

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="33"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2018"/> - * <input type="text" value="005"/>
		Amendment No. (req. for Amendments *) <input type="text"/>

Filing by The Nasdaq Stock Market LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to amend Chapter IV, Section 3 of the rules governing the Nasdaq Options Market to modify the criteria for listing an option on an underlying covered security.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*

Title \*

E-mail \*

Telephone \*  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date

By

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

edward.knight@nasdaq.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Chapter IV, Section 3 (Criteria for Underlying Securities) of the rules governing the Nasdaq Options Market (“NOM”) to modify the criteria for listing an option on an underlying covered security.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</sup>

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on September 19, 2017. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

Questions and comments on the proposed rule change may be directed to:

Sun Kim  
Assistant General Counsel  
Nasdaq, Inc.  
212-231-5106

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to amend NOM Chapter IV, Section 3 to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter “covered security” or “covered securities”). In particular, the Exchange proposes to modify Section 3(b)v.1) to permit the listing of an option on an underlying covered security that has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation (“OCC”) for listing and trading. The Exchange does not intend to amend any other criteria for listing options on an underlying security in Chapter IV, Section 3.

This proposed rule change is identical to a recently-approved rule change by the Exchange’s affiliate, Nasdaq PHLX LLC (“Phlx”), to its initial listing standards,<sup>4</sup> and serves to align the rules of Phlx and the Exchange.

Currently the underlying covered security must have a closing market price of \$3.00 per share for the previous five consecutive business days preceding the date on

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<sup>4</sup> See Securities Exchange Act Release No. 82474 (January 9, 2018) (SR-Phlx-2017-75) (Order Granting Approval of a Proposed Rule Change) (“Phlx Filing”). The Exchange, together with its affiliates, Nasdaq BX, Inc. (“BX”) and Nasdaq ISE, LLC (“ISE”), all of which are wholly owned subsidiaries of Nasdaq, Inc. (“Nasdaq HoldCo”), have filed identical rule change proposals based on the Phlx Filing.

which the Exchange submits a listing certificate to OCC. In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is traded, but the measurement will be the price over the prior three consecutive business day period preceding the submission of the listing certificate to OCC, instead of the prior five business day period.

The Exchange acknowledges that the Options Listing Procedures Plan<sup>5</sup> requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin.<sup>6</sup> The proposed amendment will still comport with that requirement. For example, if an initial public offering (“IPO”) occurs at 11 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday by 12:01 a.m. (Chicago time), with the market price determined by the closing price over the three-day period from Monday through Wednesday. The option on the IPO would then be eligible for trading on the Exchange on Friday. The proposed amendment would essentially enable options trading within four business days of an IPO becoming available instead of

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<sup>5</sup> The Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) of the Securities Exchange Act of 1934 (a/k/a the Options Listing Procedures Plan (“OLPP”)) is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. See Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order approving OLPP). The sponsors of OLPP include Nasdaq; OCC; BATS Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIA X PEARL, LLC; Nasdaq PHLX LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

<sup>6</sup> See OLPP at page 3.

six business days (five consecutive days plus the day the listing certificate is submitted to OCC).

The Exchange's initial listing standards for equity options in Chapter IV, Section 3 (including the current price/time standard of \$3.00 per share for five consecutive business days) are substantially similar to the initial listing standards adopted by other options exchanges.<sup>7</sup> At the time the options industry adopted the "look back" period of five consecutive business days, it was determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would provide a reliable test for stability.<sup>8</sup> Surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and the Exchange represents that its existing trading surveillances are adequate to monitor the trading in the underlying security and subsequent trading of options on the Exchange.<sup>9</sup>

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<sup>7</sup> See, e.g., Phlx Rule 1009, Commentary .01.

<sup>8</sup> See Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR-CBOE-2002-62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR-PCX-2003-06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR-ISE-2003-04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR-Amex-2003-19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR-Phlx-2003-27).

<sup>9</sup> Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. As it relates to IPOs, the Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real-time patterns are active for the new security as soon as the IPO begins trading. The Nasdaq MarketWatch group, which provides such real-time surveillance on the Exchange and its affiliated markets, monitors trading activity in IPOs to see whether the new issue moves substantially above or below the public offering price in the first day or several days of trading.

Furthermore, the Exchange notes that the scope of its surveillance program also includes cross market surveillance for trading that is not just limited to the Exchange. In particular, the Financial Industry Regulatory Authority (“FINRA”), pursuant to a regulatory services agreement, operates a range of cross-market equity surveillance patterns on behalf of the Exchange to look for potential manipulative behavior, including spoofing, algorithm gaming, marking the close and open, and momentum ignition strategies, as well as more general, abusive behavior related to front running, wash sales, quoting/routing, and Reg SHO violations. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates, including data from the New York Stock Exchange (“NYSE”).

Additionally for options, the Nasdaq Options Surveillance team utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on any of the six Nasdaq HoldCo-operated options markets (i.e., mini-manipulation strategies). Surveillance coverage is initiated once options begin trading on any of Nasdaq HoldCo’s six options markets, including the Exchange. Accordingly, the Exchange believes that the cross market surveillance performed by FINRA on behalf of the Exchange, coupled with Exchange staff’s real-time monitoring of similarly violative activity on Nasdaq and its affiliated markets as described herein, reflects a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option within the proposed three-day look back period.

Furthermore, the Exchange notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange

(now known as NYSE American), or the National Market System of the Exchange (now known as the Nasdaq Global Market) (collectively, the “Named Markets”), as provided for in the definition of “covered security” from Section 18(b)(1)(A) of the 1933 Act.<sup>10</sup> Accordingly, the Exchange believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

In addition, the Exchange had no cases within the past five years where an IPO-related issue for which it had pricing information qualified for the \$3.00 price requirement during the first three days of trading and did not qualify for the \$3.00 price requirement during the first five days.<sup>11</sup> In other words, none of these qualifying issues fell below the \$3.00 threshold within the first three or five days of trading. As such, the Exchange believes that its existing surveillance program, coupled with its findings related to the IPO-related issues as described herein, adequately address potential concerns regarding possible manipulation or price stability within the proposed timeframe.

The Exchange also believes that the proposed look back period can be implemented in connection with the other initial listing criteria for underlying covered

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<sup>10</sup> See 15 U.S.C. 77r(b)(1)(A).

<sup>11</sup> There were over 750 IPO-related issues on the Exchange within the past five years. Out of all of the issues with pricing information, there was only one issue that had a price below \$3 during the first five consecutive business days. The Exchange notes, however, that it allows for companies to list on the Nasdaq Capital Market at \$2.00 or \$3.00 per share in some instances, which was the case for this particular issue. See Rule 5500 Series for initial listing standards on the Nasdaq Capital Market.



securities. In particular, the Exchange recognizes that it may be difficult to verify the number of shareholders in the days immediately following an IPO due to the fact that stock trades generally clear within two business days (T+2) of their trade date and therefore the shareholder count will generally not be known until T+2.<sup>12</sup> The Exchange notes that the current T+2 settlement cycle was recently reduced from T+3 on September 5, 2017 in connection with the Commission's amendments to Exchange Rule 15c6-1(a) to adopt the shortened settlement cycle,<sup>13</sup> and the look back period of three consecutive business days proposed herein reflects this shortened T+2 settlement period. As proposed, stock trades would clear within T+2 of their trade date (i.e., within three business days) and therefore the number of shareholders could be verified within three business days, thereby enabling options trading within four business days of an IPO (three consecutive business days plus the day the listing certificate is submitted to OCC).

Furthermore, the Exchange notes that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele. Such firms can confirm the number of individual customers who have a position in the new issue. The earliest that these firms can provide confirmation is usually the day after the first day of trading (T+1) on an unsettled basis, while others can confirm on the third day of trading (T+2). The Exchange has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are able to provide these numbers within

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<sup>12</sup> The number of shareholders of record can be verified from large clearing agencies such as The Depository Trust and Clearing Corporation ("DTCC") upon the settlement date (i.e., T+2).

<sup>13</sup> See Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7- 22-16).

T+2 after an IPO. For the foregoing reasons, the Exchange believes that basing the proposed three business day look back period on the T+2 settlement cycle would allow for sufficient verification of the number of shareholders.

The proposed rule change will apply to all covered securities that meet the relevant criteria in Chapter IV, Section 3. Pursuant to Section 3(b), Nasdaq Regulation establishes guidelines to be considered in evaluating potential underlying securities for NOM options transactions. However, the fact that a particular security may meet the standards established by Nasdaq Regulation does not necessarily mean that it will be selected as an underlying security.<sup>14</sup> As part of the established criteria, the issuer must be in compliance with any applicable requirements of the Act and the rules thereunder.<sup>15</sup> Additionally, in considering the underlying security, Nasdaq Regulation relies on information made publicly available by the issuer and/or the markets in which the security is traded.<sup>16</sup> The Exchange believes that these measures, together with its existing surveillance procedures, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>18</sup> in particular,

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<sup>14</sup> See Chapter IV, Section 3(b).

<sup>15</sup> See Chapter IV, Section 3(b)iii.

<sup>16</sup> See Chapter IV, Section 3(d).

<sup>17</sup> 15 U.S.C. 78f(b).

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.

The Exchange believes that the proposed changes to its listing standards for covered securities would allow the Exchange to more quickly list options on a qualifying covered security that has met the \$3.00 eligibility price without sacrificing investor protection. As discussed above, the Exchange believes that its existing trading surveillances provide a sufficient measure of protection against potential price manipulation within the proposed three consecutive business day timeframe. The Exchange also believes that the proposed three consecutive business day timeframe would continue to be a reliable test for price stability in light of its findings that none of the IPO-related issues on Nasdaq within the past five years that qualified for the \$3.00 per share price standard during the first three trading days fell below the \$3.00 threshold during the fourth or fifth trading day. Furthermore, the established guidelines to be considered by the Exchange in evaluating the potential underlying securities for Exchange option transactions,<sup>19</sup> together with existing trading surveillances, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the proposed timeframe.

In addition, the Exchange believes that basing the proposed timeframe on the T+2 settlement cycle adequately addresses the potential difficulties in confirming the number of shareholders of the underlying covered security. Having some of the largest brokerage

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<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> See notes 14 - 16 above.

firms that provide these shareholder counts to the Exchange confirm that they are able to provide these numbers within T+2 further demonstrates that the 2,000 shareholder requirement can be sufficiently verified within the proposed timeframe. For the foregoing reasons, the Exchange believes that the proposed amendments will remove and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to swiftly hedge their investment in the stock in a shorter amount of time than what is currently in place.<sup>20</sup>

Finally, it should be noted that a price/time standard for the underlying security was first adopted when the listed options market was in its infancy, and was intended to prevent the proliferation of options being listed on low-priced securities that presented special manipulation concerns and/or lacked liquidity needed to maintain fair and orderly markets.<sup>21</sup> When options trading commenced in 1973, the Commission determined that it was necessary for securities underlying options to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security.<sup>22</sup> These standards, including a price/time standard, were imposed to ensure that those issuers upon whose securities options were to be traded were widely-held, financially sound companies whose shares had trading volume and float substantial

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<sup>20</sup> This proposed rule change does not alter any obligations of issuers or other investors of an IPO that may be subject to a lock-up or other restrictions on trading related securities.

<sup>21</sup> See Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949-01 (September 5, 1991) (SR-AMEX-86-19; SR-CBOE-86-15; SR-NYSE-86-20; SR-PSE-86-15; and SR-PHLX-86-21) (“1991 Approval Order”) at 43949 (discussing the Commission’s concerns when options trading initially commenced in 1973).

<sup>22</sup> See 1991 Approval Order at 43949.

enough so as not to be readily susceptible to manipulation.<sup>23</sup> At that time, the Commission determined that the imposition of these standards was reasonable in view of the pilot nature of options trading and the limited experience of investors with options trading.<sup>24</sup>

Now more than 40 years later, the listed options market has evolved into a mature market with sophisticated investors. In view of this evolution, the Commission has approved various exchange proposals to relax some of these initial listing standards throughout the years,<sup>25</sup> including reducing the price/time standard in 2003 from \$7.50 per share for the majority of business days over a three month period to the current \$3.00 per share/five business day standard (“2003 Proposal”).<sup>26</sup> It has been almost fifteen years since the Commission approved the 2003 Proposal, and both the listed options market and exchange technologies have continued to evolve since then. In this instance, Nasdaq is only proposing a modest reduction of the current five business day standard to three business days to correspond to the securities industry’s move to a T+2 standard settlement cycle.<sup>27</sup> The \$3.00 per share standard and all other initial options listing criteria in Chapter IV, Section 3 will remain unchanged by this proposal. For the reasons

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<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> See e.g., 1991 Approval Order (modifying a number of initial listing criteria, including the reduction of the price/time standard from \$10 per share each day during the preceding three calendar months to \$7.50 per share for the majority of days during the same period).

<sup>26</sup> See note 8 above.

<sup>27</sup> See note 13 above.

discussed herein, the Exchange therefore believes that the proposed three business day period will be beneficial to the marketplace without sacrificing investor protections.

4. 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 proposed rule change reduces the number of days to list options on an underlying security, and is intended to bring new options listings to the marketplace quicker.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>28</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>29</sup> in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

The proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition because it would allow the Exchange greater flexibility in bringing new options listings to the marketplace more quickly, which will be beneficial to the marketplace. While the proposed rule change would shorten the look back period from five consecutive business days to three, the Exchange believes that the reduced time frame would still be sufficient to protect against attempts to manipulate the market price of the underlying security and would continue to provide a reliable test for stability. As discussed above, the \$3.00 per share price standard and all other initial options listing criteria in Chapter IV, Section 3 will remain unchanged by this proposal. In addition, the fact that a particular security meets these initial listing standards does not necessarily mean that it will be selected as an underlying security,<sup>30</sup> so the proposed rule change is only an enabling rule in this regard. In addition, the Exchange believes that its surveillance program, coupled with its findings on the IPO-related issues as discussed above, also adequately address potential concerns regarding possible manipulation or price stability within the proposed timeframe.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

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<sup>30</sup> See Chapter IV, Section 3(b).

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the Exchange can align its initial options listing standards with that of its affiliates.<sup>31</sup> Similar rule change proposals will be filed for BX and ISE, as noted above. Market participants that are members on multiple exchanges operated by Nasdaq HoldCo will be provided greater uniformity regarding the initial options listing criteria with the establishment of consistent standards across the six Nasdaq HoldCo exchanges.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on Phlx Rule 1009, Commentary .01.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

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<sup>31</sup> See note 4 above.



11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2018-005)

January \_\_, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Criteria for Listing Underlying Securities

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 January 16, 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, 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 Chapter IV, Section 3 (Criteria for Underlying Securities) of the rules governing the Nasdaq Options Market (“NOM”) to modify the criteria for listing an option on an underlying covered security.

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.

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

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

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 purpose of the proposed rule change is to amend NOM Chapter IV, Section 3 to modify the criteria for listing options on an underlying security as defined in Section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter "covered security" or "covered securities"). In particular, the Exchange proposes to modify Section 3(b)v.1) to permit the listing of an option on an underlying covered security that has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation ("OCC") for listing and trading. The Exchange does not intend to amend any other criteria for listing options on an underlying security in Chapter IV, Section 3.

This proposed rule change is identical to a recently-approved rule change by the Exchange's affiliate, Nasdaq PHLX LLC ("Phlx"), to its initial listing standards,<sup>3</sup> and serves to align the rules of Phlx and the Exchange.

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<sup>3</sup> See Securities Exchange Act Release No. 82474 (January 9, 2018) (SR-Phlx-2017-75) (Order Granting Approval of a Proposed Rule Change) ("Phlx Filing"). The Exchange, together with its affiliates, Nasdaq BX, Inc. ("BX") and Nasdaq ISE, LLC ("ISE"), all of which are wholly owned subsidiaries of Nasdaq, Inc.

Currently the underlying covered security must have a closing market price of \$3.00 per share for the previous five consecutive business days preceding the date on which the Exchange submits a listing certificate to OCC. In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is traded, but the measurement will be the price over the prior three consecutive business day period preceding the submission of the listing certificate to OCC, instead of the prior five business day period.

The Exchange acknowledges that the Options Listing Procedures Plan<sup>4</sup> requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin.<sup>5</sup> The proposed amendment will still comport with that requirement. For example, if an initial public offering (“IPO”) occurs at 11 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday by 12:01 a.m. (Chicago time), with the market price determined by the closing price over the three-day

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(“Nasdaq HoldCo”), have filed identical rule change proposals based on the Phlx Filing.

<sup>4</sup> The Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11a(2)(3)(B) of the Securities Exchange Act of 1934 (a/k/a the Options Listing Procedures Plan (“OLPP”)) is a national market system plan that, among other things, sets forth procedures governing the listing of new options series. See Securities Exchange Act Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (Order approving OLPP). The sponsors of OLPP include Nasdaq; OCC; BATS Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; EDGX Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq PHLX LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NYSE American, LLC; and NYSE Arca, Inc.

<sup>5</sup> See OLPP at page 3.

period from Monday through Wednesday. The option on the IPO would then be eligible for trading on the Exchange on Friday. The proposed amendment would essentially enable options trading within four business days of an IPO becoming available instead of six business days (five consecutive days plus the day the listing certificate is submitted to OCC).

The Exchange's initial listing standards for equity options in Chapter IV, Section 3 (including the current price/time standard of \$3.00 per share for five consecutive business days) are substantially similar to the initial listing standards adopted by other options exchanges.<sup>6</sup> At the time the options industry adopted the "look back" period of five consecutive business days, it was determined that the five-day period was sufficient to protect against attempts to manipulate the market price of the underlying security and would provide a reliable test for stability.<sup>7</sup> Surveillance technologies and procedures concerning manipulation have evolved since then to provide adequate prevention or detection of rule or securities law violations within the proposed time frame, and the Exchange represents that its existing trading surveillances are adequate to monitor the trading in the underlying security and subsequent trading of options on the Exchange.<sup>8</sup>

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<sup>6</sup> See, e.g., Phlx Rule 1009, Commentary .01.

<sup>7</sup> See Securities Exchange Act Release Nos. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (SR-CBOE-2002-62); 47352 (February 11, 2003), 68 FR 8319 (February 20, 2003) (SR-PCX-2003-06); 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR-ISE-2003-04); 47613 (April 1, 2003), 68 FR 17120 (April 8, 2003) (SR-Amex-2003-19); and 47794 (May 5, 2003), 68 FR 25076 (May 9, 2003) (SR-Phlx-2003-27).

<sup>8</sup> Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. As it relates to IPOs, the Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols. These real-

Furthermore, the Exchange notes that the scope of its surveillance program also includes cross market surveillance for trading that is not just limited to the Exchange. In particular, the Financial Industry Regulatory Authority (“FINRA”), pursuant to a regulatory services agreement, operates a range of cross-market equity surveillance patterns on behalf of the Exchange to look for potential manipulative behavior, including spoofing, algorithm gaming, marking the close and open, and momentum ignition strategies, as well as more general, abusive behavior related to front running, wash sales, quoting/routing, and Reg SHO violations. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates, including data from the New York Stock Exchange (“NYSE”).

Additionally for options, the Nasdaq Options Surveillance team utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on any of the six Nasdaq HoldCo-operated options markets (i.e., mini-manipulation strategies). Surveillance coverage is initiated once options begin trading on any of Nasdaq HoldCo’s six options markets, including the Exchange. Accordingly, the Exchange believes that the cross market surveillance performed by FINRA on behalf of the Exchange, coupled with Exchange staff’s real-time monitoring of similarly violative activity on Nasdaq and its affiliated markets as described herein, reflects a comprehensive surveillance program

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time patterns are active for the new security as soon as the IPO begins trading. The Nasdaq MarketWatch group, which provides such real-time surveillance on the Exchange and its affiliated markets, monitors trading activity in IPOs to see whether the new issue moves substantially above or below the public offering price in the first day or several days of trading.

that is adequate to monitor for manipulation of the underlying security and overlying option within the proposed three-day look back period.

Furthermore, the Exchange notes that the proposed listing criteria would still require that the underlying security be listed on NYSE, the American Stock Exchange (now known as NYSE American), or the National Market System of the Exchange (now known as the Nasdaq Global Market) (collectively, the “Named Markets”), as provided for in the definition of “covered security” from Section 18(b)(1)(A) of the 1933 Act.<sup>9</sup> Accordingly, the Exchange believes that the proposed rule change would still ensure that the underlying security meets the high listing standards of a Named Market, and would also ensure that the underlying is covered by the regulatory protections (including market surveillance, investigation and enforcement) offered by these exchanges for trading in covered securities conducted on their facilities.

In addition, the Exchange had no cases within the past five years where an IPO-related issue for which it had pricing information qualified for the \$3.00 price requirement during the first three days of trading and did not qualify for the \$3.00 price requirement during the first five days.<sup>10</sup> In other words, none of these qualifying issues fell below the \$3.00 threshold within the first three or five days of trading. As such, the Exchange believes that its existing surveillance program, coupled with its findings related

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<sup>9</sup> See 15 U.S.C. 77r(b)(1)(A).

<sup>10</sup> There were over 750 IPO-related issues on the Exchange within the past five years. Out of all of the issues with pricing information, there was only one issue that had a price below \$3 during the first five consecutive business days. The Exchange notes, however, that it allows for companies to list on the Nasdaq Capital Market at \$2.00 or \$3.00 per share in some instances, which was the case for this particular issue. See Rule 5500 Series for initial listing standards on the Nasdaq Capital Market.

to the IPO-related issues as described herein, adequately address potential concerns regarding possible manipulation or price stability within the proposed timeframe.

The Exchange also believes that the proposed look back period can be implemented in connection with the other initial listing criteria for underlying covered securities. In particular, the Exchange recognizes that it may be difficult to verify the number of shareholders in the days immediately following an IPO due to the fact that stock trades generally clear within two business days (T+2) of their trade date and therefore the shareholder count will generally not be known until T+2.<sup>11</sup> The Exchange notes that the current T+2 settlement cycle was recently reduced from T+3 on September 5, 2017 in connection with the Commission's amendments to Exchange Rule 15c6-1(a) to adopt the shortened settlement cycle,<sup>12</sup> and the look back period of three consecutive business days proposed herein reflects this shortened T+2 settlement period. As proposed, stock trades would clear within T+2 of their trade date (i.e., within three business days) and therefore the number of shareholders could be verified within three business days, thereby enabling options trading within four business days of an IPO (three consecutive business days plus the day the listing certificate is submitted to OCC).

Furthermore, the Exchange notes that it can verify the shareholder count with various brokerage firms that have a large retail customer clientele. Such firms can confirm the number of individual customers who have a position in the new issue. The

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<sup>11</sup> The number of shareholders of record can be verified from large clearing agencies such as The Depository Trust and Clearing Corporation ("DTCC") upon the settlement date (i.e., T+2).

<sup>12</sup> See Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7- 22-16).



earliest that these firms can provide confirmation is usually the day after the first day of trading (T+1) on an unsettled basis, while others can confirm on the third day of trading (T+2). The Exchange has confirmed with some of these brokerage firms who provide shareholder numbers to the Exchange that they are able to provide these numbers within T+2 after an IPO. For the foregoing reasons, the Exchange believes that basing the proposed three business day look back period on the T+2 settlement cycle would allow for sufficient verification of the number of shareholders.

The proposed rule change will apply to all covered securities that meet the relevant criteria in Chapter IV, Section 3. Pursuant to Section 3(b), Nasdaq Regulation establishes guidelines to be considered in evaluating potential underlying securities for NOM options transactions. However, the fact that a particular security may meet the standards established by Nasdaq Regulation does not necessarily mean that it will be selected as an underlying security.<sup>13</sup> As part of the established criteria, the issuer must be in compliance with any applicable requirements of the Act and the rules thereunder.<sup>14</sup> Additionally, in considering the underlying security, Nasdaq Regulation relies on information made publicly available by the issuer and/or the markets in which the security is traded.<sup>15</sup> The Exchange believes that these measures, together with its existing surveillance procedures, provide adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the timeframe contained in this proposal.

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<sup>13</sup> See Chapter IV, Section 3(b).

<sup>14</sup> See Chapter IV, Section 3(b)iii.

<sup>15</sup> See Chapter IV, Section 3(d).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>17</sup> 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.

The Exchange believes that the proposed changes to its listing standards for covered securities would allow the Exchange to more quickly list options on a qualifying covered security that has met the \$3.00 eligibility price without sacrificing investor protection. As discussed above, the Exchange believes that its existing trading surveillances provide a sufficient measure of protection against potential price manipulation within the proposed three consecutive business day timeframe. The Exchange also believes that the proposed three consecutive business day timeframe would continue to be a reliable test for price stability in light of its findings that none of the IPO-related issues on Nasdaq within the past five years that qualified for the \$3.00 per share price standard during the first three trading days fell below the \$3.00 threshold during the fourth or fifth trading day. Furthermore, the established guidelines to be considered by the Exchange in evaluating the potential underlying securities for Exchange option transactions,<sup>18</sup> together with existing trading surveillances, provide

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See notes 13 - 15 above.

adequate safeguards in the review of any covered security that may meet the proposed criteria for consideration of the option within the proposed timeframe.

In addition, the Exchange believes that basing the proposed timeframe on the T+2 settlement cycle adequately addresses the potential difficulties in confirming the number of shareholders of the underlying covered security. Having some of the largest brokerage firms that provide these shareholder counts to the Exchange confirm that they are able to provide these numbers within T+2 further demonstrates that the 2,000 shareholder requirement can be sufficiently verified within the proposed timeframe. For the foregoing reasons, the Exchange believes that the proposed amendments will remove and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to swiftly hedge their investment in the stock in a shorter amount of time than what is currently in place.<sup>19</sup>

Finally, it should be noted that a price/time standard for the underlying security was first adopted when the listed options market was in its infancy, and was intended to prevent the proliferation of options being listed on low-priced securities that presented special manipulation concerns and/or lacked liquidity needed to maintain fair and orderly markets.<sup>20</sup> When options trading commenced in 1973, the Commission determined that it was necessary for securities underlying options to meet certain minimum standards

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<sup>19</sup> This proposed rule change does not alter any obligations of issuers or other investors of an IPO that may be subject to a lock-up or other restrictions on trading related securities.

<sup>20</sup> See Securities Exchange Act Release No. 29628 (August 29, 1991), 56 FR 43949-01 (September 5, 1991) (SR-AMEX-86-19; SR-CBOE-86-15; SR-NYSE-86-20; SR-PSE-86-15; and SR-PHLX-86-21) (“1991 Approval Order”) at 43949 (discussing the Commission’s concerns when options trading initially commenced in 1973).

regarding both the quality of the issuer and the quality of the market for a particular security.<sup>21</sup> These standards, including a price/time standard, were imposed to ensure that those issuers upon whose securities options were to be traded were widely-held, financially sound companies whose shares had trading volume and float substantial enough so as not to be readily susceptible to manipulation.<sup>22</sup> At that time, the Commission determined that the imposition of these standards was reasonable in view of the pilot nature of options trading and the limited experience of investors with options trading.<sup>23</sup>

Now more than 40 years later, the listed options market has evolved into a mature market with sophisticated investors. In view of this evolution, the Commission has approved various exchange proposals to relax some of these initial listing standards throughout the years,<sup>24</sup> including reducing the price/time standard in 2003 from \$7.50 per share for the majority of business days over a three month period to the current \$3.00 per share/five business day standard (“2003 Proposal”).<sup>25</sup> It has been almost fifteen years since the Commission approved the 2003 Proposal, and both the listed options market and exchange technologies have continued to evolve since then. In this instance, Nasdaq is only proposing a modest reduction of the current five business day standard to three

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<sup>21</sup> See 1991 Approval Order at 43949.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> See e.g., 1991 Approval Order (modifying a number of initial listing criteria, including the reduction of the price/time standard from \$10 per share each day during the preceding three calendar months to \$7.50 per share for the majority of days during the same period).

<sup>25</sup> See note 7 above.

business days to correspond to the securities industry's move to a T+2 standard settlement cycle.<sup>26</sup> The \$3.00 per share standard and all other initial options listing criteria in Chapter IV, Section 3 will remain unchanged by this proposal. For the reasons discussed herein, the Exchange therefore believes that the proposed three business day period will be beneficial to the marketplace without sacrificing investor protections.

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 proposed rule change reduces the number of days to list options on an underlying security, and is intended to bring new options listings to the marketplace quicker.

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

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<sup>26</sup> See note 12 above.

to Section 19(b)(3)(A)(iii) of the Act<sup>27</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>28</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2018-005 on the subject line.

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>28</sup> 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.

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-2018-005. This file number should be included on the subject line if e-mail 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 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; 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-2018-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined>.

**The Nasdaq Stock Market Rules**

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**Chapter IV Securities Traded on NOM**

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**Sec. 3 Criteria for Underlying Securities**

(a) No change.

(b) In addition, Nasdaq Regulation shall from time to time establish standards to be considered in evaluating potential underlying securities for NOM options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the standards established by Nasdaq Regulation does not necessarily mean that it will be selected as an underlying security. Nasdaq Regulation may give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, an underlying security will not be selected unless:

i. – iv. No change.

v. Either:

- 1) If the underlying security is a "covered security" as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least \$3.00 for the previous [five]three consecutive business days preceding the date on which the Exchange submits a certificate to the Clearing Corporation for listing and trading, as measured by the closing price reported in the primary market in which the underlying security is traded; or
- 2) If the underlying security is not a "covered security," the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three (3) calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

(c) – (n) No change.

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