

assist Participants in managing and controlling the risks associated with their access to and activity on the Exchange, both for the benefit of Participants and investors. The Exchange's risk settings, moreover, are consistent with risk settings employed by other exchanges, such as Cboe BYX. Although the Exchange presently offers these risk settings, codifying them will provide additional transparency to Participants regarding the risk settings offered by the Exchange. It will also foster cooperation and coordination with persons engaged in facilitating transactions in securities and more generally, will protect investors and the public interest, by providing additional transparency regarding risk settings offered by the Exchange.

#### *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 amended. The proposed rule change is not designed to address any competitive issues and does not pose an undue burden on non-clearing members because, unlike clearing members, non-clearing members do not guarantee the execution of a Participant's transactions on the Exchange. Moreover, the proposal to share risk settings with clearing members will not burden competition among clearing members because it will apply to all clearing members equally and regardless of size. The Exchange notes that this proposal will not affect competition among Participants because the proposal provides for sharing of all of Participants' risk settings set forth in IM-6200-1. Any Participant that does not wish to share its risk settings with its clearing member could avoid sharing such settings by becoming a clearing member. Lastly, the proposal to codify the Exchange's risk settings will not burden competition among Participants because the risk settings are already available to or required of Participants and will continue to be available or required of all Participants going forward.

#### *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) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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-NASDAQ-2018-002 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-2018-002. 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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

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. 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-2018-002 and should be submitted on or before February 7, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82481; File No. SR-NASDAQ-2017-133]

### **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Transitional Rules That Have Expired Related to Compensation Committee Listing Standards**

January 10, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 27, 2017, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("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

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

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 eliminate transitional rules that have expired related to compensation committee listing standards.

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

Nasdaq proposes to delete the introductory language to Rule 5605(d), Rule 5605(d)(6), Rule 5605A and IM-5605A-6, and part of Rule 5615 to remove transitional rules that are no longer applicable to any companies and references to those transitional rules. These transitional rules were adopted in 2013 in connection with changes to the compensation committee requirements.<sup>3</sup> Those changes to the compensation committee requirements were fully phased in on October 31, 2014 and the transitional rules no longer apply to any listed company.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and

perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Nasdaq believes that it is in the public interest to eliminate the obsolete compensation committee requirements because the rules that replaced these provisions have been found to protect investors and the public interest<sup>6</sup> and because eliminating these provisions, which were fully phased out in October 2014, will improve the readability of Nasdaq's rules.

#### 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. Nasdaq does not believe the proposed rule change, which merely eliminates obsolete provisions and does not make any substantive change to Nasdaq's rules, will impose any burden, nor have any 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<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in

<sup>6</sup> See Securities Exchange Act Release No. 68640, *supra*.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-133 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-2017-133. 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 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. 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-2017-133, and should be submitted on or before February 7, 2018.

<sup>3</sup> Securities Exchange Act Release No. 68640 (January 11, 2013), 78 FR 4554 (January 22, 2013) (approving SR-NASDAQ-2012-109).

<sup>4</sup> 15 U.S.C. 78f(b).

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

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

**Eduardo A. Aleman,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 32967; File No. 812-14714]

**The Guardian Insurance & Annuity Company, Inc., et al.**

January 10, 2018.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the “Act”).

**APPLICANTS:** The Guardian Insurance & Annuity Company, Inc., (“Guardian”), The Guardian Separate Account Q, and The Guardian Separate Account R (each, a “Separate Account” and together, the “Separate Accounts”). Guardian and the Separate Accounts are referred to as the “Applicants.”

**SUMMARY OF APPLICATION:** Applicants seek an order pursuant to section 26(c) of the Act, approving the substitution of shares issued by certain investment portfolios of registered investment companies (the “Existing Portfolios”) for shares of certain investment portfolios of Guardian Variable Products Trust (the “Replacement Portfolios”), held by the Separate Accounts to support certain variable annuity contracts (the “Contracts”). Guardian Variable Products Trust is referred to as the “Trust.”

**FILING DATE:** The application was filed on November 3, 2016 and was amended on April 10, 2017 and September 18,

2017. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 6, 2018 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. Applicants: Richard T. Potter, Senior Vice President, Counsel and Assistant Corporate Secretary, The Guardian Insurance & Annuity Company, Inc., 7 Hanover Square, New York, New York 10004.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Riegel, Senior Counsel, at (202) 551-6873, or Robert H. Shapiro, Branch Chief at (202) 551-6821 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an Applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

**Applicants’ Representations**

1. Guardian is a Delaware stock life insurance company licensed to conduct insurance business in the District of Columbia and all fifty states of the United States. Guardian is wholly-owned by The Guardian Life Insurance Company of America (“Guardian Life”), a mutual life insurance company.

2. Each Separate Account meets the definition of “separate account,” as defined in section 2(a)(37) of the Act and rule 0-1(e) thereunder. The Separate Accounts are registered under the Act as unit investment trusts. The assets of the Separate Accounts support the Contracts and interests in the Separate Accounts offered through such Contracts. Guardian is the legal owner of the assets in the Separate Accounts. The Separate Accounts are segmented into subaccounts, and each subaccount invests in an underlying registered open-end management investment company or series thereof.

3. The Contracts are each registered under the Securities Act of 1933, as amended (the “1933 Act”) on Form N-4.

Each Contract has particular fees, charges, and investment options, as described in the Contracts’ respective prospectuses.

4. The Contracts are individual flexible or single premium deferred variable annuity contracts. As set forth in the prospectuses for the Contracts, each Contract provides that Guardian reserves the right to substitute shares of the funds in which the Separate Accounts invest for shares of any funds already held or to be held in the future by the Separate Accounts.<sup>1</sup>

5. Guardian, on behalf of itself and the Separate Accounts, proposes to exercise its contractual right to substitute shares of the Existing Portfolios for shares of the Replacement Portfolios (“Substitutions”), as shown in the table below:

Substitution No.	Existing portfolio	Replacement portfolio
1 .....	Variable Portfolio Loomis Sayles Growth Fund (Class 2) ....	Guardian Large Cap Disciplined Growth VIP Fund.
2 .....	Fidelity VIP Contrafund Portfolio (Service Class 2) .....	Guardian Large Cap Disciplined Growth VIP Fund.
3 .....	Fidelity VIP Growth Portfolio (Service Class 2) .....	Guardian Large Cap Disciplined Growth VIP Fund.
4 .....	Alger Capital Appreciation Portfolio (Class S) .....	Guardian Large Cap Fundamental Growth VIP Fund.
5 .....	BlackRock Capital Appreciation V.I. Fund (Class III) .....	Guardian Large Cap Fundamental Growth VIP Fund.
6 .....	Columbia Variable Portfolio Large Cap Growth Fund (Class 2).	Guardian Large Cap Fundamental Growth VIP Fund.
7 .....	Invesco V.I. American Franchise Fund (Series II) .....	Guardian Large Cap Fundamental Growth VIP Fund.
8 .....	MFS® Growth Series (Service Class) .....	Guardian Large Cap Fundamental Growth VIP Fund.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> Certain Contracts make or made available guaranteed living benefit riders (each, a “Living Benefit Rider” and collectively, the “Living Benefit Riders”). The terms of certain Living Benefit Riders

include investment restrictions that limit the available investment options to identified allocation models consisting of a specified selection of investment options. A Contract owner with a Living Benefit Rider that has investment restrictions may

transfer Contract value by reallocating all of his Contract value to a different allocation model under the rider or, depending on the terms of the rider, by reallocating his Contract value within the parameters of the allocation model.