

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86507; File No. SR-NASDAQ-2019-056]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend The Nasdaq Options Market LLC Pricing at Options 7, Section 3 Titled “Nasdaq Options Market—Ports and Other Services.”

July 29, 2019.

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 July 15, 2019, 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, II, and III, 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 The Nasdaq Options Market LLC (“NOM”) pricing at Options 7, Section 3 titled “Nasdaq Options Market—Ports and Other Services.” The amendment will describe the pricing with respect to an upcoming technology infrastructure migration.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaq.cchwallstreet.com/>, at the principal office of the Exchange, 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, 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 NOM pricing at Options 7, Section 3 titled “Nasdaq Options Market—Ports and Other Services.” During the month of August 2019, NOM Participants will be required to transition from current FIX Ports,<sup>3</sup> CTI Ports<sup>4</sup> and FIX DROP Ports<sup>5</sup> to new FIX Ports, CTI Ports and FIX DROP Ports in connection with an upcoming technology infrastructure migration.

##### Description of Migration and Pricing Impact

In connection with this migration, Participants will request new FIX Ports, CTI Ports and FIX DROP Ports during the month of August, which are duplicative of the type and quantity of their current ports, at no additional cost to allow for testing of the new ports and allow for continuous connection to the match engine during the transition period.<sup>6</sup> For example, a NOM Participant with 3 FIX Ports, 1 CTI Port and 1 FIX DROP Port on August 1, 2019 could request 3 new FIX Ports, 1 CTI Port and 1 FIX DROP Port for the month of August 2019 at no additional cost. The NOM Participant would be assessed only for the legacy market ports, in this case 3 FIX Ports, 1 CTI Port and 1 FIX DROP Port, for the month of August

<sup>3</sup> Financial Information eXchange” or “FIX” is an interface that allows Participants and their Sponsored Customers to connect, send, and receive messages related to orders to and from the Exchange. Features include the following: (1) Execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications. See Chapter VI, Section 21(a)(i)(A).

<sup>4</sup> Clearing Trade Interface (“CTI”) is a real-time clearing trade update message that is sent to a Participant after an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or “CMTA” or The Options Clearing Corporation or “OCC” number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Chapter VI, Section 19(b)(1).

<sup>5</sup> FIX DROP is a real-time order and execution update message that is sent to a Participant after an order been received/modified or an execution has occurred and contains trade details specific to that Participant. The information includes, among other things, the following: (i) Executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. See Chapter VI, Section 19(b)(3).

<sup>6</sup> Participants would contact Market Operations to acquire new duplicative FIX Ports, CTI Ports and FIX DROP Ports. See Options Technical Update #2019-3.

2019 and would not be assessed for the new ports, which are duplicative of the current ports. A Participant may acquire any additional legacy ports during the month of August 2019 and would be assessed the charges indicated in the current Pricing Schedule. The migration does not require a Participant to acquire any additional ports, rather the migration requires a new port to replace any existing ports provided the Participant desired to maintain the same number of ports.<sup>7</sup> A Participant desiring to enter orders into NOM is required to obtain 1 FIX Port. A Participant may also obtain order and execution ports, such as a CTI Port and/or a FIX DROP Port, to receive clearing and execution messages. The number of additional FIX or order and execution ports obtained by a Participant is dependent on the Participant’s business needs.

##### Applicability to and Impact on Participants<sup>8</sup>

The proposal is not intended to impose any additional fees on any NOM Participants. All Participants may enter orders on NOM. As noted above, a NOM Participant may enter all orders on NOM through one FIX Port. The Exchange does not require a NOM Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is intended to permit a NOM Participant to migrate its current FIX Ports, CTI Ports and FIX DROP Ports at no additional costs during the month of August 2019 to allow for continuous connection to the Exchange. Participants would only be assessed a fee for their current FIX Ports, CTI Ports and FIX DROP Ports and not be assessed a fee for any new duplicative ports they acquire in connection with the technology

<sup>7</sup> The migration is 1:1 and therefore would not require a Participant to acquire new ports, nor would it reduce the number of ports needed to connect.

<sup>8</sup> On May 21, 2019, the SEC Division of Trading and Markets (the “Division”) issued fee filing guidance titled “Staff Guidance on SRO Rule Filings Relating to Fees” (“Guidance”). Within the Guidance, the Division noted, among other things, that the purpose discussion should address “how the fee may apply differently (e.g., additional cost vs. additional discount) to different types of market participants (e.g., market makers, institutional brokers, retail brokers, vendors, etc.) and different sizes of market participants.” See Guidance (available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>). The Guidance also suggests that the purpose discussion should include numerical examples. Where possible, the Exchange is including numerical examples. In addition, the Exchange is providing data to the Commission in support of its arguments herein. The Guidance covers all aspects of a fee filing, which the Exchange has addressed throughout this filing.

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

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

infrastructure migration. This proposal is not intended to have a pricing impact.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>10</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities. Moreover, the Exchange believes that its proposal complies with Commission guidance on SRO fee filings that the Commission Staff issued on May 21, 2019.<sup>11</sup>

### The Proposal is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ." <sup>12</sup>

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is one of several options venues to which

market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange believes its proposal is reasonable because it will not cause a pricing impact on any NOM Participant, rather the proposal is intended to permit NOM Participants to migrate their FIX Ports, CTI Ports and FIX DROP Ports to new technology at no additional cost during the month of August 2019. This proposal, which offers new duplicative ports to Participants at no cost, will allow Participants to test and maintain continuous connection to the Exchange during the month of August 2019.

### The Proposal Represents an Equitable Allocation and Is Not Unfairly Discriminatory

The Exchange believes its proposal allocates its fees fairly among its market participants. The proposal is equitable and not unfairly discriminatory. All Participants may enter orders on NOM. As noted above, a NOM Participant may enter all orders on NOM through one FIX Port. The Exchange does not require a NOM Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is not intended to have a pricing impact to any NOM Participant.

### 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.

### Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. This proposal does not amend pricing or functionality. Rather, this technology migration will enable NOM Participants to continue to connect to NOM, as is the case today, for the entry of orders.

### Intra-Market Competition

The proposal does not impose an undue burden on intra-market competition. All Participants may enter orders on NOM. As noted above, a NOM Participant may enter all orders on NOM through one FIX Port. The Exchange does not require a NOM Participant to obtain more than one FIX Port, however, a Participant may obtain multiple FIX Ports, a CTI Port or a FIX DROP Port to meet its individual business needs. This proposal is not intended to have a pricing impact to any NOM Participant.

### 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>13</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2019-056 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-NASDAQ-2019-056. 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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> See Guidance, *supra* note 8. Although the Exchange believes that this filing complies with the Guidance, the Exchange does not concede that the standards set forth in the Guidance are consistent with the Exchange Act and reserves its right to challenge those standards through administrative and judicial review, as appropriate.

<sup>12</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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-NASDAQ-2019-056 and should be submitted on or before August 23, 2019.

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

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2019-16482 Filed 8-1-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33580; 812-15022]

### Alaia Capital, LLC and m+ ETF Trust

July 30, 2019.

**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), 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) of the Act 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 redeemed 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; (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; and (f) certain Funds ("Feeder Funds") to create and redeem Creation Units in-kind in a master-feeder structure.

**APPLICANTS:** Alaia Capital, LLC (the "Initial Adviser"), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 and m+ ETF Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series.

**FILING DATES:** The application was filed on April 22, 2019.

**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 August 23, 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: Alaia Capital, LLC and m+ ETF Trust, 10 Corbin Drive, Darien, CT 06820.

**FOR FURTHER INFORMATION CONTACT:** Rachel Loko, Senior Counsel, at (202) 551-6883, or Holly Hunter-Ceci, Assistant Chief Counsel, at (202) 551-6825 (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 website by searching for the file number, or for an applicant using the Company name box, at [http://](http://www.sec.gov/search/search.htm)

[www.sec.gov/search/search.htm](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").<sup>1</sup> 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. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions ("Portfolio Instruments"). Each Fund will disclose on its website 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 only 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

<sup>1</sup> Applicants request that the order apply to the new series of the Trust as well as to additional series of the Trust and any other open-end management investment company or series thereof that currently exist or that may be created in the future (each, included in the term "Fund"), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term "Adviser") and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

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