

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 017 Amendment No. (req. for Amendments *)
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Filing by The Nasdaq Stock Market LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires * <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>
Section 806(e)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposed rule change to amend Nasdaq Rule 5704

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

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

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

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

(Title *)
 Date 07/23/2020
 By John Zecca (Name *)
 EVP and Chief Legal Officer
 john.zecca@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Nasdaq Rule 5704 to remove the listing requirement that following twelve months after listing a series of Exchange Traded Fund Shares (the “Fund”) on Nasdaq that the Fund has at least 50 beneficial holders and to amend the requirement that Nasdaq will establish a minimum number of shares of the Fund to be outstanding at the time of initial listing with a requirement that the Fund must have a minimum number of shares outstanding to facilitate the formation of at least one creation unit on an initial and continued listing basis.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on April 13, 2020. No other action is necessary for the filing of the rule change.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend Nasdaq Rule 5704 to remove the listing requirement that following twelve months after listing a series of an Exchange Traded Fund Shares on Nasdaq that the Fund has at least 50 beneficial holders and to amend the requirement that Nasdaq will establish a minimum number of shares of the Fund to be outstanding at the time of initial listing with a requirement that the Fund must have a minimum number of shares outstanding to facilitate the formation of at least one creation unit on an initial and continued listing basis.³

Nasdaq believes that the requirement that a series of Exchange Traded Fund Shares listed pursuant to Nasdaq Rule 5704 must have at least 50 beneficial shareholders is no longer necessary. The Exchange believes that the conditions of Rule 6c-11⁴ (“Rule 6c-11”) under the Investment Company Act of 1940, as amended,⁵ coupled with the existing creation and redemption process, mitigate the potential lack of liquidity that the shareholder requirement was intended to address.⁶ Nasdaq believes that requiring a

³ The term creation unit would have the same meaning as defined in Rule 6c-11 (i.e., a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount, if any.).

⁴ A series of Exchange Traded Fund Shares listed pursuant to Nasdaq Rule 5704 is required to be eligible to operate pursuant to Rule 6c-11. See Nasdaq Rule 5704(b).

⁵ See Release No. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (“ETF Adopting Release”).

⁶ As stated in previous rule proposals, Nasdaq believes that the shareholder requirement, as it relates to common stock, is a measure of liquidity designed to

sufficient number of shares to be outstanding at all times in order to facilitate the formation of at least one creation unit, coupled with the daily portfolio transparency and other enhanced disclosure requirements of Rule 6c-11, will facilitate an effective arbitrage mechanism and provide market participants and investors with sufficient transparency into the holdings of the underlying portfolio and ensure that the trading price in the secondary market remains in line with the value per share of the portfolio. The Exchange believes this is consistent with prior Commission statements.⁷

For example, Rule 6c-11 requires additional disclosure if the premium or discount is in excess of 2% for more than seven consecutive days, as well as related website disclosure and discussion requirements.⁸ This disclosure provides additional transparency to investors in the event that the trading value and the underlying portfolio deviate for an extended period of time, which could indicate an inefficient arbitrage mechanism.⁹ The arbitrage mechanism relies on the fact that shares of the Fund can be

help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed. See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Revise the Exchange’s Initial Listing Standards Related to Liquidity). However, as discussed herein, the pricing, liquidity, trading and valuation of Exchange Traded Fund Shares is fundamentally different from that of common stock.

⁷ In the Adopting Release, the Commission stated, “Further, we believe that the conditions we are adopting as part of rule 6c-11, along with other recent actions that are designed to promote an effective arbitrage mechanism, will continue to result in a sufficiently close alignment between an ETF’s market price and NAV per share in most circumstances...” See supra note 6, at pp. 41.

⁸ See 17 CFR 270.6c-11(c)(1)(vi).

⁹ The Exchange notes that the Commission discussed the importance of an effective and efficient arbitrage mechanism in the Rule 6c-11 Release. See supra note 6 at pp. 14-16.

created and redeemed and that shares of the Fund are able to flow into or out of the market when the price of the Fund is not aligned with the net asset value per share of the portfolio. The resulting buying and selling of the shares of the Fund, as well as the underlying portfolio components, generally causes the market price and the net asset value per share to converge. The Exchange believes this is consistent with prior Commission statements.¹⁰

In addition, the proper functioning of the arbitrage mechanism is reliant on the presence of authorized participants (“APs”) that are eligible to facilitate creations and redemptions with the fund and support the liquidity of the fund. The AP facilitates liquidity in the ETF primary market by purchasing shares of the underlying portfolio and transferring the shares to the ETF issuer in exchange for shares of the ETF (creation) or returning shares of the ETF to the issuer and receiving shares of the portfolio (redemption). Therefore, the ability of the AP to transact in shares of the ETF plays a vital role in the liquidity of the ETF and the functioning of the arbitrage mechanism. The AP is able to buy and sell shares of the ETF from both the fund and investors. Because ETFs can be created and redeemed “in-kind” and do not have an upper limit of the number of shares that can be outstanding, an AP can fulfill customer orders or take advantage of arbitrage opportunities regardless of the number of ETF shares currently outstanding. Thus, unlike common stock, the liquidity of an ETF is not dependent on the number of ETF shares currently outstanding or the number of shareholders, but on the

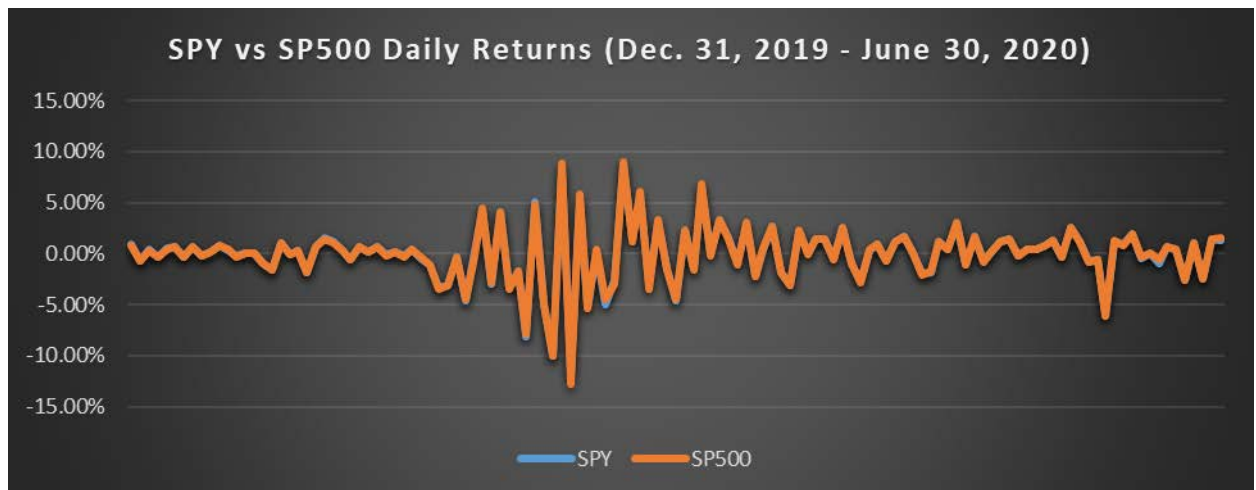
¹⁰ In the ETF Adopting Release, the Commission stated, “The combination of the creation and redemption process with secondary market trading in ETF shares and underlying securities provides arbitrage opportunities that are designed to help keep the market price of ETF shares at or close to the NAV per share of the ETF.” See ETF Adopting Release at pp. 12-13.

availability of AP's to transact in the ETF primary market. The Exchange notes that the SEC did not adopt a minimum number of APs as part of Rule 6c-11 because funds already have enough APs so that a need for such a requirement to ensure a sufficient number of APs was unwarranted.¹¹

ETF liquidity, due to its open-ended structure allowing for creations and redemptions, differs from single company stocks because the opportunity or market makers to arbitrage between the ETF price and the value of the underlying securities exists. Even during market conditions marked by large buying or selling imbalances in the ETF, the ETF should be expected to trade close to the value of its underlying holdings provided that the creation/redemption facility remains open and accessible. To demonstrate, the two charts below¹² compare the percentage daily returns of both SPY and QQQ compared to their respective benchmark indices the S&P 500 and the Nasdaq 100. SPY and QQQ, as passive ETFs, are managed to track the returns of the benchmark index by replicating the holdings of the index. As can be seen in the two charts below, the returns of both SPY and QQQ are kept close in line through the availability of the arbitrage mechanism. It is important to note that this dynamic of close tracking was able to occur during a period of unprecedented volatility and volumes in both ETFs. The observations period was the first two quarters of 2020.

¹¹ “Additionally, based upon Form N-CEN data through September 5, 2019, we found that out of 1672 funds reviewed that could rely on rule 6c-11, only 30 (approximately 1.8% of the funds reviewed) reported having fewer than 2 APs. We therefore do not believe that it is appropriate at this time to prescribe a minimum number of APs that an ETF may use.” See ETF Adopting Release at p. 54.

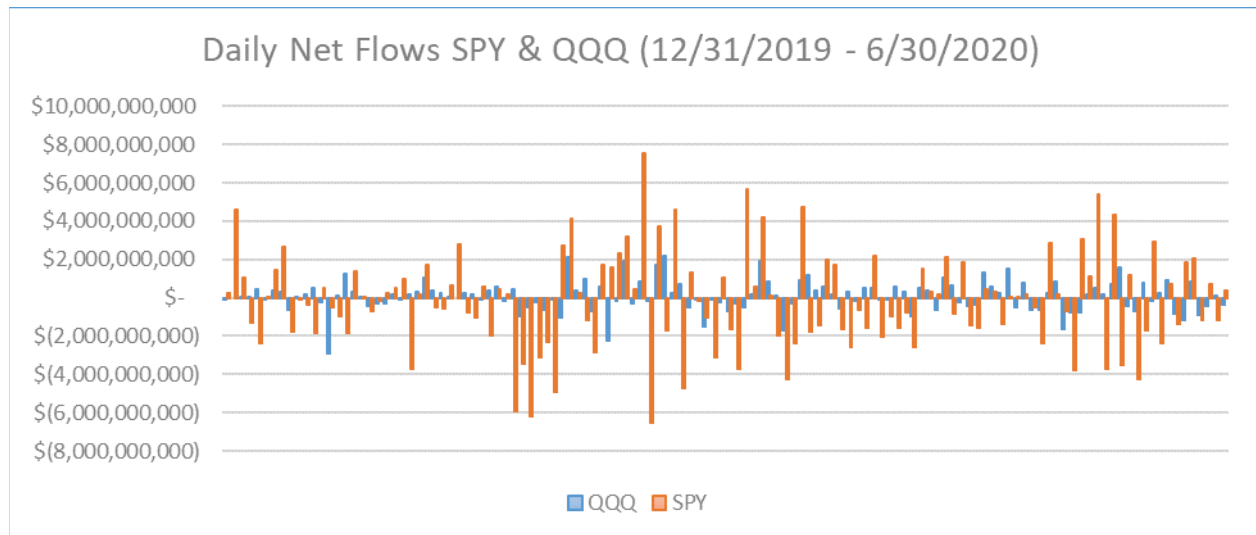
¹² FactSet Research Systems Inc. (2020). SPY vs SP500 Daily Returns (Dec. 31, 2019 – June 30, 2020) and QQQ vs NDX 100 Daily Returns (Dec. 31, 2019 – June 30, 2020). Retrieved July 17, 2020, from FactSet database.



The chart below¹³ maps out daily net flows through creation/redemption activity in the same observation period to give evidence that there likely were significant buy/sell imbalances where market makers were able to keep the returns of SPY and QQQ in line with their benchmark indices through the availability of arbitrage in the open-ended ETF structure. This dynamic also works similarly in an ETF with little or no daily trading activity, where a market maker can generally be expected to provide liquidity in this ETF that is higher than the average daily volume through creation/redemption. The market

¹³ FactSet Research Systems Inc. (2020). Daily Net Flows SPY & QQQ (12/31/19 – 6/30/20). Retrieved July 17, 2020, from FactSet database.

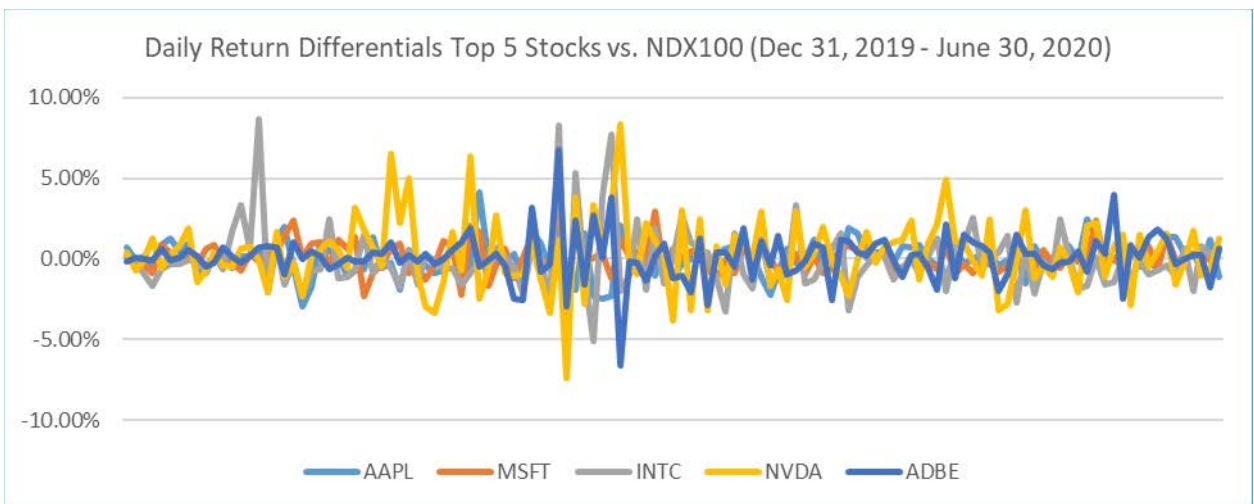
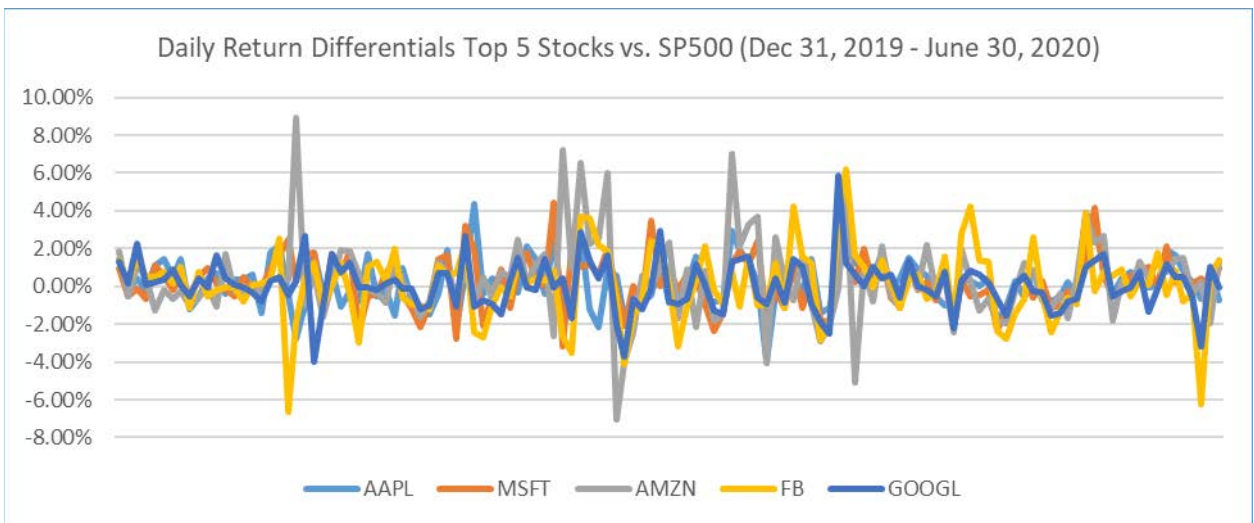
maker will consider the availability of the arbitrage mechanism and liquidity of the underlying fund securities significantly more than the awareness that an ETF has 50 or greater shareholders who may or may not even trade on a given trading day.



To further illustrate how the arbitrage mechanism makes ETF liquidity differ from single stock liquidity, the two charts below¹⁴ take the 5 highest weighted stocks from the S&P 500 and Nasdaq 100 indices and compare their daily percentage returns against the daily percentage returns of the index they are constituents of. These stocks are some of the largest and most actively held and traded names on a daily basis, and the point being made is that these stocks are not open-ended and therefore impact how market makers trade them and consider the availability and activity of other trading participants. The observation period remains the first two quarters of 2020. When looking at the relative returns of each of these stocks against the “market” as these

¹⁴ FactSet Research Systems Inc. (2020). Daily Return Differentials Top 5 Stocks vs. SP500 (Dec 31, 2019 – June 30, 2020) and QQQ vs NDX 100 Daily Returns (Dec. 31, 2019 – June 30, 2020) and Daily Return Differentials Top 5 Stocks vs. NDX100 (Dec. 31, 2019 – June 30, 2020). Retrieved July 17, 2020, from FactSet database.

indices are commonly referred, we see that there are often significant daily return variations between the stock and the index. The stocks do not have the open-ended structure to create or redeem shares like the ETF; therefore, the market makers in the stocks must consider daily buying and selling imbalance activity to reduce risk on their balance sheets by quickly adjusting their trading prices directly in reaction to large trading imbalances. The expectation of other shareholders buying and selling the stock on a daily basis will impact how market makers adjust their prices significantly more than in an ETF due to their expected ability to quickly and efficiently trade out of risk.



In order for fund redemptions to be executed in support of the arbitrage

mechanism, Nasdaq believes it is appropriate that in lieu of the shareholder requirement that the Fund has a sufficient number of shares outstanding in order to facilitate the formation of at least one creation unit on an initial and continued listing basis. The existence of the creation and redemption process, daily portfolio transparency, as well as a sufficient number of shares outstanding to allow for the formation of at least one creation unit, ensures that market participants are able to redeem shares and, thereby support the proper functioning of the arbitrage mechanism. Of the over 350 funds currently listed on Nasdaq that would be eligible to be listed under Nasdaq Rule 5704, only two had a single creation unit outstanding. The remaining funds have, on average, shares outstanding equal to approximately 300 creation units.¹⁵

Therefore, the symbiotic relationship between the disclosure requirements of Rule 6c-11, the ability of the AP to create and redeem shares of a fund, and the functioning of the arbitrage mechanism helps to ensure that the trading price in the secondary market is at fair value. This renders the need for a shareholder requirement, whose original purpose was to support a fair and orderly trading, as duplicative and unnecessary. Finally, Nasdaq's surveillance program and its ability to halt trading in a fund provides for additional investor protections by further mitigating any abnormal trading that would affect the Fund's price.¹⁶

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the

¹⁵ Nasdaq internal data as of March 31, 2020.

¹⁶ See Nasdaq Rule 4120(a)(10).

Act¹⁷ in general and Section 6(b)(5) of the Act¹⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change to amend Nasdaq Rule 5704 to remove the 50 beneficial holder requirement and to amend the shares outstanding listing requirement, as discussed above, will 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. As discussed herein, reliance on the conditions of Rule 6c-11, coupled with the existing creation and redemption process, as well as the presence of sufficient shares to support the creation and redemption process, serve to mitigate the potential for a lack of liquidity that the shareholder requirement was intended to address.¹⁹ By further aligning the listing requirements with the operational relationship between investors, market participants and ETF issuers, the proposal facilitates greater transparency for investors and issuers resulting in a more efficient market and increased investor protections.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See supra note 6.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes that the proposed rule change will maintain the integrity of Nasdaq Rule 5704 on an initial and continued listing basis to the benefit of investors and the marketplace.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2020-017)

July __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Nasdaq Rule 5704

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 July 23, 2020, 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 Nasdaq Rule 5704 to remove the listing requirement that following twelve months after listing a series of Exchange Traded Fund Shares (the “Fund”) on Nasdaq that the Fund has at least 50 beneficial holders and to amend the requirement that Nasdaq will establish a minimum number of shares of the Fund to be outstanding at the time of initial listing with a requirement that the Fund must have a minimum number of shares outstanding to facilitate the formation of at least one creation unit on an initial and continued listing basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 amend Nasdaq Rule 5704 to remove the listing requirement that following twelve months after listing a series of an Exchange Traded Fund Shares on Nasdaq that the Fund has at least 50 beneficial holders and to amend the requirement that Nasdaq will establish a minimum number of shares of the Fund to be outstanding at the time of initial listing with a requirement that the Fund must have a minimum number of shares outstanding to facilitate the formation of at least one creation unit on an initial and continued listing basis.³

Nasdaq believes that the requirement that a series of Exchange Traded Fund Shares listed pursuant to Nasdaq Rule 5704 must have at least 50 beneficial shareholders

³ The term creation unit would have the same meaning as defined in Rule 6c-11 (i.e., a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount, if any.).

is no longer necessary. The Exchange believes that the conditions of Rule 6c-11⁴ (“Rule 6c-11”) under the Investment Company Act of 1940, as amended,⁵ coupled with the existing creation and redemption process, mitigate the potential lack of liquidity that the shareholder requirement was intended to address.⁶ Nasdaq believes that requiring a sufficient number of shares to be outstanding at all times in order to facilitate the formation of at least one creation unit, coupled with the daily portfolio transparency and other enhanced disclosure requirements of Rule 6c-11, will facilitate an effective arbitrage mechanism and provide market participants and investors with sufficient transparency into the holdings of the underlying portfolio and ensure that the trading price in the secondary market remains in line with the value per share of the portfolio. The Exchange believes this is consistent with prior Commission statements.⁷

⁴ A series of Exchange Traded Fund Shares listed pursuant to Nasdaq Rule 5704 is required to be eligible to operate pursuant to Rule 6c-11. See Nasdaq Rule 5704(b).

⁵ See Release No. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (“ETF Adopting Release”).

⁶ As stated in previous rule proposals, Nasdaq believes that the shareholder requirement, as it relates to common stock, is a measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed. See Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Revise the Exchange’s Initial Listing Standards Related to Liquidity). However, as discussed herein, the pricing, liquidity, trading and valuation of Exchange Traded Fund Shares is fundamentally different from that of common stock.

⁷ In the Adopting Release, the Commission stated, “Further, we believe that the conditions we are adopting as part of rule 6c-11, along with other recent actions that are designed to promote an effective arbitrage mechanism, will continue to result in a sufficiently close alignment between an ETF’s market price and NAV per share in most circumstances...” See supra note 6, at pp. 41.

For example, Rule 6c-11 requires additional disclosure if the premium or discount is in excess of 2% for more than seven consecutive days, as well as related website disclosure and discussion requirements.⁸ This disclosure provides additional transparency to investors in the event that the trading value and the underlying portfolio deviate for an extended period of time, which could indicate an inefficient arbitrage mechanism.⁹ The arbitrage mechanism relies on the fact that shares of the Fund can be created and redeemed and that shares of the Fund are able to flow into or out of the market when the price of the Fund is not aligned with the net asset value per share of the portfolio. The resulting buying and selling of the shares of the Fund, as well as the underlying portfolio components, generally causes the market price and the net asset value per share to converge. The Exchange believes this is consistent with prior Commission statements.¹⁰

In addition, the proper functioning of the arbitrage mechanism is reliant on the presence of authorized participants (“APs”) that are eligible to facilitate creations and redemptions with the fund and support the liquidity of the fund. The AP facilitates liquidity in the ETF primary market by purchasing shares of the underlying portfolio and transferring the shares to the ETF issuer in exchange for shares of the ETF (creation) or

⁸ See 17 CFR 270.6c-11(c)(1)(vi).

⁹ The Exchange notes that the Commission discussed the importance of an effective and efficient arbitrage mechanism in the Rule 6c-11 Release. See *supra* note 6 at pp. 14-16.

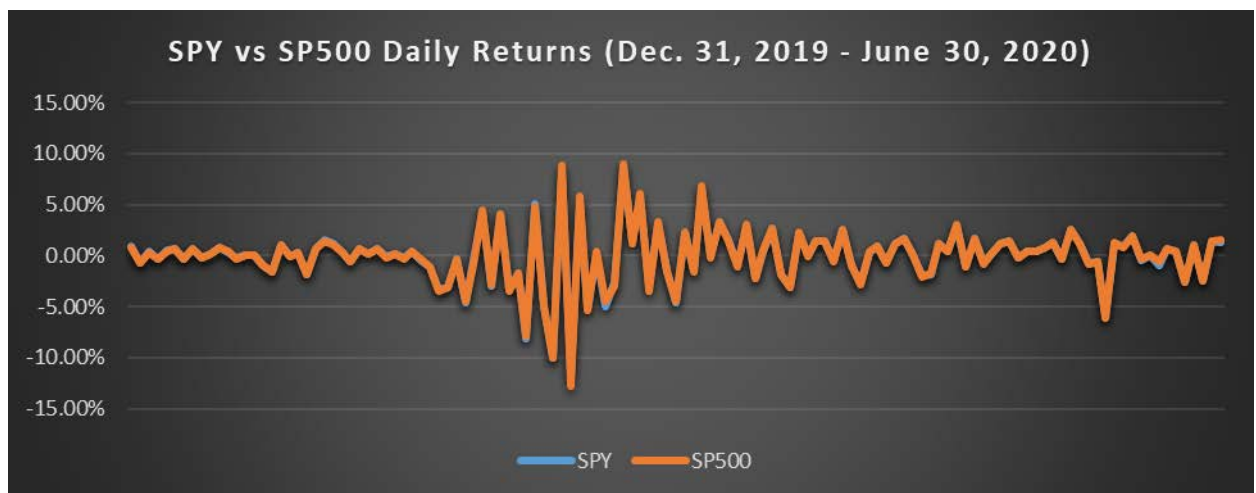
¹⁰ In the ETF Adopting Release, the Commission stated, “The combination of the creation and redemption process with secondary market trading in ETF shares and underlying securities provides arbitrage opportunities that are designed to help keep the market price of ETF shares at or close to the NAV per share of the ETF.” See ETF Adopting Release at pp. 12-13.

returning shares of the ETF to the issuer and receiving shares of the portfolio (redemption). Therefore, the ability of the AP to transact in shares of the ETF plays a vital role in the liquidity of the ETF and the functioning of the arbitrage mechanism. The AP is able to buy and sell shares of the ETF from both the fund and investors. Because ETFs can be created and redeemed “in-kind” and do not have an upper limit of the number of shares that can be outstanding, an AP can fulfill customer orders or take advantage of arbitrage opportunities regardless of the number of ETF shares currently outstanding. Thus, unlike common stock, the liquidity of an ETF is not dependent on the number of ETF shares currently outstanding or the number of shareholders, but on the availability of AP’s to transact in the ETF primary market. The Exchange notes that the SEC did not adopt a minimum number of APs as part of Rule 6c-11 because funds already have enough APs so that a need for such a requirement to ensure a sufficient number of APs was unwarranted.¹¹

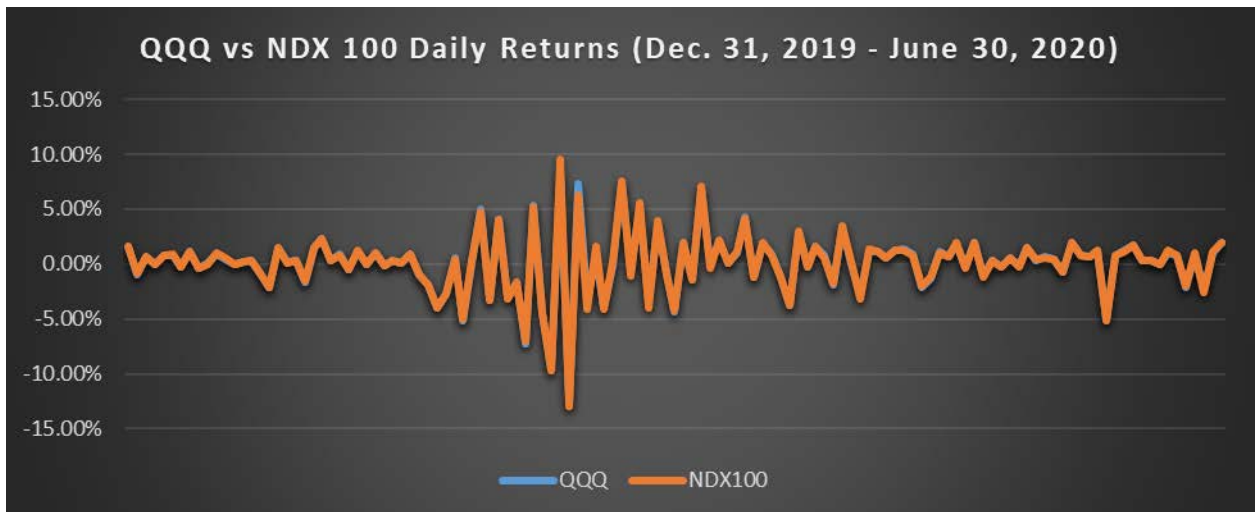
ETF liquidity, due to its open-ended structure allowing for creations and redemptions, differs from single company stocks because the opportunity or market makers to arbitrage between the ETF price and the value of the underlying securities exists. Even during market conditions marked by large buying or selling imbalances in the ETF, the ETF should be expected to trade close to the value of its underlying holdings provided that the creation/redemption facility remains open and accessible. To

¹¹ “Additionally, based upon Form N-CEN data through September 5, 2019, we found that out of 1672 funds reviewed that could rely on rule 6c-11, only 30 (approximately 1.8% of the funds reviewed) reported having fewer than 2 APs. We therefore do not believe that it is appropriate at this time to prescribe a minimum number of APs that an ETF may use.” See ETF Adopting Release at p. 54.

demonstrate, the two charts below¹² compare the percentage daily returns of both SPY and QQQ compared to their respective benchmark indices the S&P 500 and the Nasdaq 100. SPY and QQQ, as passive ETFs, are managed to track the returns of the benchmark index by replicating the holdings of the index. As can be seen in the two charts below, the returns of both SPY and QQQ are kept close in line through the availability of the arbitrage mechanism. It is important to note that this dynamic of close tracking was able to occur during a period of unprecedented volatility and volumes in both ETFs. The observations period was the first two quarters of 2020.

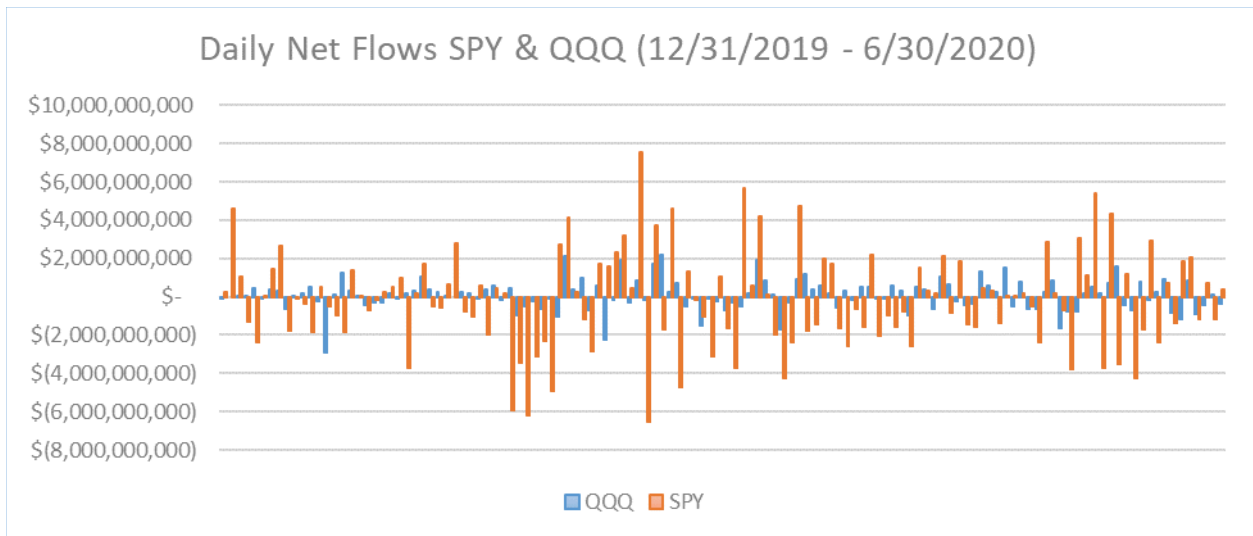


¹² FactSet Research Systems Inc. (2020). SPY vs SP500 Daily Returns (Dec. 31, 2019 – June 30, 2020) and QQQ vs NDX 100 Daily Returns (Dec. 31, 2019 – June 30, 2020). Retrieved July 17, 2020, from FactSet database.



The chart below¹³ maps out daily net flows through creation/redemption activity in the same observation period to give evidence that there likely were significant buy/sell imbalances where market makers were able to keep the returns of SPY and QQQ in line with their benchmark indices through the availability of arbitrage in the open-ended ETF structure. This dynamic also works similarly in an ETF with little or no daily trading activity, where a market maker can generally be expected to provide liquidity in this ETF that is higher than the average daily volume through creation/redemption. The market maker will consider the availability of the arbitrage mechanism and liquidity of the underlying fund securities significantly more than the awareness that an ETF has 50 or greater shareholders who may or may not even trade on a given trading day.

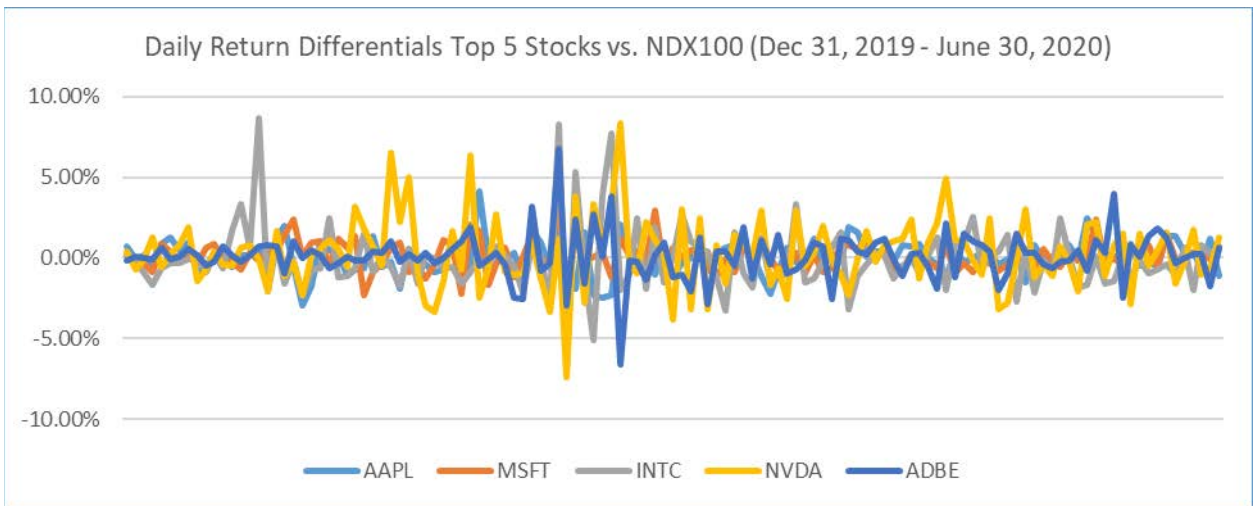
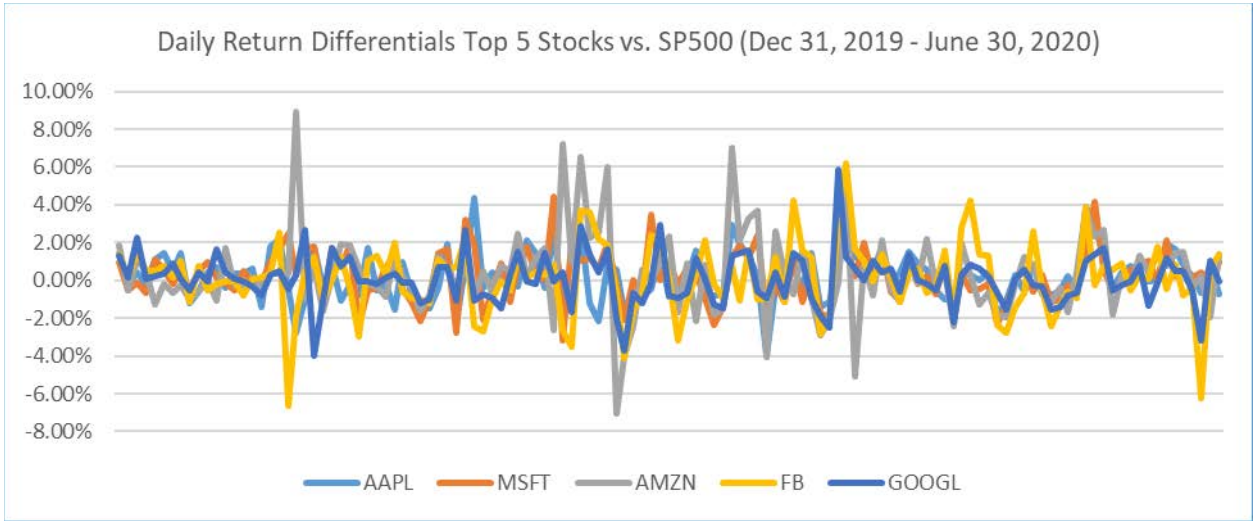
¹³ FactSet Research Systems Inc. (2020). Daily Net Flows SPY & QQQ (12/31/19 – 6/30/20). Retrieved July 17, 2020, from FactSet database.



To further illustrate how the arbitrage mechanism makes ETF liquidity differ from single stock liquidity, the two charts below¹⁴ take the 5 highest weighted stocks from the S&P 500 and Nasdaq 100 indices and compare their daily percentage returns against the daily percentage returns of the index they are constituents of. These stocks are some of the largest and most actively held and traded names on a daily basis, and the point being made is that these stocks are not open-ended and therefore impact how market makers trade them and consider the availability and activity of other trading participants. The observation period remains the first two quarters of 2020. When looking at the relative returns of each of these stocks against the “market” as these indices are commonly referred, we see that there are often significant daily return variations between the stock and the index. The stocks do not have the open-ended structure to create or redeem shares like the ETF; therefore, the market makers in the

¹⁴ FactSet Research Systems Inc. (2020). Daily Return Differentials Top 5 Stocks vs. SP500 (Dec 31, 2019 – June 30, 2020) and QQQ vs NDX 100 Daily Returns (Dec. 31, 2019 – June 30, 2020) and Daily Return Differentials Top 5 Stocks vs. NDX100 (Dec. 31, 2019 – June 30, 2020). Retrieved July 17, 2020, from FactSet database.

stocks must consider daily buying and selling imbalance activity to reduce risk on their balance sheets by quickly adjusting their trading prices directly in reaction to large trading imbalances. The expectation of other shareholders buying and selling the stock on a daily basis will impact how market makers adjust their prices significantly more than in an ETF due to their expected ability to quickly and efficiently trade out of risk.



In order for fund redemptions to be executed in support of the arbitrage mechanism, Nasdaq believes it is appropriate that in lieu of the shareholder requirement that the Fund has a sufficient number of shares outstanding in order to facilitate the formation of at least one creation unit on an initial and continued listing basis. The

existence of the creation and redemption process, daily portfolio transparency, as well as a sufficient number of shares outstanding to allow for the formation of at least one creation unit, ensures that market participants are able to redeem shares and, thereby support the proper functioning of the arbitrage mechanism. Of the over 350 funds currently listed on Nasdaq that would be eligible to be listed under Nasdaq Rule 5704, only two had a single creation unit outstanding. The remaining funds have, on average, shares outstanding equal to approximately 300 creation units.¹⁵

Therefore, the symbiotic relationship between the disclosure requirements of Rule 6c-11, the ability of the AP to create and redeem shares of a fund, and the functioning of the arbitrage mechanism helps to ensure that the trading price in the secondary market is at fair value. This renders the need for a shareholder requirement, whose original purpose was to support a fair and orderly trading, as duplicative and unnecessary. Finally, Nasdaq's surveillance program and its ability to halt trading in a fund provides for additional investor protections by further mitigating any abnormal trading that would affect the Fund's price.¹⁶

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹⁷ in general and Section 6(b)(5) of the Act¹⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

¹⁵ Nasdaq internal data as of March 31, 2020.

¹⁶ See Nasdaq Rule 4120(a)(10).

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

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 rule change to amend Nasdaq Rule 5704 to remove the 50 beneficial holder requirement and to amend the shares outstanding listing requirement, as discussed above, will 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. As discussed herein, reliance on the conditions of Rule 6c-11, coupled with the existing creation and redemption process, as well as the presence of sufficient shares to support the creation and redemption process, serve to mitigate the potential for a lack of liquidity that the shareholder requirement was intended to address.¹⁹ By further aligning the listing requirements with the operational relationship between investors, market participants and ETF issuers, the proposal facilitates greater transparency for investors and issuers resulting in a more efficient market and increased investor protections.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of 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 purpose of the Act. The Exchange believes that the proposed rule change will maintain the

¹⁹ See supra note 6.

integrity of Nasdaq Rule 5704 on an initial and continued listing basis to the benefit of investors and the marketplace.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-017 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-2020-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2020-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market LLC Rules

* * * * *

5704. Exchange Traded Fund Shares

(a) No Change.

(b) Nasdaq may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 5704 on an initial and continued listing basis.

(1) Initial and Continued Listing. Each series of Exchange Traded Fund Shares must also satisfy the following criteria on an initial and continued listing [(except for paragraph (A) below)] basis:

(A) [Initial]Shares Outstanding. For each series of Exchange Traded Fund Shares, [Nasdaq will establish a minimum] there must be a sufficient number of Exchange Traded Fund Shares outstanding to facilitate the formation of at least one creation unit required to be outstanding at the time of commencement of trading on Nasdaq.

(B) – (D) No Change.

(2) Suspension of trading and removal. Nasdaq will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Exchange Traded Fund Shares under any of the following circumstances:

(A) No Change.

(B) [if, following the initial twelve month period after commencement of trading on Nasdaq of a series of Exchange Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange Traded Fund Shares;

(C)]if any of the other requirements set forth in this Rule 5704 are not continuously maintained; or

(C[D]) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

(c) – (f) No Change.

* * * * *