

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>16</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>17</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that Web-based administration of the Regulatory Element of the Exchange's CE Program and the lower costs associated with Web-based administration of the Regulatory Element of the Exchange's CE Program are ends that may serve to increase access to the markets, which is in the interests of investors and consistent with the Act. In general, Web-based delivery of the Regulatory Element of the Exchange's CE Programs at a reduced cost lowers barriers to entry [sic] and removes impediments to a free and open market and national market system by making it easier and less costly for TPHs to participate in the markets. Accordingly, the Exchange believes that offering Web-based delivery of the Regulatory Element of Exchange's CE Program at a reduced cost and that lowering the cost of CE in general are goals that are consistent with the Act.

### *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. As FINRA has stated, the proposed rule change is specifically intended to reduce the burdens of continuing education on

market participants while preserving the integrity its CE Programs. In general, reduction in cost and removal of barriers to entry encourages competition among market participants, particularly in situations where such rules are consistently employed across the markets. By bringing the Exchange's fees structure in line with that of FINRA, the Exchange believes it is removing impediments to free and open markets and encouraging competition between the Exchange and other markets that utilize FINRA's CE Programs. For the foregoing reasons, the Exchange believes that the proposed rule change will relieve burdens on, and otherwise promote, competition.

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

The Exchange neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and paragraph (f) of Rule 19b-4<sup>20</sup> thereunder. 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 will institute proceedings to determine whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2015-119 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-CBOE-2015-119. 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-CBOE-2015-119 and should be submitted on or before February 9, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

*Extension:*

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>18</sup> *Id.*

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f).

Rule 17f-4, SEC File No. 270-232, OMB Control No. 3235-0225.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (the "Paperwork Reduction Act"), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 17(f) (15 U.S.C. 80a-17(f)) under the Investment Company Act of 1940 (the "Act")<sup>1</sup> permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities ("securities depositories"), subject to rules adopted by the Commission.

Rule 17f-4 (17 CFR 270.17f-4) under the Act specifies the conditions for the use of securities depositories by funds<sup>2</sup> and their custodians.

The Commission staff estimates that 152 respondents (including an estimated 81 active funds that may deal directly with a securities depository, an estimated 50 custodians, and 21 possible securities depositories)<sup>3</sup> are subject to the requirements in rule 17f-4. The rule is elective, but most, if not all, funds use depository custody arrangements.<sup>4</sup>

Rule 17f-4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets.<sup>5</sup> This

obligation does not contain a collection of information because it does not impose identical reporting, recordkeeping or disclosure requirements. Funds and custodians may determine the specific measures the custodian will take to comply with this obligation.<sup>6</sup> If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations,<sup>7</sup> which is a collection of information for purposes of the Paperwork Reduction Act. All funds that deal directly with securities depositories in reliance on rule 17f-4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.<sup>8</sup>

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.<sup>9</sup> If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports,<sup>10</sup> which is a collection of information for purposes of the Paperwork Reduction Act. Custodians and depositories usually transmit financial reports to funds twice each year.<sup>11</sup> The Commission staff estimates that 50 custodians spend approximately

926 hours (by support staff) annually in transmitting such reports to funds.<sup>12</sup> In addition, approximately 81 funds (*i.e.*, two percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. Commission staff estimates that depositories spend approximately 19 hours (by support staff) annually transmitting reports to the 81 funds.<sup>13</sup> The total annual burden estimate for compliance with rule 17f-4's reporting requirement is therefore 945 hours.<sup>14</sup>

If a fund deals directly with a securities depository, rule 17f-4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers' instructions).<sup>15</sup> All funds that seek to rely on rule 17f-4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement.<sup>16</sup>

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's collection of information requirement is 945 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. This estimate is not derived from a comprehensive or even representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission,

<sup>12</sup> (3,968 fund clients × 2 reports) = 7,936 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 926 hours (7 minutes × 7,936 transmissions).

<sup>13</sup> (81 fund clients who may deal directly with a securities depository × 2 reports) = 162 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 19 hours (7 minutes × 162 transmissions).

<sup>14</sup> 926 hours for custodians and 19 hours for securities depositories.

<sup>15</sup> Rule 17f-4(b)(2).

<sup>16</sup> The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

Commercial Code when the parties have not agreed to a standard. Rule 17f-4 does not impose any substantive obligations beyond those contained in Article 8, Uniform Commercial Code, Revised Article 8—Investment Securities (1994 Official Text with Comments) ("Revised Article 8").

<sup>6</sup> Moreover, the rule does not impose any requirement regarding evidence of the obligation.

<sup>7</sup> Rule 17f-4(b)(1)(i).

<sup>8</sup> The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus, new funds would not be subject to this condition.

<sup>9</sup> Rule 17f-4(a)(2).

<sup>10</sup> Rule 17f-4(b)(1)(ii).

<sup>11</sup> The estimated 50 custodians would handle requests for reports from an estimated 3,968 fund clients (approximately 80 fund clients per custodian) and the depositories from the remaining 81 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with industry representatives that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this Paperwork Reduction Act estimate, the Commission staff assumes that custodians transmit the reports to all fund clients.

<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> As amended in 2003, rule 17f-4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. See Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The term "fund" is used in this Notice to mean a registered investment company.

<sup>3</sup> The Commission staff estimates that, as permitted by the rule, an estimated 2% of all active funds may deal directly with a securities depository instead of using an intermediary. The number of custodians is estimated based on information from Morningstar Direct<sup>SM</sup>. The Commission staff estimates the number of possible securities depositories by adding the 12 Federal Reserve Banks and 9 active registered clearing agencies. The Commission staff recognizes that not all of these entities may currently be acting as a securities depository for fund securities.

<sup>4</sup> Based on responses to Item 18 of Form N-SAR (17 CFR 274.101), approximately 97 percent of funds' custodians maintain some or all fund securities in a securities depository pursuant to rule 17f-4.

<sup>5</sup> Rule 17f-4(a)(1). This provision incorporates into the rule the standard of care provided by section 504(c) of Article 8 of the Uniform

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta.Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA\_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 12, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76874; File No. SR-NASDAQ-2015-167]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section (a)(6) of Rule 1120, Continuing Education Requirements

January 12, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that, on December 30, 2015, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend section (a)(6) of Rule 1120 (Continuing Education Requirements) to provide for web-based delivery of the Exchange’s continuing education (“CE”) program. The proposed rule change would phase out the current option of completing the Regulatory Element in a test center, and eliminate the current option for in-house delivery of the Regulatory Element of the CE program. The amendments will delete the current text of Rule 1120(a)(6) (In-Firm Delivery of

the Regulatory Element). The Exchange’s proposal is materially similar to a recent FINRA filing to amend FINRA Rule 1250, which was recently approved by the Securities and Exchange Commission.<sup>3</sup> The proposed rule change will become operative January 4, 2016.

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 CE requirements under Rule 1120 consist of a Regulatory Element<sup>4</sup> and a Firm Element.<sup>5</sup> The Regulatory Element applies to all registered persons<sup>6</sup> and consists of periodic computer-based training on regulatory, compliance, ethical, and supervisory subjects and sales practice standards, which must be completed within prescribed timeframes.<sup>7</sup> In addition, a registered

person is required to retake the Regulatory Element in the event that such person (A) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act; (B) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (C) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or self-regulatory organization. Rule 1120(a)(1) provides that the following Regulatory Elements administered by FINRA shall be required: the S201 Supervisor Program for registered principals and supervisors, the S501 Series 56 Proprietary Trader continuing education program for Series 56 registered persons, and the S101 General Program for Series 7 and all other registered persons. Currently, the Regulatory Element may be administered in a test center or in-firm subject to specified procedures.<sup>8</sup>

The Firm Element consists of annual, member-developed and administered training programs for covered registered persons,<sup>9</sup> which must be appropriate for

otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person’s registration anniversary date. A person’s initial registration date, also known as the “base date,” shall establish the cycle of anniversary dates for purposes of the Rule. The content of the Regulatory Element of the program shall be determined by Nasdaq and shall be appropriate to either the registered representative or principal status of the person subject to the Rule.

<sup>8</sup> Pursuant to Rule 1120(a)(6), Nasdaq Members that are also FINRA members are currently permitted to administer the continuing education Regulatory Element program to their registered persons by instituting an in-firm program to the extent such program has been deemed acceptable to FINRA in accordance with NASD Rule 1120(a)(6). (The Exchange notes that NASD Rule 1120 has previously been superseded by FINRA Rule 1250 which FINRA has amended, as discussed above, to delete the in-firm CE option on a phased basis.) Nasdaq and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 1120(a)(6) by complying with NASD Rule 1250. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Nasdaq Rule 1120(a)(6) are being performed by FINRA on behalf of Nasdaq. Nasdaq Members that are not FINRA members are not permitted to institute in-firm delivery of the Regulatory Element program.

<sup>9</sup> Under Rule 1120(b)(1) (Persons Subject to the Firm Element), a “covered registered person” means any person registered with a member who

<sup>3</sup> See Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements) (SR-FINRA-2015-015). See also Securities Exchange Act Release No. 76107 (October 8, 2015), 80 FR 62139 (October 15, 2015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Delivery of the Regulatory Element of the Exchange’s Continuing Education Program) (SR-CBOE-2015-084).

<sup>4</sup> See Rule 1120(a) (Regulatory Element).

<sup>5</sup> See Rule 1120(b) (Firm Element).

<sup>6</sup> For purposes of the Regulatory Element, a “registered person” means any person registered with Nasdaq as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series. See Rule 1120(a)(5).

<sup>7</sup> Pursuant to Rule 1120(a)(1), each registered person shall complete the Regulatory Element of the continuing education program beginning with the occurrence of their second registration anniversary date and every three years thereafter, or as

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

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