

and Exchange Commission (“Commission”), 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> a proposed rule change to amend Nasdaq Rules 5705 and 5710 to adopt a disclosure requirement for certain securities. The proposed rule change was published for comment in the **Federal Register** on December 19, 2018.<sup>3</sup> On January 29, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On March 5, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>6</sup> On March 19, 2019, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>7</sup> The Commission has received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 2.

## II. Description of the Proposed Rule Change, as Modified by Amendment No. 2<sup>8</sup>

The Exchange proposes to amend Nasdaq Rule 5705(b)(1)(B) relating to Index Fund Shares and Nasdaq Rule 5710(d) relating to Linked Securities. Specifically, the Exchange proposes to require issuers of leveraged or inverse Index Fund Shares and Linked Securities that seek returns on a daily basis to provide additional website disclosure highlighting the daily return feature of these products and the risks associated with holding these products for longer than one day. The Exchange

proposes to amend Nasdaq Rules 5705(b)(1)(B) and 5710(d) to require issuers of such Index Fund Shares or Linked Securities to include on each such product’s website a statement that the product seeks returns for a single day,<sup>9</sup> and that, due to the compounding of returns, holding periods of longer than one day can result in investment returns that are significantly different than the product’s target returns. The proposed disclosure would also direct investors to consult the prospectus for further information on the calculation of the returns and other risks associated with investing in this type of product. The Exchange represents that, while issuers’ websites already typically contain language similar to the disclosure proposed herein, Nasdaq believes that providing example language enhances the transparency of the proposed listing standard.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, 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.

Currently, Nasdaq rules permit the listing and trading of Index Fund Shares and Linked Securities that seek investment results to exceed by a multiple of the performance (leveraged), or exceed by a multiple of the inverse of the performance (inverse), of an underlying index or reference asset. According to the Exchange, these products are designed to track the daily performance of an underlying instrument, and holding these products for longer than a day can result in investment returns that are significantly different than the target return. The

Exchange states that some investors may not fully understand this risk. The Commission believes that the proposed amendments requiring additional disclosure for these types of Index Fund Shares and Linked Securities listed on the Exchange are consistent with investor protection because the disclosure would provide investors with additional information regarding the investment risks associated with these products.

This approval order is based on all of the Exchange’s representations, including those set forth above and in Amendment No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act<sup>12</sup> and the rules and regulations thereunder applicable to a national securities exchange.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NASDAQ-2018-079), as modified by Amendment No. 2 be, and it hereby is, approved.

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

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 789X)]

### CSX Transportation, Inc.— Discontinuance of Service Exemption—in Miami-Dade County, Fla.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 12.5-mile rail line on its Jacksonville Division, Homestead Subdivision between milepost SXH 54.5 and milepost SXH 67.0 in Miami-Dade County, Fla. (the Line). The Line traverses U.S. Postal Service Zip Codes 33177, 33187, 33170, 33031, and 33030.

CSXT has certified that: (1) No freight traffic has moved over the Line for at least two years; (2) any overhead traffic on the Line can be rerouted over other

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

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

<sup>3</sup> See Securities Exchange Act Release No. 84812 (December 13, 2018), 83 FR 65184.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 85000, 84 FR 1525 (February 4, 2019).

<sup>6</sup> Amendment No. 1, which amends and replaces the proposed rule change in its entirety, is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-079/srnasdaq2018079-5020213-183007.pdf>.

<sup>7</sup> In Amendment No. 2, which amends and replaces the proposed rule change, as modified by Amendment No. 1, in its entirety, the Exchange removes (i) the proposed definition of Closing Indicative Value relating to Linked Securities, and (ii) all of the proposed changes in the first paragraph of Nasdaq Rule 5710(d). Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nasdaq-2018-079/srnasdaq2018079-5146426-183370.pdf>.

<sup>8</sup> For more information regarding the proposal, including the proposed amendments to Nasdaq Rules 5705 and 5710, see Amendment No. 2, *supra* note 7.

<sup>9</sup> The Exchange notes that the proposed rule change is limited to Multiple/Inverse Daily Products.

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

lines; (3) no formal complaint filed by a user of rail service on the Line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA)<sup>1</sup> to subsidize continued rail service has been received, this exemption will be effective on April 24, 2019, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)<sup>2</sup> must be filed by April 4, 2019.<sup>3</sup> Petitions for reconsideration must be filed by April 12, 2019, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001.

A copy of any petition filed with Board should be sent to CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

<sup>1</sup> The Board modified its OFA procedures effective July 29, 2017. Among other things, the OFA process now requires potential offerors, in their formal expression of intent, to make a preliminary financial responsibility showing based on a calculation using information contained in the carrier's filing and publicly available information. See *Offers of Financial Assistance*, EP 729 (STB served June 29, 2017); 82 FR 30,997 (July 5, 2017).

<sup>2</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,800. See 49 CFR 1002.2(f)(25).

<sup>3</sup> Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: March 19, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,  
Clearance Clerk.

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2019-0001]

### 2019 Generalized System of Preferences (GSP): Notice of Annual GSP Product and Country Review; Deadline for Filing Petitions

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of statistics availability and announcement of annual GSP review.

**SUMMARY:** The Office of the United States Trade Representative (USTR) will consider petitions to modify the GSP status of GSP beneficiary developing countries (BDCs) because of country practices; add products to GSP eligibility; remove products from GSP eligibility for one or more countries; waive competitive need limitations (CNLs); deny *de minimis* waivers for products eligible for *de minimis* waivers; and redesignate currently excluded products. This review will include separate hearings on product petitions and country eligibility reviews, which USTR will announce in the **Federal Register** at a later date.

**DATES:** April 18, 2019 at midnight EST: Deadline for petitions to modify the GSP status of certain GSP beneficiary developing countries because of country practices; petitions requesting waivers of CNLs; petitions on GSP product eligibility additions or removals; petitions to deny *de minimis* waivers; petitions to redesignate an excluded product; and petitions for continuation of CNLs that have exceeded certain thresholds. USTR will not consider petitions submitted after the April 18, 2019 deadline. USTR will announce the petitions accepted for review, along with a schedule for any related public hearings and the opportunity for the public to provide comments, at a later date.

**ADDRESSES:** USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in

section III below. The docket number is USTR-2019-0001. For alternatives to on-line submissions, please contact Lauren Gamache at [gsp@ustr.eop.gov](mailto:gsp@ustr.eop.gov), or 202-395-2974.

**FOR FURTHER INFORMATION CONTACT:**

Lauren Gamache at [gsp@ustr.eop.gov](mailto:gsp@ustr.eop.gov), or 202-395-2974.

**SUPPLEMENTARY INFORMATION:**

### I. 2018 Import Statistics Related to CNLs, De Minimis Waivers, and Product Redesignations

The GSP program provides for the duty-free treatment of designated articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2461-2467), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

USTR posted the 2018 import statistics relating to CNLs, *de minimis* waivers, and product redesignations on the USTR website at [https://ustr.gov/sites/default/files/IssueAreas/gsp/2018\\_Import\\_Statistics\\_Relating\\_to\\_CNLS\\_De\\_Minimis\\_Waivers\\_and\\_Product\\_Redesignations.pdf](https://ustr.gov/sites/default/files/IssueAreas/gsp/2018_Import_Statistics_Relating_to_CNLS_De_Minimis_Waivers_and_Product_Redesignations.pdf). These statistics include four lists.

I. List I identifies GSP-eligible articles from BDCs that exceeded a CNL by having been imported into the United States in 2018 in excess of \$185 million, or in a quantity equal to or greater than 50 percent of the total U.S. import value for this product in 2018. Unless the President grants a waiver in response to a petition filed by an interested party, these products will be removed from GSP eligibility on November 1, 2019.

II. List II identifies GSP-eligible articles from BDCs that are above the 50 percent CNL but that are eligible for a *de minimis* waiver since total U.S. imports of the product are less than \$24 million. Articles eligible for *de minimis* waivers automatically are considered in the GSP annual review process without the filing of a petition. As described below, USTR will only accept petitions in opposition to a potential *de minimis* waiver for a particular product.

III. List III identifies GSP-eligible articles from certain BDCs that currently are not receiving GSP duty-free treatment but may be considered for GSP redesignation based on 2018 trade data and consideration of certain statutory factors. Note that products exceeding the 50 percent CNL may be considered for redesignation if there was no U.S. production of a like or directly competitive product in the last three years.