

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78384; File No. SR-Nasdaq-2016-002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To List and Trade Shares of the First Trust Municipal High Income ETF of First Trust Exchange-Traded Fund III

July 21, 2016.

On January 6, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the First Trust Municipal High Income ETF ("Fund") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on January 27, 2016.³ On February 16, 2016, the Exchange filed Amendment No. 1.⁴ On March 8, 2016, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ On April 26, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.⁸

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 76944 (Jan. 21, 2016), 81 FR 4712 ("Notice").

⁴ Amendment No. 1 is available on the Commission's Web site at: <http://www.sec.gov/comments/sr-nasdaq-2016-002/nasdaq2016002-1.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 34-77320, 81 FR 13429 (Mar. 14, 2016). The Commission designated April 26, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 77871, 81 FR 26265 (May 2, 2016) ("Order Instituting Proceedings"). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to

In the Order Instituting Proceedings, the Commission solicited comments to specified matters related to the proposal.⁹ On June 24, 2016, the Exchange filed Amendment No. 2, which replaced the originally filed proposed rule change in its entirety.¹⁰ The Commission has not received any comments on the proposed rule change.

Section 19(b)(2) of the Act¹¹ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 27, 2016.¹² The 180th day after publication of the notice of the filing of the proposed rule change in the **Federal Register** is July 25, 2016.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹³ designates September 23, 2016, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto (File No. SR-Nasdaq-2016-002).

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

Robert W. Errett,

Deputy Secretary.

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promote just and equitable principles of trade," and "to protect investors and the public interest." See *id.*, 81 FR at 26268.

⁹ See *id.*

¹⁰ Amendment No. 2 is available on the Commission's Web site at: <https://www.sec.gov/comments/sr-nasdaq-2016-002/nasdaq2016002-2.pdf>.

¹¹ 15 U.S.C. 78s(b)(2).

¹² See *supra* note 3.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78381; File No. SR-NYSEArca-2016-103]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rules 2.17(c) and 2.23(i) To Harmonize the Requirement of When OTP Holders and OTP Firms Must File a Uniform Termination Notice for Securities Industry Registration With the Rules of Other Exchanges and FINRA

July 21, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 14, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 2.17(c) and 2.23(i) to harmonize the requirement of when OTP Holders and OTP Firms must file an [sic] Uniform Termination Notice for Securities Industry Registration ("Form U-5") with the rules of other exchanges and FINRA. The proposed rule change is available on the Exchange's Web site at www.nyse.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 those 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 parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to amend Rules 2.17 and 2.23 to harmonize the requirement of when OTP Holders and OTP Firms must file a Form U-5 with the requirements on [sic] other exchanges and the Financial Industry Regulatory Authority ("FINRA"). This filing is not intended to address any other registration requirements in Exchange rules.

Specifically, under current Rule 2.17(c), an OTP Holder that terminates an OTP is required to file a Form U-5 or any amendment thereto within ten (10) business days of the termination or the occurrence requiring the amendment. Under current Rule 2.23(i), OTP Holders and OTP Firms are required to file a Form U-5 and any amendment thereto within ten (10) business days of the termination date of an employee that has been approved for admission to the trading floor or participation on any trading system. While each of these rules govern the same topic, they do not use the same rule language.

The Exchange proposes to amend these two rules by replacing the current requirements of when to electronically file a Form U-5 with the same requirement in each rule that an OTP Holder or OTP Firm (as applicable) promptly file a Form U-5 electronically with the Central Registration Depository ("CRD"), but not later than 30 calendar days after the date of termination of an OTP or employee (as applicable). The proposed rule would further require that any amendment to a Form U-5 must also be promptly filed electronically with CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. Finally, the proposed rule would provide that all Forms U-5 must also be provided to the terminated person concurrently with filing.

The proposed rule text is based on the requirements of other exchanges and FINRA and therefore would harmonize the requirement of when OTP Holders or OTP Firms must file a Form U-5 with the rules of other exchanges and FINRA.⁴ The Exchange believes that the

proposed rule changes will promote the protection of investors by adding that a Form U-5 be filed promptly, rather than the current requirement that a Form U-5 be filed within 10 days. The Exchange believes that this proposed requirement may lead to Form U-5s being filed sooner than the current 10-day requirement. Consistent with the rules of other exchanges and FINRA, the rule would further provide that a Form U-5 should be filed not later than 30 days after the date of termination. While this date is longer than the current 10 day requirement, the Exchange believes that this timing, combined with the requirement to file promptly, may still lead to firms submitting Form U-5s on a more prompt basis. In addition, the proposed rule would harmonize the standard, thus reducing the burden on competition for OTP Holders and OTP Firms that are members of multiple exchanges and FINRA to meet similar requirements. Such conformance to the prevalent standard would both harmonize the time period for filing the requisite Form U-5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence.

2. Statutory Basis

The Exchange believes that the proposed changes are consistent with Section 6(b) of the Act,⁵ in general, and furthers [sic] the objectives of Section 6(b)(5),⁶ in particular, in that they are designed 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, in general, to protect investors and the public interest. Additionally, the Exchange believes the

concurrently to the person whose association has been terminated); BATS BZX Exchange, Inc. ("BZX") Rule 2.5 Interpretations and Policies .04(a) and (b) (requiring that a Form U-5 be reported immediately following the date of termination, but in no event later than 30 days following termination, that any amendment to the Form U-5 shall be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice or amendment should be provided concurrently to the person whose association has been terminated); FINRA By-Laws Article 5 Sec. 3(a) and (b) (requiring that notice of termination be filed not later than 30 days after termination, that an amendment to a Form U-5 be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that notice be provided concurrently to the person whose association has been terminated within the time periods prescribed).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

proposed rule changes are consistent with the Section 6(b)(5)⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule changes would remove impediments to and perfect the mechanisms of a free and open market by conforming the time period within which OTP Holders and OTP Firms must file a Form U-5 to the requirement that such forms be filed promptly, but not later than 30 days after the termination event. The Exchange believes that the proposed rule changes would protect investors and the public interest by adding that Form U-5s should be filed promptly, rather than requiring only that they be filed within 10 days. In addition, the Exchange believes that adding the requirement that a Form U-5 be filed not later than 30 days after the event would eliminate the disparity among the exchanges, other SROs and the affected persons stemming from the cessation of their employment. In this regard, the proposed changes would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities as they would both harmonize the time period for filing the requisite Form U-5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence. Such action would not affect nor diminish the abilities of the Exchange, OTP Holders or OTP Firms to fulfill their regulatory responsibilities under the Act or the rules promulgated thereunder, including but not limited to the responsibilities to monitor the activities of such persons, nor would such proposed amendment affect the rights of such terminated persons.

The Exchange believes this additional transparency and clarity removes a potential impediment to, and would contribute to perfecting, the mechanism for a free and open market and a national market system, and, in general, would protect investors and the public interest by harmonizing the time period for filing the requisite Form U-5 across multiple SROs, and by imposing the requirement that such form be filed promptly.⁸

⁷ *Id.*

⁸ This filing is intended to address only the filing requirements of Forms U-5; it is not intended to address or affect any other mandatory filing requirements or procedures.

⁴ See New York Stock Exchange LLC ("NYSE") Rule 345(a).17(a) and (b) (requiring that a Form U-5 shall be reported promptly, but in any event not later than 30 days following termination, that any amendment to the Form U-5 shall be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice must be provided

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

The Exchange does not believe that these proposed rule changes would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are not designed to address any competitive issue but rather to harmonize Exchange time-filing requirements to a standard prevalent among other exchanges and FINRA, thereby reducing any potential confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule changes would serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NYSEArca-2016-103 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-NYSEArca-2016-103. 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 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-NYSEArca-2016-103 and should be submitted on or before August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78380; File No. SR-NASDAQ-2016-090]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Affiliated Entities

July 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on July 11, 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, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NASDAQ Options Market LLC's ("NOM") pricing at Chapter XV to permit certain affiliated market participants to aggregate eligible volume for pricing in Chapter XV, Sections 2(1) and 2(6), for which a volume threshold or volume percentage is required to obtain the pricing.

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

The purpose of the proposed rule change is to permit certain affiliated market participants to aggregate volume in Chapter XV, Sections 2(1) and 2(6), for which a volume threshold or volume percentage is required to qualify for various pricing incentives. The Exchange's proposal is intended to incentivize Participants to submit for execution a greater amount of order flow on NOM to obtain more advantageous pricing.

Affiliated Entity

The Exchange proposes to add three definitions to Chapter XV of NOM