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Legal front running on the Nasdaq

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Abstract

Under pressure from Elon Musk's SpaceX, the Nasdaq is changing the rules for the Nasdaq-100 Index. This has serious consequences.

Zusammenfassung

Die Nasdaq ändert auf Druck von Elon Musks SpaceX die Regeln für den Nasdaq-100-Index. Das hat gravierende Folgen.



Agreeing to a probationary period is not only common in the world of work. New-comers to the stock market must also first prove that they are capable of meeting numerous requirements.

By no means are all shares listed on the stock exchange. If owners of unlisted shares decide to allow anyone to purchase shares, they list the shares on the stock exchange: a small stake, the majority, or the entire company. This is known as an Initial Public Offering (IPO). The motivation for this may be to raise capital and/or meet the financial needs of the existing owners. Once shares are listed on a stock exchange, anyone can buy them. Access is provided, for example, by banks or specialist brokers.

Following the IPO, the newly listed company faces numerous requirements. These include, for example, providing the public with timely information regarding important corporate events, financial reporting in accordance with the rules, and sound management practices (corporate governance). If new listings meet all the requirements placed upon them over a certain period, they have the chance to qualify for inclusion in an index. This is a desirable outcome. This is because members of an index receive increased attention from the public and investors. With the rise of passive, exchange-traded funds (ETFs), inclusion in an index automatically attracts further capital to the share. This is beneficial for the share price performance, at least in the short term.

A financial market index is designed to represent and measure the performance of a specific market, asset class, sector or investment strategy. The MSCI Emerging Markets Index, for example, represents the performance of equities from emerging markets worldwide. The Bloomberg Global Aggregate Bond Index, on the other hand, tracks a broad spectrum of global bonds, including government, corporate and secured bonds with investment-grade ratings. The construction of a financial market index is not random, but follows fixed rules regarding the selection of individual components, their weighting, the calculation of the index and the basic requirements for inclusion in the index. There is no standardised approach to index construction. Each index provider creates its own rules – and can change them.



Revolutionary overhaul of index rules

The rules for inclusion in the major US indices also vary. [The composition of the Dow Jones Industrial Average, with its 30 constituents, is decided on an irregular basis by a five-member expert committee comprising editors from the S&P DJIA indices and the 'Wall Street Journal'](#).

Different regulations apply to the S&P 500 and the Nasdaq 100 respectively¹. The S&P 500 is the most important global equity barometer, currently comprising 503 constituents spread across all sectors². The Nasdaq 100 (101 constituents) includes numerous shares from major technology companies in its index, but is also joined by stocks from other sectors: for example, the soft drinks manufacturer PepsiCo and the ketchup producer Kraft Heinz can be found in the Nasdaq 100. Financial companies are traditionally excluded from the Nasdaq 100. This is stipulated by the regulations.

Companies seeking inclusion in the Nasdaq 100 must be listed exclusively on the Nasdaq Global Select Market or the Nasdaq Global Market. Both are stock exchanges. The security must have a free float of at least ten per cent. To be eligible for initial inclusion in the index, a security must have been listed and admitted to trading on an approved stock exchange for at least three full calendar months, not counting the month of initial listing. There are further requirements, such as an average daily trading turnover of at least five million dollars over three months.

[In a decision dated 30 March 2026, Nasdaq significantly lowered the barriers to entry for inclusion in the index.](#)³ From 1 May 2026, accelerated entry into the illustrious circle of the Nasdaq 100 will be possible as early as 15 trading days after an initial public offering. At the same time, Nasdaq is partially changing the rules for weighting within the index (see table). S&P Global, the financial agency behind the S&P 500, is also considering lowering the barriers. The index provider FTSE Russell is likewise considering a 'fast-entry' scheme for its US market indices and has been in a consultation phase since early April 2026.

[It is no coincidence that this is happening now: with SpaceX, Elon Musk's space company, the most spectacular IPO of all time is on the horizon. Musk had pushed for the rules to be changed, as reported by the Reuters news agency, among others.](#)

¹ To be included in the S&P 500 or the broader S&P 1500, newly listed companies must have been traded on a recognised stock exchange for at least twelve months prior to inclusion. In addition, there are requirements regarding profit performance, which must have been positive in the past

² The indices do not always contain exactly the same number of shares as the index name suggests (500 or 100). Alphabet shares, for example, are represented by two share classes

³ Nasdaq explains the changes as follows: *"Nasdaq Global Indexes periodically reviews index methodologies through standard governance processes, and feedback submitted during the consultation informed the final determination."*



The Nasdaq has complied and, in return, can likely boast the SpaceX listing. The Nasdaq is both a stock exchange and an index provider.

The changes will have a noticeable impact. The key lever is the new fast-entry rule. Not only will it soon be unnecessary to have been listed for a long time; the previous rule that at least ten per cent of a company's shares must also be tradable on the stock exchange (the so-called free float) will also be abolished. The real revolution, however, lies in the fact that on the Nasdaq, a low free float of up to 20 per cent will soon not be included 1:1 in the index weighting, but multiplied by a factor of 3, i.e. 3:1. Until now, there was no such rule: companies with a free float of less than ten per cent are not eligible for the Nasdaq 100 until 30 April 2026.

Take SpaceX, for example: the company could be valued at two trillion dollars at its IPO. However, only a small number of shares will be offered on the stock market. Exactly how many has not yet been determined. There is talk of just three to four per cent. That would correspond to \$60 to \$80 billion in free float, should SpaceX actually achieve a total valuation of \$2 trillion. Under the new index rules, this \$60 to \$80 billion would be multiplied by a factor of 3. SpaceX shares would then be given an index weighting of \$180 to \$240 billion. To be included in the Nasdaq 100 quickly, a company must rank among the top 40 heavyweights. The threshold currently stands at 114 billion dollars.⁴ Thanks to the factor of 3, SpaceX is therefore highly likely to join this elite group shortly after its IPO – the new rules make it possible.

⁴ CrowdStrike Holdings share on 21 April 2026



Table: What the new rules for inclusion in the Nasdaq 100 index look like

Example companies	Total market capitalisation (for ranking & inclusion only) in dollars	Listed market capitalisation in dollars	Proportion of free float	3x free float adjustment if free float is <20%	Index weight in dollars
A	80 billion	80 billion	86%	100%	80 billion
B	150 billion	150 billion	10%	30%	45 billion
C	1 trillion	500 billion	5%	15%	75 billion
D	200 billion	100 billion	45%	100%	100 billion
ADR (primary listing)	110 billion	110 billion	12%	36%	39.6 billion
ADR (Non-primary listing)	N/A	40 billion	N/A	N/A	40 billion

Example company	Comments
A	All shares are listed, and the free float is over 20%, so there is no adjustment to the market capitalisation (this is the norm)
B	All shares are listed, but the free float is only 10%, so the company is weighted at 30% of its market capitalisation (10% x 3 = 30%)
C	A large proportion of the market capitalisation is unlisted; the free float of the listed shares is only 5%, so the security is weighted at 15% of the listed market capitalisation (3% x 5 = 15%)
D	A large proportion of the market capitalisation is unlisted, but the free float of the listed shares is over 20%, so the company is weighted by the full listed market capitalisation
ADR (Primary Listing)	This ADR is treated as a direct listing. All shares are listed, but the free float is only 12%, so the security is weighted at 36% of its market capitalisation (12% x 3 = 36%)
ADR (Non-primary listing)	Only shares listed on the Nasdaq are taken into account for inclusion and weighting. The security is weighted by its full Nasdaq market capitalisation

ADRs (American Depositary Receipts) are US dollar-denominated certificates that represent ownership of shares in foreign companies and are traded on US stock exchanges. Source: own representation based on Nasdaq, Flossbach von Storch Research Institute, as at April 2026.

This rapid rise is no small matter: the Nasdaq 100 Index attracts the second-highest amount of ETF funds after the S&P 500. Most recently, more than 200 investment products tracking the Nasdaq 100 held over \$600 billion.

A gateway for mega tech IPOs

With the rule changes, the Nasdaq is also likely to attract other mega IPOs, such as those of the AI companies OpenAI and Anthropic. This may be in the spirit of an index that aims to reflect the economy and take account of upheavals. However, the additional weighting change by a factor of 3 is a kowtow to Musk and the upcoming IPO hopefuls OpenAI and Anthropic. Reason: All other things being equal, the new Nasdaq 100 regulations lead to a higher valuation of the companies. The index mechanics override fundamental factors such as expected revenue and profit



growth. Originally, the Nasdaq even planned to introduce a factor of 5 for free float, which highlights the arbitrariness of introducing this unusual rule. Instead of three per cent of listed shares, as much as 15 per cent would then have been included in the index weighting. From an investor's perspective, this would have exacerbated the problems even further.

The situation is as follows: if, for example, SpaceX were to join the Nasdaq 100 with a market capitalisation of \$240 billion, but only shares worth \$80 billion were actually listed, this would create a massive imbalance between supply and demand. This is because ETFs are required to buy shares in proportion to their weighting, and many active fund managers would also be effectively forced to increase their holdings if their portfolios are heavily weighted towards the Nasdaq 100 or technology stocks. Up until the 15th trading day following the SpaceX IPO – the day of its inclusion in the index – there is therefore likely to be a massive surge in demand. Hedge funds are likely to jump in, drive up the price and cash in on the day of inclusion. All of this is happening largely detached from the business outlook and any fair value of the share derived from it. This 'flipping' strategy (jumping in and out of a share quickly) is unlikely to be limited to well-connected hedge funds. As SpaceX reportedly also intends to allow retail investors to participate in the IPO, they too could beat the ETFs to the punch – which amounts to legal *front-running*.⁵

The buying frenzy is likely to be followed by a hangover. Once the demand from the final buyers – who are likely to be ETF providers until the 15th trading day – has been satisfied, the share price faces a slump. Market participants buying solely on the basis of the new index mechanics are likely to exit; particularly as hedge funds often take positions using leverage, i.e. partly or wholly financed by credit. As SpaceX or other future mega-IPOs carry significant weight, this could drag down index funds that may have paid top prices. Mathematically, this should be manageable, as even with a market capitalisation of \$240 billion plus a substantial price premium following its inclusion in the index, SpaceX's share of the index is unlikely to exceed one per cent. However, sentiment would be dampened and could lead to the sale of ETFs. [Studies show that many investors hold ETFs for only short periods anyway.](#) An event such as the SpaceX IPO could further reinforce this trend. An artificially inflated free float, multiplied by a factor of three, is strictly speaking a low-float problem for investors: too few shares are circulating on the market.

⁵ Front running is an illegal trading practice in which market participants (usually brokers) use non-public information about large client orders to open their own positions before these orders are executed. By deliberately exploiting price jumps triggered by the client order, they make profits at the client's expense



However: [whilst competing indices such as the S&P 500 weight shares according to their free float](#), the Nasdaq 100 Index has always weighted shares according to the listed market capitalisation of all outstanding shares (see Table Examples A and D).

The logic of an IPO is changing

However, with the new 'fast-entry' and 'factor 3' regulations, the logic behind IPOs is shifting. Previously, inclusion in major indices was a result of maturity, company size, share liquidity and profitability. Now, large IPOs can be structured in advance. A limited supply of shares generally drives up the price of sought-after, promising companies. The valuation rises significantly higher than would previously have been the case with the required higher free float of ten per cent without the factor rule. Furthermore, there is now the possibility of being listed on the Nasdaq 100 without a waiting period.

ETF providers must buy early, before a stable secondary market has even established itself. This creates a structural excess of demand. Particularly with low floats, a scarcity premium can automatically form – a valuation component that has less to do with fundamental data than with index mechanics.

Furthermore, shares are locked into ETFs as long as ETF investors do not sell the funds. Passive funds do not buy or sell securities based on fundamental data, but rather on the basis of index mechanics and the inflows and outflows of their investors. The lock-in effect in ETFs further significantly reduces the already considerably diminished number of available shares. This increases the risk of a sharp fall in the share price. Should there be fundamental disappointments, investors wishing to sell will face low demand. The share price could plummet significantly simply due to this lack of liquidity.

The Nasdaq is doing the US stock market culture no favours. It remains to be seen to what extent high volatility will set in for the share prices of SpaceX, OpenAI or Anthropic following a potential Nasdaq listing, and whether this will feed through to the Nasdaq 100 index. Anyone investing passively in the Nasdaq 100 via ETFs should certainly be aware of the higher volatility risk. It remains to be seen whether S&P Global, FTSE or other index providers will follow the Nasdaq's lead due to competitive pressure. The answer as to whether they should do so is: better not.



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