proposed rule change is August 17, 2018.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. ICC proposes to revise the ICC Rulebook to provide for the clearance of an additional Standard Emerging Market Sovereign CDS contract. The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider ICC's proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) [5] of the Act, designates October 1, 2018, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ICC–2018–007).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83861; File No. SR–NASDAQ–2018–059]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Initial and Continued Listing Standards for Subscription Receipts and Fees for Their Listing

August 16, 2018.

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 August 3, 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 adopt initial and continued listing standards for subscription receipts and fees for their listing.

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 adopt initial and continued listing standards for the listing of Subscription Receipts on the Nasdaq Capital Market and fees for their listing.

Subscription Receipts are a financing technique that has been used for many years by Canadian public companies. Typically, Canadian companies use Subscription Receipts as a means of providing cash consideration in merger or acquisition transactions. Subscription Receipts are sold in a public offering that occurs after the execution of an acquisition agreement. The proceeds of the Subscription Receipt offering are held in a custody account and, if the related acquisition closes, the Subscription Receipt holders receive a specified number of shares of the issuer. If the acquisition does not close, then the Subscription Receipts are redeemed for their original purchase price plus any interest accrued on the custody account. The benefit of Subscription Receipts to the issuer is that they provide a contingent form of financing that only becomes permanent if the acquisition is completed. By contrast, a company financing the cash consideration for an acquisition by means of a traditional equity or debt offering is at risk of having incurred unnecessary dilution of its shareholders or indebtedness if the related acquisition fails to close. Subscription Receipts provide investors with flexibility to elect to invest in the post merger company and not in the company in its pre-merger form.

Nasdaq has received inquiries from market participants about the possibility of the use of Subscription Receipts as a fundraising alternative for listed companies. As a result of this interest, the Exchange is now proposing to adopt listing standards for Subscription Receipts. Under the proposed rule, Nasdaq will initially list Subscription Receipts on the Capital Market pursuant to proposed Rule 5520 if they meet the following requirements: [3]

(a) The security that the Subscription Receipts are exchangeable for must be listed on the Nasdaq Global Select, Global or Capital Market.

(b) The issuer of the Subscription Receipts must not have received a Staff Delisting Determination with respect to the security the Subscription Receipts are exchangeable for and must not have been notified about a deficiency in any continued listing standard with respect to the issuer of the Subscription Receipts or the security the Subscription Receipts are exchangeable for, except with respect to a corporate governance requirement where the issuer has received a grace period under Rule 5810(c)(3)(E).[4]

(c) The proceeds of the Subscription Receipts offering must be designated solely for use in connection with the consummation of a specified acquisition that is the subject of a binding acquisition agreement (the ''Specified Acquisition'').

(d) The proceeds of the Subscription Receipts offering must be held in an interest-bearing custody account by an independent custodian.

(e) The Subscription Receipts will promptly be redeemed for cash (i) at any

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[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As described in more detail below, these requirements are each either identical or substantially similar to those in Section 102.08 of the NYSE Listed Company Manual for the initial listing of Subscription Receipts.

[4] Rule 5810(c)(3)(E) provides a grace period for a company to regain compliance if the company fails to meet the majority board independence or the audit committee composition requirements due to one vacancy, or fails to meet the audit committee composition requirements because an audit committee member ceases to be independent for reasons outside of her control. The grace period is until the earlier of the company's next annual shareholders meeting or one year from the event that caused the deficiency to cure the deficiency. However, if the company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the company has 180 days from the event that caused the deficiency to cure it.

time the Specified Acquisition is terminated, or (ii) if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts, or such earlier time as is specified in the operative agreements. If the Subscription Receipts are redeemed, the holders will receive cash payments equal to their proportionate share of the funds in the custody account, including any interest earned on those funds.

(f) If the Specified Acquisition is consummated, the holders of the Subscription Receipts will receive the shares of common stock for which their Subscription Receipts are exchangeable.

(g) At the time of initial listing, the Subscription Receipts must have a price per Subscription Receipt of at least $4.00, a minimum Market Value of Publicly Held Shares of $100 million, 1,100,000 Publicly Held Shares [5] and 400 holders of round lots (*i.e.,* 100 securities).

(h) The sale of the Subscription Receipts and the issuance of the common stock of the issuer in exchange for the Subscription Receipts must both be registered under the Securities Act.

Listed Subscription Receipts will be convertible into the primary listed class of common stock of the listed company issuing the Subscription Receipts and will thereafter be subject to all of the continued listing requirements applicable to a primary class of common stock listed on the Nasdaq.

Nasdaq proposes to adopt Rule 5565 to include continued listing standards applicable to Subscription Receipts. The Exchange will immediately initiate suspension and delisting procedures under the Rule 5800 Series when (i) the number of publicly held shares is less than 100,000, (ii) the number of public holders is less than 100, (iii) the total market value of the listed Subscription Receipts is below $15 million over 30 consecutive trading days, (iv) the related common equity security ceases to be listed or receives a delisting determination from Nasdaq staff, or (v) the issuer announces that the Specified Acquisition has been terminated.[6] An issuer of Subscription Receipts that fails these requirements will be issued a delisting letter under Rule 5810(c)(1) and will not be eligible to provide a plan to regain compliance.

Because the issuer of the Subscription Receipt is already listing its primary common stock on Nasdaq, it must comply with the continued listing standards for common stock as well as the corporate governance requirements applicable to listed companies. In addition to the foregoing, Subscription Receipts will be subject to potential delisting for all of the reasons generally applicable to operating companies under the Rule 5800 Series. The Exchange notes that an issuer of Subscription Receipts may be subject to delisting at the time of closing of the related acquisition pursuant to Rule 5110(a), which requires a company to meet the initial listing standards following a business combination with a non-Nasdaq entity resulting in a change of control of the listed company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq listing.

Nasdaq proposes to amend Rule 4120(a) and IM–5250–1 to provide that whenever it halts trading in a security of a listed company pending dissemination of material news or implements any other required regulatory trading halt, the Exchange will also halt trading in any listed Subscription Receipt that is exchangeable by its terms into the common stock of such company. The Exchange will monitor activity in Subscription Receipts to identify and deter any potential improper trading activity in such securities and will adopt surveillance procedures, and make any enhancements necessary, to enable it to monitor Subscription Receipts alongside the common equity securities into which they are convertible. Additionally, the Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange,[7] which are designed to detect violations of Exchange rules and applicable federal securities laws.

Finally, Nasdaq proposes to adopt fees for Subscription Receipts in proposed Rule 5920. Specifically, Nasdaq proposes to charge a $25,000 entry fee, which would include a $5,000 application fee, for the listing of a class of Subscription Receipts on the Nasdaq Capital Market. Given their short-term nature, Nasdaq does not propose to charge a separate annual fee to list Subscription Receipts and Subscription Receipts would not be included in the shares considered when calculating Nasdaq's All-inclusive Annual Listing Fee.[8] While other securities listed on Nasdaq may have short terms, such as warrants, these securities are not required to have a short defined life and may have terms that extend for many years. In fact, no other security that can be listed on Nasdaq is required, as a condition for listing, to have a term of twelve months from issuance or less. For this reason, Nasdaq believes it is appropriate to adopt a different fee schedule for Subscription Receipts, which recognizes their required short-term nature.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] 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 listing standard is consistent with Section 6(b)(5) of the Act in that it contains requirements in relation to the listing of Subscription Receipts that provide adequate protections for investors and the public interest. In particular, the Exchange believes that the quantitative requirements, which require that Subscription Receipts must have a price per share of at least $4.00, a minimum total market value of publicly held shares of $100 million, 1,100,000 publicly held shares, and 400 holders of round lots (collectively, the ''Distribution Criteria''), are designed to protect investors in that they are identical to the requirements the Commission recently approved for NYSE to list Subscription Receipts.[12] In

[5] Listing Rule 5005(a)(34) defines publicly held shares as ''shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding.''

[6] These requirements are substantially similar to those in Section 802.01B of the NYSE Listed Company Manual for the continued listing of Subscription Receipts.

[7] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[8] *See* IM–5910–1(e) and IM–5920–1(e), which impose the All-Inclusive Annual Fee based on total shares outstanding and define ''total shares outstanding'' to mean ''the aggregate number of all securities outstanding for each class of equity securities (*not otherwise identified in this Rule 5900 Series*) listed [on Nasdaq] . . . .'' (emphasis added). Because proposed Rule 5920(a)(7) would identify Subscription Receipts and subject them to a different fee schedule, the Subscription Receipts would not be included in total shares outstanding for this purpose.

[9] Nasdaq also proposes to make a non-substantive change to eliminate a duplicate phrase in Rule 5501.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Exchange Act Release No. 81856 (October 11, 2017), 82 FR 48296 (October 17, 2017) (approving SR–NYSE–2017–31).

approving that filing, the Commission noted that the Distribution Criteria is the same that currently applies to the listing of common stock in connection with an initial public offering under NYSE listing rules and that the $100 million market value of publicly held shares requirement is similar to the requirements for other initial listing of securities on NYSE, which should help ensure that a sufficient market, with adequate depth and liquidity, exists for the initial listing of Subscription Receipts.

Similarly, the Exchange believes that the proposed continued listing standards for Subscription Receipts are consistent with the requirements of the Act and the protection of investors. Under the proposal, the Exchange will immediately initiate suspension and delisting procedures when (i) the number of publicly held shares is less than 100,000, (ii) the number of public holders is less than 100, (iii) the total market value of listed Subscription Receipts is below $15 million over 30 consecutive trading days, (iv) the related common equity security ceases to be listed or receives a delisting determination from Nasdaq staff, or (v) the issuer announces that the Specified Acquisition has been terminated. In addition, Subscription Receipts will be subject to potential delisting for all of the reasons generally applicable to operating companies, including those outlined in the Rule 5800 Series of Nasdaq's rules, and may also be subject to delisting at the time of closing of the related acquisition pursuant to Rule 5110(a), which requires a company to meet the initial listing standards following a business combination with a non-Nasdaq entity resulting in a change of control of the listed company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq listing. The Exchange believes the application of Rule 5110(a), which requires a company to meet the initial listing standards following a business combination with a non-Nasdaq entity resulting in a change of control of the listed company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq listing, will help to ensure that companies that would not otherwise qualify for original listing on the Exchange could not list, for example, by merging with a listed company. Taken as a whole, Nasdaq believes that these standards should help ensure that a sufficient market, with adequate depth and liquidity, exists for the continued listing of Subscription Receipts and are similar to the continued listing standards for other securities that have similar characteristics.

Nasdaq also notes that once the Specified Acquisition has occurred and a Subscription Receipt is converted to common stock, that common stock is subject to the continued listing requirements for such common stock under Rules 5450 or 5550, as applicable. In addition to the quantitative listing requirements proposed for Subscription Receipts, the proposed initial and continued listing standards also include additional protections for Subscription Receipt holders. For example, the issuer of Subscription Receipts must be a Nasdaq-listed company that is not currently non-compliant with any applicable continued listing standard and must continue to be listed on the Exchange throughout the time the Subscription Receipts are traded on the Exchange. The proposed rules also provide that whenever Nasdaq halts trading in a security of a listed company pending dissemination of material news or implements any other required regulatory trading halt, Nasdaq will also halt trading in any listed Subscription Receipt that is exchangeable by its terms into the common stock of such company.

Nasdaq believes that these additional requirements should protect investors and the public interest, consistent with Section 6(b)(5) of the Act, by assuring that information with respect to the listed company issuing the Subscription Receipts is publicly available and that the issuing company is meeting all continued listing standards, including corporate governance requirements, of the Exchange. In addition, these requirements should help assure that the Exchange has a listing relationship with, and direct access to information from, the issuer of the Subscription Receipts. Among other things, this direct relationship the Exchange has with the listed company issuing the Subscription Receipts will help to ensure that the Exchange will receive information in a timely manner to halt trading in the Subscription Receipts when there is a material news, or other regulatory, trading halt imposed on the common stock, and other securities, of the listed company.

There are additional protections for investors in the proposed standards. These include that all the proceeds of the Subscription Receipts offering must be designated solely for use in connection with the consummation of a Specified Acquisition pursuant to a definitive acquisition agreement, the material terms of which would be subject to disclosure. Additionally, the proceeds of the Subscription Receipts offering must also be held in an interest-bearing custody account by an independent custodian and holders will promptly redeem the Subscription Receipts for cash, equal to the holder's proportionate share of the funds in the custody account plus any interest earned, at any time the Specified Acquisition is terminated or if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts (or such earlier time as specified in the operative agreements). If the Specified Acquisition is consummated, the holders of the Subscription Receipts will receive the shares of common stock for which their Subscription Receipts are exchangeable. Finally, the listing standards specifically state and remind issuers that the sale of Subscription Receipts and the issuance of the common stock of the issuer in exchange for the Subscription Receipts must both be registered under the Securities Act of 1933. This is important because shareholders, at the time they purchase a Subscription Receipt, are making an investment decision to also purchase the common stock of the merged listed company should the Specified Acquisition be consummated within twelve months or such shorter specified time period. Therefore, it is important to have registration and disclosure under the Securities Act of both the Subscription Receipt and the related common stock. Based on the above, Nasdaq believes that specifically setting forth the Securities Act registration requirements in its rules for listing Subscription Receipts is consistent with the requirements of Section 6(b)(5) of the Act to further investor protection and the public interest.

The Exchange will also monitor activity in Subscription Receipts to identify and deter any potential improper trading activity in such securities and will adopt surveillance procedures, and make any enhancements necessary, to enable it to monitor Subscription Receipts alongside the common equity securities into which they are convertible. Since the Subscription Receipts are related to, and represent an interest in, the common stock of the post-acquisition listed company, this surveillance should help to monitor the trading activity in both the issuer's listed common stock and the Subscription Receipts. Nasdaq believes that these safeguards and standards should help to ensure that the listing, and continued listing, of any Subscription Receipts will be consistent with investor protection, the public interest, and the maintenance of fair and orderly markets.

For the above reasons, Nasdaq believes that the proposed initial and continued listing standards are consistent with the Act.

Nasdaq also believes that the proposed fee set forth in Rule 5920 is consistent with Section 6(b)(4) and 6(b)(5) of the Act in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges and is not designed to permit unfair discrimination among its members and issuers and other persons using its facilities. Subscription Receipts are designed to be used for the limited purpose of raising capital for an announced merger transaction and by their terms must be redeemed within 12 months if the transaction does not close. While other securities listed on Nasdaq can have short terms, no other security that can be listed on Nasdaq is required, as a condition for listing, to have a term of twelve months from issuance or less. As such, Nasdaq believes it is not unfairly discriminatory under Section 6(b)(5) of the Act as between issuers listing other types of securities, to charge a fee that differs from its fee for other equity securities, which generally have longer terms or no fixed term, and that it is equitable and reasonable under Section 6(b)(4) of the Act to charge a single $25,000 fee, which includes a $5,000 application fee, for the listing of these securities during their lifetime. This fee is also not unfairly discriminatory because the same fee will apply to all issuers seeking to list Subscription Receipts. Further, Nasdaq operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list Subscription Receipts and if a company believes that Nasdaq's fee is unreasonable it can decide either not to list the Subscription Receipts or to list them on an alternative venue.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act. The purpose of the proposed rule is to enhance competition by providing issuers and investors with an additional type of listed security that is not currently available on Nasdaq, but that is available on another domestic listing exchange. As such, the Exchange does not believe the proposed rule change imposes any burden on competition but instead will enhance 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 [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–059 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2018–059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–059, and should be submitted on or before September 12, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Eduardo A. Aleman,**

*Assistant Secretary.*

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[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 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.

[15] 17 CFR 200.30–3(a)(12).