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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 083

Amendment No. (req. for Amendments *)

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposed rule change to exempt certain categories of investment companies registered under the Investment Company Act of 1940

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 of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 10/21/2021 (Title *)
By John Zecca EVP and Chief Legal Counsel
(Name *)

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

 Date: 2021.10.21 17:07:42 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SR-NASDAQ-2021-083 19b-4.doc

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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SR-NASDAQ-2021-083 Exhibit 1.doc

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

Add Remove View

SR-NASDAQ-2021-083 Exhibit. 5.doc

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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act”)¹ and Rule 19b-4 thereunder,² The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to exempt certain categories of investment companies registered under the Investment Company Act of 1940 (the “1940 Act”) from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company.

The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. 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 F. 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 5615 to exempt certain categories of investment companies registered under the 1940 Act from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The proposal is substantially similar to a recent rule change made by NYSE Arca, Inc. (“Arca”).³

Nasdaq proposes a minor restructuring of the subparagraphs in Nasdaq Rule 5615(a)(1) relating to the current exemptions to the corporate governance requirements for asset-backed issuers and other passive issuers. Specifically, renumbering the corporate governance requirements set forth in Nasdaq Rule 5615(a)(1) to Nasdaq Rule 5615(a)(1)(A), renumbering the current exemption for asset-backed issuers from Nasdaq Rule 5615(a)(1)(A) to Nasdaq Rule 5615(a)(1)(A)(i), and renumbering the current exemption for other passive issuers from Nasdaq Rule 5615(a)(1)(B) to Nasdaq Rule 5615(a)(1)(A)(ii). Nasdaq also proposes to amend Nasdaq Rule 5615(a) by adding new subsection (1)(C), as well as inserting a new second paragraph under Nasdaq Rule 5615(a)(5) between the existing two paragraphs. Nasdaq Rule 5615(a)(5) will provide

³ See Securities Exchange Act No. 91901 (May 14, 2021) 86 FR 27487 (May 20, 2021) (SR-NYSEArca-2020-54) (Order approving of a proposed rule change, as modified by amendment no. 2, to amend NYSE Arca Rule 5.3E to exempt registered investment companies that list certain categories of securities defined as derivative and special purpose securities under NYSE Arca Rules from having to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of an affiliated registered investment company (the “Arca Approval Order”).

the proposed exemptions for certain management investment companies,⁴ while Nasdaq Rule 5615(a)(1)(C) will provide for the proposed exemption of Nasdaq Rule 5615(a)(1) applicable to issuers of Portfolio Depository Receipts, as provided under Nasdaq Rule 5705(a).

By way of background, Nasdaq Rule 5635(a) requires issuers to obtain shareholder approval in connection with the acquisition of the stock or assets of another company, in the following circumstances:

(1) where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:

(A) the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

(B) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities; or

(2) any director, officer or Substantial Shareholder (as defined by Nasdaq Rule 5635(e)(3)) of the Company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the Company or assets to be acquired or in the consideration to be paid in the transaction or

⁴ See infra footnote 6.

series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more.

Nasdaq Rule 5615 exempts certain categories of issuers from certain corporate governance requirements.

Now, the Exchange proposes to amend Nasdaq Rule 5615(a) to exempt certain categories of investment companies registered under the 1940 Act from the requirement to comply with Nasdaq Rule 5635(a) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8⁵ (Mergers of affiliated companies) (“Rule 17a-8”) under the 1940 Act and does not otherwise require shareholder approval under the 1940 Act and the rules thereunder or any other Exchange rule.⁶ Specifically, the Exchange proposes to exempt from the shareholder approval provision described herein Portfolio Depository Receipts, as provided under Nasdaq Rule 5705(a)(1) by the addition of subsection (C) to Nasdaq Rule 5615(a)(1), as well as amending Nasdaq Rule 5615(a)(5) by inserting a new second paragraph between the existing two paragraphs to exempt from the shareholder approval

⁵ 17 CFR 270.17a-8.

⁶ The Exchange proposes to exempt both Portfolio Depository Receipts (Nasdaq Rule 5705(a) and certain management investment companies that are Index Fund Shares (Nasdaq Rule 5705(b), Managed Fund Shares (Nasdaq Rule 5735), Managed Portfolio Shares (Nasdaq Rule 5760), Exchange Traded Fund Shares (Nasdaq Rule 5704), and Proxy Portfolio Shares (Nasdaq Rule 5750) (collectively, with Portfolio Depository Receipts, the “1940 Act Securities”). Each of the listed categories are issued by an entity organized under the 1940 Act. In proposing this exemption, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund’s organizational documents. See Investment Company Act Release No. 25666 at Footnote 18.

provision described herein management investment companies that are Index Fund Shares (as defined in Nasdaq Rule 5705(b)), Managed Fund Shares (as defined in Nasdaq Rule 5735), Managed Portfolio Shares (as defined in Nasdaq Rule 5760), Exchange Traded Fund Shares (as defined in Nasdaq Rule 5704), and Proxy Portfolio Shares (as defined in Nasdaq Rule 5750), respectively.⁷

In general, the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or asset of another company is designed to give existing shareholders a vote on the issuance of stock that may dilute their voting or economic rights. The Exchange notes that Nasdaq Rule 5635(a)(2) is also intended to give shareholders a vote on transactions where a director, officer, or substantial shareholder of the listed company has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. For the reasons described below, as well as the protections embedded in Rule 17a-8, the Exchange believes that these concerns are limited with respect to 1940 Act Securities. Therefore, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from having to obtain shareholder approval under Exchange rules which can be both time consuming and expensive.

The Exchange believes that the potential economic and voting dilution concerns sometimes associated with a large share issuance are unlikely to be present when an issuer of a 1940 Act Security issues shares in connection with the acquisition of the stock

⁷ Index Fund Shares listed pursuant to Nasdaq Rule 5705(b) are substantively similar to Investment Company Units listed pursuant to Arca Rule 5.2-E(j)(3). Similarly, Proxy Portfolio Shares listed pursuant Nasdaq Rule 5750 are substantively similar to Active Proxy Portfolio Shares listed pursuant to Arca Rule 8.601-E.

or assets of an affiliated registered investment company. As described above, the proposed exemption will only apply to issuers of investment companies organized under the 1940 Act. Sections 17(a)(1)-(2) of the 1940 Act prohibit, among other things, certain transactions between registered investment companies and affiliated persons.⁸ Rule 17a-8 provides an exemption from Sections 17(a)(1)-(2) for certain mergers of affiliated companies provided that the board of directors of each investment company, including a majority of the directors that are not interested persons, affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction.⁹ Because the shares issued by the acquiring investment company are issued at a price equal to the fund's net asset value,¹⁰ the board of directors is able to make an affirmative determination that the merger is not dilutive to existing shareholders.¹¹ With respect to potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, Exchange Traded Fund Shares, and Proxy Portfolio Shares either do not have the right to elect directors at annual meetings or have

⁸ 15 U.S.C. 80a-17(a)(1)-(2). See also the definition of "affiliated person" in the 1940 Act at 15 U.S.C 80a-2(a)(3).

⁹ 17 CFR 270.17a-8.

¹⁰ The Exchange notes that the proposing releases for Rule 17a-8 specifically contemplated that, in certain circumstances, the price paid may deviate from a fund's net asset value due to adjustments for tax purposes. See Investment Company Act Release No. 25259 at Footnote 26.

¹¹ The Exchange notes that the shares are issued at a fund's net asset value when the fund is registered. Rule 17a-8 also includes requirements to protect against dilution when the fund to be acquired is unregistered. Notwithstanding these requirements applicable when a fund is unregistered, the Exchange's exemption will only apply when each fund that is a party to the merger is registered.

the right to elect directors only in very limited circumstances.

The Exchange believes that the same provisions of Rule 17a-8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange believes there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

Under Rule 17a-8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met. However, Rule 17a-8 does not require the surviving company (i.e., the fund issuing shares in the merger) to obtain the approval of its shareholders. When the Commission proposed amendments to Rule 17a-8, it specifically sought comment on whether the outstanding voting securities of the fund that will survive the merger should also be required to approve the merger.¹² Importantly, the Commission ultimately did not include a requirement of approval of shareholders of the surviving company in its final rule.

Given that Rule 17a-8 does not require a surviving company issuer of 1940 Act

¹² See Investment Company Act Release No. 25259 at Section II(A)(2)(a): "Should the outstanding voting securities of the fund that will survive the merger also be required to approve the merger?"

Securities to obtain shareholder approval in the context of a merger of affiliated companies, the Exchange believes it is appropriate to exempt such issuers of 1940 Act Securities from having to comply with Nasdaq Rule 5615(a)(1). As described above, the Exchange only proposes to exempt issuers of 1940 Act Securities from having to comply with Nasdaq Rule 5615(a)(1) if they are issuing shares to acquire the stock or assets of an affiliated registered investment company. Notwithstanding the proposed exemption, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.¹³ Thus, an issuer of a 1940 Act Security may still be required to obtain shareholder approval in connection with the acquisition of the stock or assets of an affiliated company even if such transaction complies with Rule 17a-8 if such transaction would require shareholder approval under other applicable Exchange Rules, another provision of the 1940 Act or the rules and regulations thereunder, state law, or a fund's organizational documents.

Based on the above proposed changes, Nasdaq proposes to amend Nasdaq Rule 5615(a) by adding new subsection (1)(C), as well as inserting a new second paragraph under Nasdaq Rule 5615(a)(5) between the existing two paragraphs. Nasdaq Rule 5615(a)(5) will provide the proposed exemptions for certain management investment companies,¹⁴ while Nasdaq Rule 5615(a)(1)(C) will provide for the proposed exemption

¹³ See supra footnote 6.

¹⁴ Id.

of Nasdaq Rule 5615(a)(1) applicable to issuers of Portfolio Depository Receipts, as provided under Nasdaq Rule 5705(a).

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹⁵ in general and Section 6(b)(5) of the Act¹⁶ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors as protections afforded by Rule 17a-8, mean that (i) there is limited risk of dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated company, and (ii) existing shareholders have a reduced risk of being disenfranchised as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Id.

the company or assets to be acquired or the consideration to be paid. With respect to potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, Exchange Traded Fund Shares, and Proxy Portfolio Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to registered investment companies that are organized under the 1940 Act. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. Where the shares issued by the surviving investment company are issued at a price equal to the fund's net asset value, the board of directors is able to conclude that the interests of shareholders in such a transaction will not be diluted. With respect to voting dilution, the Exchange notes that holders of 1940 Act Securities have very limited voting rights, including no right to vote on the annual election of a board of directors.

The Exchange believes that the same provisions of Rule 17a-8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and

therefore may benefit from the transaction. Because the board of each merging company must make an affirmative determination that the transaction is in the best interest of its investment company that the transaction will not result in dilution for existing shareholders, there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange notes that while shareholders of the non-surviving company must approve the merger under certain circumstances, Rule 17a-8 does not require the shareholders of the surviving company to approve the transaction. Accordingly, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from the requirements of Nasdaq Rule 5615 in this same limited circumstance.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.¹⁸

The Exchange believes it is not unfairly discriminatory to offer the exemption only to issuers of 1940 Act Securities completing a merger with an affiliated registered investment company, as opposed to all issuers of securities listed pursuant to Nasdaq Rule 5700, because only 1940 Act Securities are subject to the requirements of the 1940 Act which offer the protections against dilution and self-dealing described herein.

Lastly, the Exchange believes that the proposal is reasonable as it is substantially

¹⁸ See supra footnote 6.

similar to a recent rule amendment made by Arca.¹⁹

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 proposed amendment will not impose any burden on competition, as they simply propose to offer 1940 Act Securities a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders. Further, the proposed rule change is substantively similar to Arca Rule 5.3E.

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

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)²⁰ of the Act.

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

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

¹⁹ See supra footnote 3.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 15 U.S.C. 78s(b)(3)(A).

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

The Exchange believes that the proposal does not significantly affect the protection of investors or the public interest because, as discussed above, the proposal is consistent with the protection of investors as protections afforded by Rule 17a-8, meaning that (i) there is limited risk of dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated company, and (ii) existing shareholders have a limited risk of being disenfranchised as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. Furthermore, the proposal is substantially similar to a recent rule amendment made by Arca.²³

²² 15 U.S.C. 78s(b)(3)(A).

²³ See supra footnote 3.

The Exchange does not believe the proposed amendments will impose any significant burden on competition as they simply propose to offer 1940 Act Securities a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders.

For the foregoing reasons, this rule filing qualifies as a "non-controversial" rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with the Commission. At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. Waiver of the operative delay would provide certain investment companies registered under the 1940 Act immediate relief from the shareholder approval requirements of Nasdaq Rule 5615 if the conditions proposed herein are met. Further, the Commission previously approved a substantively similar rule change on Arca and found it consistent with the Act.

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

The Exchange's proposal is substantially similar to a recent rule amendment made by Arca, with two exceptions. The Arca rule exempts certain categories of "derivative

and special purpose securities”²⁴ from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company.²⁵ While the Arca rule provides an exemption for Investment Company Units and Active Proxy Portfolio Shares, Nasdaq’s proposed Rule provides an exemption for Index Fund Shares and Proxy Portfolio Shares. However, as noted above those products are substantively similar to Investment Company Units and Active Proxy Portfolio Shares listed on Arca.²⁶

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.

²⁴ For purposes of Arca Rule 5.3-E, derivative and special purpose securities are defined as those securities listed pursuant to Rules 5.2-E(h) (Unit Investment Trusts), 5.2-E(j)(2) (Equity Linked Notes), 5.2-E(j)(3) (Investment Company Units), 5.2-E(j)(4) (Index- Linked Exchangeable Notes), 5.2-E(j)(5) (Equity Gold Shares), 5.2-E(j)(6) (Equity- Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index- Linked Securities), 5.2-E(j)(8) (Exchange-Traded Fund Shares), 8.100-E (Portfolio Depository Receipts), 8.200-E (Trust Issued Receipts), 8.201-E (Commodity-Based Trust Shares), 8.202-E (Currency Trust Shares), 8.203-E (Commodity Index Trust Shares), 8.204-E (Commodity Futures Trust Shares), 8.300-E (Partnership Units), 8.400-E (Paired Trust Shares), 8.600-E (Managed Fund Shares), 8.601-E (Active Proxy Portfolio Shares), 8.700-E (Managed Trust Securities) and 8.900-E (Managed Portfolio Shares). As noted above, Investment Company Units and Active Proxy Portfolio Shares are equivalent to Index Fund Shares and Proxy Portfolio Shares listed on the Exchange pursuant to Nasdaq Rules 5705(b) and 5750, respectively.

²⁵ See supra footnote 3.

²⁶ See supra footnote 7.

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-2021-083)

October __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Exempt Certain Categories of Investment Companies Registered under the Investment Company Act of 1940

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 October 21, 2021, 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 exempt certain categories of investment companies registered under the Investment Company Act of 1940 (the “1940 Act”) from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 5615 to exempt certain categories of investment companies registered under the 1940 Act from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The proposal is substantially similar to a recent rule change made by NYSE Arca, Inc. (“Arca”).³

Nasdaq proposes a minor restructuring of the subparagraphs in Nasdaq Rule 5615(a)(1) relating to the current exemptions to the corporate governance requirements for asset-backed issuers and other passive issuers. Specifically, renumbering the corporate governance requirements set forth in Nasdaq Rule 5615(a)(1) to Nasdaq Rule 5615(a)(1)(A), renumbering the current exemption for asset-backed issuers from Nasdaq

³ See Securities Exchange Act No. 91901 (May 14, 2021) 86 FR 27487 (May 20, 2021) (SR-NYSEArca-2020-54) (Order approving of a proposed rule change, as modified by amendment no. 2, to amend NYSE Arca Rule 5.3E to exempt registered investment companies that list certain categories of securities defined as derivative and special purpose securities under NYSE Arca Rules from having to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of an affiliated registered investment company (the “Arca Approval Order”).

Rule 5615(a)(1)(A) to Nasdaq Rule 5615(a)(1)(A)(i), and renumbering the current exemption for other passive issuers from Nasdaq Rule 5615(a)(1)(B) to Nasdaq Rule 5615(a)(1)(A)(ii). Nasdaq also proposes to amend Nasdaq Rule 5615(a) by adding new subsection (1)(C), as well as inserting a new second paragraph under Nasdaq Rule 5615(a)(5) between the existing two paragraphs. Nasdaq Rule 5615(a)(5) will provide the proposed exemptions for certain management investment companies,⁴ while Nasdaq Rule 5615(a)(1)(C) will provide for the proposed exemption of Nasdaq Rule 5615(a)(1) applicable to issuers of Portfolio Depository Receipts, as provided under Nasdaq Rule 5705(a).

By way of background, Nasdaq Rule 5635(a) requires issuers to obtain shareholder approval in connection with the acquisition of the stock or assets of another company, in the following circumstances:

(1) where, due to the present or potential issuance of common stock, including shares issued pursuant to an earn-out provision or similar type of provision, or securities convertible into or exercisable for common stock, other than a public offering for cash:

(A) the common stock has or will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance of stock or securities convertible into or exercisable for common stock; or

(B) the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the

⁴ See infra footnote 6.

issuance of the stock or securities; or

(2) any director, officer or Substantial Shareholder (as defined by Nasdaq Rule 5635(e)(3)) of the Company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the Company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more.

Nasdaq Rule 5615 exempts certain categories of issuers from certain corporate governance requirements.

Now, the Exchange proposes to amend Nasdaq Rule 5615(a) to exempt certain categories of investment companies registered under the 1940 Act from the requirement to comply with Nasdaq Rule 5635(a) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8⁵ (Mergers of affiliated companies) (“Rule 17a-8”) under the 1940 Act and does not otherwise require shareholder approval under the 1940 Act and the rules thereunder or any other Exchange rule.⁶ Specifically, the Exchange proposes to exempt

⁵ 17 CFR 270.17a-8.

⁶ The Exchange proposes to exempt both Portfolio Depository Receipts (Nasdaq Rule 5705(a) and certain management investment companies that are Index Fund Shares (Nasdaq Rule 5705(b), Managed Fund Shares (Nasdaq Rule 5735), Managed Portfolio Shares (Nasdaq Rule 5760), Exchange Traded Fund Shares (Nasdaq Rule 5704), and Proxy Portfolio Shares (Nasdaq Rule 5750) (collectively, with Portfolio Depository Receipts, the “1940 Act Securities”). Each of the listed categories are issued by an entity organized under the 1940 Act. In proposing this exemption, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its

from the shareholder approval provision described herein Portfolio Depository Receipts, as provided under Nasdaq Rule 5705(a)(1) by the addition of subsection (C) to Nasdaq Rule 5615(a)(1), as well as amending Nasdaq Rule 5615(a)(5) by inserting a new second paragraph between the existing two paragraphs to exempt from the shareholder approval provision described herein management investment companies that are Index Fund Shares (as defined in Nasdaq Rule 5705(b)), Managed Fund Shares (as defined in Nasdaq Rule 5735), Managed Portfolio Shares (as defined in Nasdaq Rule 5760), Exchange Traded Fund Shares (as defined in Nasdaq Rule 5704), and Proxy Portfolio Shares (as defined in Nasdaq Rule 5750), respectively.⁷

In general, the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or asset of another company is designed to give existing shareholders a vote on the issuance of stock that may dilute their voting or economic rights. The Exchange notes that Nasdaq Rule 5635(a)(2) is also intended to give shareholders a vote on transactions where a director, officer, or substantial shareholder of the listed company has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. For the reasons described below, as well as the protections embedded in Rule 17a-8, the Exchange believes that these concerns are limited with respect to 1940

obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents. See Investment Company Act Release No. 25666 at Footnote 18.

⁷ Index Fund Shares listed pursuant to Nasdaq Rule 5705(b) are substantively similar to Investment Company Units listed pursuant to Arca Rule 5.2-E(j)(3). Similarly, Proxy Portfolio Shares listed pursuant Nasdaq Rule 5750 are substantively similar to Active Proxy Portfolio Shares listed pursuant to Arca Rule 8.601-E.

Act Securities. Therefore, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from having to obtain shareholder approval under Exchange rules which can be both time consuming and expensive.

The Exchange believes that the potential economic and voting dilution concerns sometimes associated with a large share issuance are unlikely to be present when an issuer of a 1940 Act Security issues shares in connection with the acquisition of the stock or assets of an affiliated registered investment company. As described above, the proposed exemption will only apply to issuers of investment companies organized under the 1940 Act. Sections 17(a)(1)-(2) of the 1940 Act prohibit, among other things, certain transactions between registered investment companies and affiliated persons.⁸ Rule 17a-8 provides an exemption from Sections 17(a)(1)-(2) for certain mergers of affiliated companies provided that the board of directors of each investment company, including a majority of the directors that are not interested persons, affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction.⁹ Because the shares issued by the acquiring investment company are issued at a price equal to the fund's net asset value,¹⁰ the board of directors is able to make an

⁸ 15 U.S.C. 80a-17(a)(1)-(2). See also the definition of "affiliated person" in the 1940 Act at 15 U.S.C 80a-2(a)(3).

⁹ 17 CFR 270.17a-8.

¹⁰ The Exchange notes that the proposing releases for Rule 17a-8 specifically contemplated that, in certain circumstances, the price paid may deviate from a fund's net asset value due to adjustments for tax purposes. See Investment Company Act Release No. 25259 at Footnote 26.

affirmative determination that the merger is not dilutive to existing shareholders.¹¹ With respect to potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, Exchange Traded Fund Shares, and Proxy Portfolio Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

The Exchange believes that the same provisions of Rule 17a-8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company must make an affirmative decision that the transaction is in the best interest of its respective company and that the transaction will not result in dilution for existing shareholders, the Exchange believes there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

Under Rule 17a-8, an affiliated merger must be approved by a majority of the outstanding voting securities of the merging company that is not the surviving company unless certain conditions are met. However, Rule 17a-8 does not require the surviving company (i.e., the fund issuing shares in the merger) to obtain the approval of its shareholders. When the Commission proposed amendments to Rule 17a-8, it specifically

¹¹ The Exchange notes that the shares are issued at a fund's net asset value when the fund is registered. Rule 17a-8 also includes requirements to protect against dilution when the fund to be acquired is unregistered. Notwithstanding these requirements applicable when a fund is unregistered, the Exchange's exemption will only apply when each fund that is a party to the merger is registered.

sought comment on whether the outstanding voting securities of the fund that will survive the merger should also be required to approve the merger.¹² Importantly, the Commission ultimately did not include a requirement of approval of shareholders of the surviving company in its final rule.

Given that Rule 17a-8 does not require a surviving company issuer of 1940 Act Securities to obtain shareholder approval in the context of a merger of affiliated companies, the Exchange believes it is appropriate to exempt such issuers of 1940 Act Securities from having to comply with Nasdaq Rule 5615(a)(1). As described above, the Exchange only proposes to exempt issuers of 1940 Act Securities from having to comply with Nasdaq Rule 5615(a)(1) if they are issuing shares to acquire the stock or assets of an affiliated registered investment company. Notwithstanding the proposed exemption, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or a fund's organizational documents.¹³ Thus, an issuer of a 1940 Act Security may still be required to obtain shareholder approval in connection with the acquisition of the stock or assets of an affiliated company even if such transaction complies with Rule 17a-8 if such transaction would require shareholder approval under other applicable Exchange Rules, another provision of the 1940 Act or the rules and

¹² See Investment Company Act Release No. 25259 at Section II(A)(2)(a): "Should the outstanding voting securities of the fund that will survive the merger also be required to approve the merger?"

¹³ See supra footnote 6.

regulations thereunder, state law, or a fund's organizational documents.

Based on the above proposed changes, Nasdaq proposes to amend Nasdaq Rule 5615(a) by adding new subsection (1)(C), as well as inserting a new second paragraph under Nasdaq Rule 5615(a)(5) between the existing two paragraphs. Nasdaq Rule 5615(a)(5) will provide the proposed exemptions for certain management investment companies,¹⁴ while Nasdaq Rule 5615(a)(1)(C) will provide for the proposed exemption of Nasdaq Rule 5615(a)(1) applicable to issuers of Portfolio Depository Receipts, as provided under Nasdaq Rule 5705(a).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹⁵ in general and Section 6(b)(5) of the Act¹⁶ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹⁴ Id.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Id.

The Exchange believes that the proposed amendment is consistent with the protection of investors as protections afforded by Rule 17a-8, mean that (i) there is limited risk of dilution to existing shareholders as a result of an issuance of shares by an issuer of 1940 Act Securities in connection with the acquisition of the stock or assets of an affiliated company, and (ii) existing shareholders have a reduced risk of being disenfranchised as a result of a Rule 17a-8-compliant transaction that involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid. With respect to potential concerns about voting dilution, holders of Portfolio Depository Receipts and management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, Exchange Traded Fund Shares, and Proxy Portfolio Shares either do not have the right to elect directors at annual meetings or have the right to elect directors only in very limited circumstances.

The Exchange further believes its proposal is consistent with the protection of investors because its proposal is limited to registered investment companies that are organized under the 1940 Act. In the case of a merger of affiliated investment companies, the board of directors of each investment company, including a majority of the directors that are not interested persons of the respective investment company, must affirmatively determine that (i) participation in the merger is in the best interest of their respective investment company, and (ii) the interests of their shareholders will not be diluted as a result of the transaction. Where the shares issued by the surviving investment company are issued at a price equal to the fund's net asset value, the board of directors is able to conclude that the interests of shareholders in such a transaction will not be diluted.

With respect to voting dilution, the Exchange notes that holders of 1940 Act Securities have very limited voting rights, including no right to vote on the annual election of a board of directors.

The Exchange believes that the same provisions of Rule 17a-8 that protect against dilution also provide safeguards for existing shareholders when the transaction involves a director, officer, or substantial shareholder of the listed company that has a significant interest in the company or assets to be acquired or the consideration to be paid and therefore may benefit from the transaction. Because the board of each merging company must make an affirmative determination that the transaction is in the best interest of its investment company that the transaction will not result in dilution for existing shareholders, there is reduced concern that existing shareholders will be disenfranchised as a result of the Exchange's proposed exemption.

The Exchange notes that while shareholders of the non-surviving company must approve the merger under certain circumstances, Rule 17a-8 does not require the shareholders of the surviving company to approve the transaction. Accordingly, the Exchange believes it is appropriate to exempt issuers of 1940 Act Securities from the requirements of Nasdaq Rule 5615 in this same limited circumstance.

Notwithstanding the proposed exemption described above, the Exchange notes that other provisions of Exchange rules or the 1940 Act and the rules thereunder may require shareholder approval and will still apply. In particular, the Exchange notes that the adopting release for Rule 17a-8 specifically noted that nothing in Rule 17a-8 relieves a fund of its obligation to obtain shareholder approval as may be required by state law or

a fund's organizational documents.¹⁸

The Exchange believes it is not unfairly discriminatory to offer the exemption only to issuers of 1940 Act Securities completing a merger with an affiliated registered investment company, as opposed to all issuers of securities listed pursuant to Nasdaq Rule 5700, because only 1940 Act Securities are subject to the requirements of the 1940 Act which offer the protections against dilution and self-dealing described herein.

Lastly, the Exchange believes that the proposal is reasonable as it is substantially similar to a recent rule amendment made by Arca.¹⁹

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 proposed amendment will not impose any burden on competition, as they simply propose to offer 1940 Act Securities a limited exemption for the Exchange's shareholder approval rule in a specific circumstance where the Exchange believes there is a low risk of dilution to existing shareholders. Further, the proposed rule change is substantively similar to Arca Rule 5.3E.

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.

¹⁸ See supra footnote 6.

¹⁹ See supra footnote 3.

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 Act²⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.²¹

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

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 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.

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-2021-083 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-2021-083. 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-2021-083 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.²²

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

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5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

(a) Exemptions to the Corporate Governance Requirements**(1) Asset-backed Issuers and Other Passive Issuers**

The following are exempt from the requirements relating to:

(A) Majority Independent Board (Rule 5605(b)), Audit Committee (Rule 5605(c)), Compensation Committee (Rule 5605(d)), Director Nominations (Rule 5605(e)), the Controlled Company Exemption (Rule 5615(c)(2)), and Code of Conduct (Rule 5610):

(A)i) asset-backed issuers; and

(B)ii) issuers, such as unit investment trusts, including Portfolio Depository Receipts, which are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(B) Shareholder Approval: issuers of Portfolio Depository Receipts as defined in Rule 5705(a), shall not be required to comply with Rule 5635(a) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act of 1940 and does not otherwise require shareholder approval under the Investment Company Act of 1940 and the rules thereunder or any other Exchange rule.

* * * * *

(5) Management Investment Companies

Management investment companies (including business development companies) are

subject to all the requirements of the Rule 5600 Series, except that such management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committee (as set forth in Rule 5605(d)), Independent Director Oversight of Director Nominations (as set forth in Rule 5605(e)), and Codes of Conduct (as set forth in Rule 5610).

Management investment companies that are Index Fund Shares (as defined in Rule 5705(b)), Managed Fund Shares (as defined in Rule 5735), Managed Portfolio Shares (as defined in Rule 5760), Exchange Traded Fund Shares (as defined in Rule 5704), and Proxy Portfolio Shares (as defined in Rule 5750), respectively, shall not be required to comply with Rule 5635(a) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act of 1940 and does not otherwise require shareholder approval under the Investment Company Act of 1940 and the rules thereunder or any other Exchange rule.

Management investment companies defined as Derivative Securities are exempt from additional requirements of the Rule 5600 Series as outlined in Nasdaq Rule 5615(a)(6)(A) below.

* * * * *