Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *
Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document
Exhibit 3 Sent As Paper Document

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

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

Initial * Amendment * Withdrawal * Section 19(b)(2) * Section 19(b)(3)(A) * Section 19(b)(3)(B) *

Pilot [] Extension of Time Period for Commission Action * Date Expires *

Rule
19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *
Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

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

A proposal to change the rule for listing and trading the shares of the AlphaMark Actively Managed Small Cap ETF

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 * Jonathan Last Name * Cayne
Title * Principal Associate General Counsel
E-mail * jonathan.cayne@nasdaq.com
Telephone * (301) 978-8493 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.

Date 06/19/2019 Global Chief Legal & Policy Officer
By Edward S. Knight

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
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”)\(^1\) and Rule 19b-4 thereunder,\(^2\) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to change the rule for listing and trading the shares of the AlphaMark Actively Managed Small Cap ETF (the “Fund”) of ETF Series Solutions (the “Trust”). Currently, the shares are listed pursuant to an SEC approval order, but will now be listed pursuant to the generic listing standards under Nasdaq Rule 5735. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.\(^3\)

   The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).\(^4\)

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

   (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”)

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4. Id.
on September 26, 2018. 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.

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

Jonathan F. Cayne  
Principal Associate General Counsel  
Nasdaq, Inc.  
(301) 978 8493

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

a. Purpose

The Exchange proposes to change the rule for listing and trading the shares of the Fund. Currently, the shares are listed pursuant to an SEC approval order, but will now be listed pursuant to the generic listing standards under Nasdaq Rule 5735.

The Shares began trading on the Exchange on April 21, 2015 after the Commission issued an order approving the listing and trading of the Shares on the Exchange. At that time, the Exchange was required to file separate proposals under Section 19(b) of the Act before the listing of any funds listed pursuant to Nasdaq Rule 5735 (“Managed Fund Shares”) and, as provided in the Filing, the Exchange will commence delisting procedures under the Nasdaq Rule 5800 series for a Fund where the

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6 Id.
Fund is not in compliance with the applicable listing requirements. On September 23, 2016, the Commission approved generic listing standards for Managed Fund Shares that would allow shares of a series of Managed Fund Shares to list and trade on the Exchange pursuant to Rule 19b-4(e) so long as the components of that series of Managed Fund Shares meet the criteria in Nasdaq Rule 5735(b)(1) on an initial and continual basis.

The Exchange now proposes to list and trade the Shares pursuant to Rule 19b4(e) of the Act as provided in Nasdaq Rule 5735(b)(1) and, as such, the components of the Fund will be required to comply with the requirements of that rule on an initial and continual basis. The Exchange has confirmed that the Fund’s portfolio currently complies with the requirements of Nasdaq Rule 5735(b)(1). The Exchange notes that if the Fund was not already listed, it could be listed pursuant to Rule 19b-4(e) without the submission of a rule filing.

b. Statutory Basis

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

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7 As provided in the Filing, all statements and representations made in the Filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.


9 As provided in Nasdaq Rule 5735(b)(1), the Fund must also comply with such requirements on a continual basis and any failure to meet such requirements will result in the Exchange initiating delisting proceedings for the Fund pursuant to the Nasdaq Rule 5800 series.

in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because the sole change in the proposal is to have the Fund listed and traded on the Exchange pursuant to the generic listing standards under Nasdaq Rule 5735. As noted above, if the Fund was not already listed, it would be able to be listed pursuant to Rule 19b-4(e) without the submission of a rule filing because the SEC has approved rules on the Exchange related to generic listing standards for Managed Fund Shares on the basis that the generic listing criteria is consistent with the Act and, in particular, “is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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.”

Therefore, the Exchange believes that the proposal is designed to prevent

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13 See supra note 8.
fraudulent and manipulative acts and practices, 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.

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 Exchange believes that the proposal to allow the Fund to be listed on the
   Exchange pursuant to the generic listing standards under Nasdaq Rule 5735(b)(1) will
   have no impact on competition.

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)\(^{14}\) of the Act and Rule 19b-4(f)(6) thereunder\(^{15}\) 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

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interest.

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 written notice.

The Exchange believes that its rule change proposal is appropriate for filing on an immediately effective basis under Rule 19b-4(f)(6). The Exchange believes the proposed rule change will not significantly affect the protection of investors or the public interest because the proposal is simply changing the basis for how the Fund will be listed on the Exchange and, as noted above, if the Fund was not already listed, it would be able to be listed pursuant to Rule 19b-4(e) without the submission of a rule filing. Therefore, the Exchange believes that the ability to list the Fund on the Exchange under Nasdaq Rule 5735(b)(1) raises no substantive issues for the Commission. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “noncontroversial” rule change under Rule 19b-4(f)(6).16

The Exchange respectfully requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act17 and paragraph (f)(6) of Rule 19b-4 thereunder.18 Waiver of the 30-day operative delay will allow the Fund to be subject to a single compliance regime under Nasdaq Rule

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16 Id.
5735(b)(1) instead of the series of representations made in the Fund’s 19b-4 as soon as practicable, which will streamline and simplify compliance and the costs associated therewith. Further, as noted above, if the Fund was not currently listed, it would be eligible for immediate listing pursuant to Nasdaq Rule 5735(b)(1) and the Exchange does not believe that there is any reason that the Fund should be treated differently because it is already listed on the Exchange. Waiver of the operative delay is consistent with the protection of investors and the public interest for the reasons described above.

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.

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

Not applicable.

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.

11. Exhibits

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Listing and Trading the Shares of the AlphaMark Actively Managed Small Cap ETF

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 June 19, 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 change the rule for listing and trading the shares of the AlphaMark Actively Managed Small Cap ETF (the “Fund”) of ETF Series Solutions (the “Trust”). Currently, the shares are listed pursuant to an SEC approval order, but will now be listed pursuant to the generic listing standards under Nasdaq Rule 5735.

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 change the rule for listing and trading the shares of the Fund. Currently, the shares are listed pursuant to an SEC approval order, but will now be listed pursuant to the generic listing standards under Nasdaq Rule 5735.

The Shares began trading on the Exchange on April 21, 2015 after the Commission issued an order approving the listing and trading of the Shares on the Exchange. At that time, the Exchange was required to file separate proposals under Section 19(b) of the Act before the listing of any funds listed pursuant to Nasdaq Rule 5735 (“Managed Fund Shares”) and, as provided in the Filing, the Exchange will commence delisting procedures under the Nasdaq Rule 5800 series for a Fund where the

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4 Id.
Fund is not in compliance with the applicable listing requirements.⁵ On September 23, 2016, the Commission approved generic listing standards for Managed Fund Shares that would allow shares of a series of Managed Fund Shares to list and trade on the Exchange pursuant to Rule 19b-4(e) so long as the components of that series of Managed Fund Shares meet the criteria in Nasdaq Rule 5735(b)(1) on an initial and continual basis.⁶

The Exchange now proposes to list and trade the Shares pursuant to Rule 19b4(e) of the Act as provided in Nasdaq Rule 5735(b)(1) and, as such, the components of the Fund will be required to comply with the requirements of that rule on an initial and continual basis. The Exchange has confirmed that the Fund’s portfolio currently complies with the requirements of Nasdaq Rule 5735(b)(1).⁷ The Exchange notes that if the Fund was not already listed, it could be listed pursuant to Rule 19b-4(e) without the submission of a rule filing.

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular,

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⁵ As provided in the Filing, all statements and representations made in the Filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.


⁷ As provided in Nasdaq Rule 5735(b)(1), the Fund must also comply with such requirements on a continual basis and any failure to meet such requirements will result in the Exchange initiating delisting proceedings for the Fund pursuant to the Nasdaq Rule 5800 series.

in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because the sole change in the proposal is to have the Fund listed and traded on the Exchange pursuant to the generic listing standards under Nasdaq Rule 5735. As noted above, if the Fund was not already listed, it would be able to be listed pursuant to Rule 19b-4(e) without the submission of a rule filing because the SEC has approved rules on the Exchange related to generic listing standards for Managed Fund Shares on the basis that the generic listing criteria is consistent with the Act and, in particular, “is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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.”

11  See supra note 8.
Therefore, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, 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.

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 Exchange believes that the proposal to allow the Fund to be listed on the Exchange pursuant to the generic listing standards under Nasdaq Rule 5735(b)(1) 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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.

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13 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
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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-052 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-2019-052. 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 proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2019-052 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.\(^{14}\)

Eduardo A. Aleman
Assistant Secretary

\(^{14}\) 17 CFR 200.30-3(a)(12).