore able to take action to improve the Model if necessary. The Commission therefore finds that the proposed rule is consistent with is consistent with Rule 17Ad-22(b)(2).<sup>41</sup>

Moreover, the amount a CP must contribute to ICC's Guaranty Fund is equal to the expected losses to ICC

associated with the default of that CP, calculated using ICC's stress test methodology, and taking into account, among other things, the loss after application of initial margin.<sup>42</sup> Thus, ICC's guaranty fund is based on the initial margin requirements. The Commission therefore believes that, in helping to maintain the soundness of ICC's Model and therefore margin requirements, the proposed rule change would also help ICC to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions. The Commission therefore finds that the proposed rule is consistent with is consistent with Rule 17Ad-22(b)(3).<sup>43</sup>

Therefore, for these reasons, the Commission finds that the proposed rule change is consistent with Rules 17Ad-22(b)(2) and 17Ad-22(b)(3).<sup>44</sup>

*C. Consistency with Rule 17Ad-22(d)(8)*

Rule 17Ad-22(d)(8) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act and to promote the effectiveness of ICC's risk management procedures.<sup>45</sup>

As described above, the proposed rule change would make a number of ICC personnel responsible for reporting and remediating back-testing results. Specifically, the Back-Testing Framework would require that ICC Risk periodically report results in terms of each CDS instrument, depending on market conditions. If red-zone results appear from overlapping back-testing periods, the Back-Testing Framework would make the Chief Risk Officer and Risk Oversight Officer responsible for determining whether the number of exceedances is indicative of poor back-testing results. Moreover, if the number of exceedances falls in the yellow zone, the Back-Testing Framework would require ICC Risk to determine the cause of the Model's performance. Finally, as discussed above, the Back-Testing Framework would also require that ICC Risk conduct monthly parameter reviews and parameter sensitivity analyses.

The Commission believes that in assigning these responsibilities, the proposed rule change would establish governance arrangements relating to the

Back-Testing Framework that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act by clearly assigning and documenting responsibilities for reporting and acting on the results of back-testing. Moreover, the Commission believes that in setting out specific actions to remediate poor back-testing results the proposed rule change would promote the effectiveness of ICC's risk management procedures by requiring specific actions to correct deficiencies in the Model.

Therefore, for this reason, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(d)(8).<sup>46</sup>

**IV. Conclusion**

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act<sup>47</sup> and Rules 17Ad-22(b)(2), 17Ad-22(b)(3), and 17Ad-22(d)(8) thereunder.<sup>48</sup>

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>49</sup> that the proposed rule change (SR-ICC-2019-001) be, and hereby is, approved.<sup>50</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-85362; File No. SR-NASDAQ-2018-079]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Nasdaq Rules 5705 and 5710 To Adopt a Disclosure Requirement for Certain Securities**

March 19, 2019.

**I. Introduction**

On November 29, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities

<sup>46</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>47</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>48</sup> 17 CFR 240.17Ad-22(b)(2), (b)(3), and (d)(8).

<sup>49</sup> 15 U.S.C. 78s(b)(2).

<sup>50</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>51</sup> 17 CFR 200.30-3(a)(12).

<sup>38</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>39</sup> 17 CFR 240.17Ad-22(b)(2).

<sup>40</sup> 17 CFR 240.17Ad-22(b)(3).

<sup>41</sup> 17 CFR 240.17Ad-22(b)(2).

<sup>42</sup> See ICC Rule 801(a).

<sup>43</sup> 17 CFR 240.17Ad-22(b)(3).

<sup>44</sup> 17 CFR 240.17Ad-22(b)(2), (b)(3).

<sup>45</sup> 17 CFR 240.17Ad-22(d)(8).

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 amend Nasdaq Rules 5705 and 5710 to adopt a disclosure requirement for certain securities. The proposed rule change was published for comment in the **Federal Register** on December 19, 2018.<sup>3</sup> On January 29, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On March 5, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup> On March 19, 2019, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>7</sup> The Commission has received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 2.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 2 <sup>8</sup>

The Exchange proposes to amend Nasdaq Rule 5705(b)(1)(B) relating to Index Fund Shares and Nasdaq Rule 5710(d) relating to Linked Securities. Specifically, the Exchange proposes to require issuers of leveraged or inverse Index Fund Shares and Linked Securities that seek returns on a daily basis to provide additional website disclosure highlighting the daily return feature of these products and the risks associated with holding these products for longer than one day. The Exchange

proposes to amend Nasdaq Rules 5705(b)(1)(B) and 5710(d) to require issuers of such Index Fund Shares or Linked Securities to include on each such product’s website a statement that the product seeks returns for a single day,<sup>9</sup> and that, due to the compounding of returns, holding periods of longer than one day can result in investment returns that are significantly different than the product’s target returns. The proposed disclosure would also direct investors to consult the prospectus for further information on the calculation of the returns and other risks associated with investing in this type of product. The Exchange represents that, while issuers’ websites already typically contain language similar to the disclosure proposed herein, Nasdaq believes that providing example language enhances the transparency of the proposed listing standard.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, 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.

Currently, Nasdaq rules permit the listing and trading of Index Fund Shares and Linked Securities that seek investment results to exceed by a multiple of the performance (leveraged), or exceed by a multiple of the inverse of the performance (inverse), of an underlying index or reference asset. According to the Exchange, these products are designed to track the daily performance of an underlying instrument, and holding these products for longer than a day can result in investment returns that are significantly different than the target return. The

Exchange states that some investors may not fully understand this risk. The Commission believes that the proposed amendments requiring additional disclosure for these types of Index Fund Shares and Linked Securities listed on the Exchange are consistent with investor protection because the disclosure would provide investors with additional information regarding the investment risks associated with these products.

This approval order is based on all of the Exchange’s representations, including those set forth above and in Amendment No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act <sup>12</sup> and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASDAQ-2018-079), as modified by Amendment No. 2 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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## SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 789X)]

### CSX Transportation, Inc.— Discontinuance of Service Exemption—in Miami-Dade County, Fla.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 12.5-mile rail line on its Jacksonville Division, Homestead Subdivision between milepost SXH 54.5 and milepost SXH 67.0 in Miami-Dade County, Fla. (the Line). The Line traverses U.S. Postal Service Zip Codes 33177, 33187, 33170, 33031, and 33030.

CSXT has certified that: (1) No freight traffic has moved over the Line for at least two years; (2) any overhead traffic on the Line can be rerouted over other

<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. 84812 (December 13, 2018), 83 FR 65184.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 85000, 84 FR 1525 (February 4, 2019).

<sup>6</sup> Amendment No. 1, which amends and replaces the proposed rule change in its entirety, is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-079/srnasdaq2018079-5020213-183007.pdf>.

<sup>7</sup> In Amendment No. 2, which amends and replaces the proposed rule change, as modified by Amendment No. 1, in its entirety, the Exchange removes (i) the proposed definition of Closing Indicative Value relating to Linked Securities, and (ii) all of the proposed changes in the first paragraph of Nasdaq Rule 5710(d). Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-079/srnasdaq2018079-5146426-183370.pdf>.

<sup>8</sup> For more information regarding the proposal, including the proposed amendments to Nasdaq Rules 5705 and 5710, see Amendment No. 2, *supra* note 7.

<sup>9</sup> The Exchange notes that the proposed rule change is limited to Multiple/Inverse Daily Products.

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).