SECURITIES AND EXCHANGE
COMMISSION

[Release No. 34–77706; File No. SR–
NASDAQ–2016–059]

Self-Regulatory Organizations: The
NASDAQ Stock Market LLC; Notice of
Filing and Immediate Effectiveness of
Proposed Rule Change To Require an
Issuer of Securities Listed Under the
Rule 5700 Series To Notify Nasdaq
About the Replacement of the Index,
Portfolio, or Reference Asset
Underlying the Security and Pay a Fee
in Connection With the Change

April 26, 2016.

Pursuant to Section 19(b)(1) of the
Securities Exchange Act of 1934
(“Act”),¹ and Rule 19b–4 thereunder,²
notice is hereby given that on April 20,
2016, 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 require that
an issuer of securities listed under the
Rule 5700 Series notify Nasdaq about
the replacement of the index, portfolio,
or reference asset underlying the
security and pay a fee in connection
with the change.

The text of the proposed rule change is
available on the Exchange’s Web site
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

NASDAQ rules require issuers to notify
Nasdaq about substitution listing events
and impose fees associated with those
notifications. Specifically, Rule
5005(a)(40) defines a “Substitution
Listing Event” as certain changes in the
equity or legal structure of a company³
and Rule 5250(e)(4) requires a listed
company to provide notification to
Nasdaq about these events no later than
15 days before implementation of the
event. These events generally require
Nasdaq to review the entity for
compliance with the applicable listing
requirements.

NASDAQ proposes to expand the
definition of a Substitution Listing
Event to include cases where an issuer
of securities listed under the Rule 5700
Series replaces, or significantly
modifies, the index, portfolio, or
reference asset underlying its security
(including, but not limited to, a
change in the case where Nasdaq
requires that Nasdaq review the changes
to the index, portfolio, or reference asset
underlying its security.⁴ Therefore,
NASDAQ believes it is appropriate to
clarify that NASDAQ has sole discretion as to whether
rule filing and SEC approval, if necessary, and to
clarify that the existing Substitution
Listing Event also applies to situations where a company changes the
index, portfolio, or reference asset
underlying its security.

Finally, NASDAQ proposes to remove
transitional language within Rule
5005(a)(40), which excluded a business
combination that was publicly
announced prior to October 15, 2013,
requirements, and determine if a rule
filing is required.⁶

NASDAQ also proposes to modify Rule
5701 to highlight that a change to the
index, portfolio, or reference asset
underlying a security is a Substitution
Listing Event that requires 15 calendar
days’ notice. The new language also
emphasizes that such a change may
require Nasdaq to file a new rule filing
pursuant to Section 19(b)(1) of the Act
and for such rule filing to be approved
by the SEC or otherwise take effect (as
applicable), before the product can be
listed or traded. The new rule language
also indicates that NASDAQ will halt
trading if a company effectuates a
change that requires such a filing before
it is approved by the SEC or otherwise
takes effect (as applicable). The new
rule language would also indicate that
NASDAQ will commence delisting
proceedings if a company effectuates a
change in the case where NASDAQ
determines not to submit a rule filing or
withdraws a rule filing, or where the
SEC disapproves a rule filing.⁸

NASDAQ also believes that it is
appropriate in these instances to charge
the $5,000 fee assessed for Substitution
Listing Events,⁹ which will offset the
costs associated with NASDAQ’s listing
review and, if necessary, rule filing, as
well as the costs to maintain and revise
NASDAQ’s records, and distribute
information to market participants about
the change. Therefore, NASDAQ is adding
language to Rules 5730 and 5740 to
clarify that the existing Substitution
Listing Event fee also applies to
circumstances where the change to the
index, portfolio, or reference asset
underlying its security.

(December 3, 2015), 80 FR 76605 (December 9,
Substitution Listing Event fee for securities listed
under the Rule 5700 Series).

² Currently, at a minimum, NASDAQ believes that
an issuer must disclose such changes under Rule
5250(b)(1), which requires public disclosure of any
material information that would reasonably be
expected to affect the value of its securities or
influence investors’ decisions, and must notify
NASDAQ’s MarketWatch department 10 minutes
prior to such announcement.

³ A “Substitution Listing Event” means: A reverse
stock split, re-incorporation or a change in the
Company’s place of organization, the formation of a
holding company or a listed Company, classification or exchange of a Company’s listed
shares for another security, the listing of a new class of securities in substitution for a previously-listed
class of securities, a business combination described in IM–5101–2 (unless the transaction was
publicly announced in a press release or Form 8–
K prior to October 15, 2013), or any technical
change whereby the shares of the original Company
receive a share-for-share interest in the
new Company without any change in their equity
position or rights. See Rule 5005(a)(40).

⁴ Other types of changes may also require NASDAQ
to make a rule filing with the Commission to
continue listing the changed product.

⁵ Listed companies provide notification of a
Substitution Listing Event via NASDAQ’s Listing
Center on the Company Event Notification Form.

(December 3, 2015), 80 FR 76605 (December 9,
Substitution Listing Event fee for securities listed
under the Rule 5700 Series).

(December 3, 2015), 80 FR 76605 (December 9,
Substitution Listing Event fee for securities listed
under the Rule 5700 Series).

from being considered a Substitution Listing Event. Nasdaq does not believe that any company listed on Nasdaq has an uncompleted business combination announced prior to that date, which would be considered a Substitution Listing Event. As such, Nasdaq believes this is a technical change to remove an expired transition.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general, and with Sections 6(b)(4) and (5) of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the proposed requirement that the issuer of securities listed under the Rule 5700 Series notify Nasdaq 15 calendar days in advance of changes to the index, portfolio, or reference asset underlying the security is consistent with the investor protection objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest.

Specifically, the proposed change will help ensure that Nasdaq has sufficient time to review the revised index, portfolio, or reference asset and determine whether the product complies with Nasdaq’s listing requirements and whether a rule filing must be filed by Nasdaq pursuant to Section 19(b)(1) of the Act and approved by the Commission or otherwise take effect (as applicable), which will help protect investors.

Moreover, by including this category of changes in the definition of a Substitution Listing Event, Nasdaq will charge a $5,000 fee in connection with the changes, which will help ensure that adequate resources are available for Nasdaq to conduct this review. In addition, the proposed change will clarify that Nasdaq will halt a security if the issuer implements a change that requires a rule filing before that rule filing is approved or effective (as applicable), and delist the security if Nasdaq determines not to file or withdraws the rule filing, or the SEC disapproves the rule filing, thereby protecting investors.

Including changes to the index, portfolio, or reference asset underlying a security in the list of Substitution Listing Events subject to a $5,000 fee is reasonable and equitably allocated in that it is designed to compensate Nasdaq for the work required in connection with effecting changes that the issuer has initiated. As noted above, changes made to a security’s underlying index, portfolio or reference assets require Nasdaq to review the issuer’s listing compliance and may require Nasdaq to submit a rule filing to the Commission. It is reasonable and equitable to allocate the costs of these actions to the issuer that implements the change or event, just as Nasdaq does in connection with other Substitution Listing Events.

The proposed change to eliminate transitional language from Rule 5005(a)(40) will simplify Nasdaq’s rules, thereby removing a potential impediment to a free and open market and national market system.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. This rule proposal is not primarily based on competition, but rather is designed to ensure that Nasdaq staff has adequate time and resources to review a change to an index, portfolio, or reference asset for compliance with the listing requirements and to file and obtain approval or effectiveness of a rule change, if necessary. As such, Nasdaq believes the proposed change will have no impact on competition.

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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow the Exchange to immediately receive the benefit of additional time to review changes to indices, portfolios, or reference assets underlying securities listed under the Rule 5700 Series for compliance with the listing requirements and federal securities law requirements. The Exchange further states that the additional notification time required by the proposal relating to such changes will help to prevent potential disruptions to listings of securities listed under the Rule 5700 Series, thereby helping to protect investors and the public interest.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange states that the proposal will help ensure that the Exchange has sufficient time to review a revised index, portfolio, or reference asset underlying a security listed under the Rule 5700 Series to determine whether the product complies with the Exchange’s listing requirements and

whether a rule filing must be filed by the Exchange pursuant to Section 19(b)(1) of the Act. Accordingly, the Commission designates the proposed rule change to be operative upon filing.16

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 necessary or appropriate in the public interest, for the protection of investors, or 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–NASDAQ–2016–059 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–2016–059. 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–NASDAQ–2016–059 and should be submitted on or May 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.17

Robert W. Errett,
Deputy Secretary.

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SEcurities and EXchange COMMISSION


Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing of Proposed Rule Change Relating to Preferred Volume

April 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”), and Rule 19b–4 thereunder, notice is hereby given that on April 13, 2016, ISE Mercury, LLC (the “Exchange” or “ISE Mercury”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend the Exchange’s Schedule of Fees to explain that while 100% of eligible traded volume preferred to a Market Maker counts towards that member’s volume tiers, Market Makers not preferred on an order will receive credit for the volume those non-preferred members execute. The text of the proposed rule change is available on the Exchange’s Web site (http://www.ise.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 self-regulatory organization 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 self-regulatory organization 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

On March 10, 2016, ISE Mercury introduced fee and rebate tiers for Market Maker and Priority Customer orders based on the average daily volume (“ADV”) that a member executes in Priority Customer orders.5 The Exchange assesses fees and rebates for Market Maker and Priority Customer orders based on five tiers of Total Affiliated Priority Customer ADV, as described in Table 4 of the Fee Schedule: 6 0—19,999 contracts (“Tier 1”), 20,000—39,999 contracts (“Tier 2”), 40,000—59,999 contracts (“Tier 3”), 60,000—79,999 contracts (“Tier 4”), and 80,000 or more contracts (“Tier 5”).7 As

16 For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).


1 The term Market Makers refers to “Competitive Market Makers” and “Primary Market Makers” collectively.

5 A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 350 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Mercury Rule 100(a)(17A).


7 The Total Affiliated Priority Customer ADV category includes all Priority Customer volume executed on the Exchange in all symbols and order types, including volume executed in the PIM, Facilitation, and QCC mechanisms.

The highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. Any day that the market is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from the ADV calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.