

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 28

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

File No. \* SR 2022 - \* 057

Amendment No. (req. for Amendments \*)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b> <input checked="" type="checkbox"/>	<b>Amendment *</b> <input type="checkbox"/>	<b>Withdrawal</b> <input type="checkbox"/>	<b>Section 19(b)(2) *</b> <input checked="" type="checkbox"/>	<b>Section 19(b)(3)(A) *</b> <input type="checkbox"/>	<b>Section 19(b)(3)(B) *</b> <input type="checkbox"/>
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<b>Pilot</b> <input type="checkbox"/>	<b>Extension of Time Period for Commission Action *</b> <input type="checkbox"/>	<b>Date Expires *</b> <input type="text"/>
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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 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 proposal to adopt Listing Rule 5732 to provide listing standards for Contingent Value Rights on Nasdaq Global Market

**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** 10/17/2022


(Title \*)

**By** John Zecca

EVP and Chief Legal Officer

(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: 2022.10.17 13:41:06 -04'00'**

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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SR-NASDAQ-2022-057 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-2022-057 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**

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SR-NASDAQ-2022-057 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) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt Listing Rule 5732 to provide listing standards for Contingent Value Rights on Nasdaq Global Market.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as 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 January 28, 2022. 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 Cayne  
Principal Associate General Counsel  
Nasdaq, Inc.  
301-978-8493

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

<sup>2</sup> 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

Nasdaq proposes to adopt Listing Rule 5732 to provide listing standards for Price-Based and Event-Based Contingent Value Rights (each a “CVR” and collectively, “CVRs”) on Nasdaq Global Market, which are unsecured obligations of the issuer providing for a possible cash payment at maturity.<sup>3</sup> The Exchange believes that the proposed rule change will increase competition by providing an additional listing venue for CVRs, which can currently be listed on other securities exchanges. CVRs are often used to bridge valuation gaps relating to uncertain future events that may influence the value of a target company and, more generally, may be employed to aid in the completion of deals by helping to solve certain of the valuation and closing challenges that the parties encounter.

Specifically, the cash payment at maturity for a CVR can be based upon the price performance of an affiliate’s equity security (a “Price-Based CVR”) or upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer (an “Event-Based CVR”). At maturity, the holder of a Price-Based CVR is entitled to a cash payment if the average market price of the related equity security is less than a pre-set target price. The target price is established at the time the

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<sup>3</sup> The proposed rule change is based on Section 703.18 of the NYSE Listed Company Manual, related to initial listing of CVRs, and the provisions of Section 802.01D applicable to “Specialized Securities”, related to continued listing of CVRs. See Securities Exchange Act Release No. 26072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR-NYSE-90-15) (adopting NYSE rules related to Price-Based CVRs); Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR-NYSE-2019-14) (adopting NYSE rules related to Event-Based CVRs).

Price-Based CVR is issued. Conversely, should the average market price of the related equity security equal or exceed the target price, the Price-Based CVR would expire worthless. Price-Based CVRs are generally distributed to shareholders of an acquired company who are receiving shares of the acquirer as acquisition consideration. The Price-Based CVRs provide the acquiree's shareholders with some medium-term protection against poor stock price performance of the shares of the acquirer by guaranteeing them a specified cash payment if the acquirer's average stock price is below a specified level at the time of maturity of the Price-Based CVR.

Event-Based CVRs are also typically issued to the shareholders of an acquired entity as consideration in an acquisition transaction. Event-Based CVRs entitle their holders to receive a specified cash payment upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer prior to the maturity date of the Event-Based CVR. The Event-Based CVR provides the shareholders of the acquiree an additional interest in the medium-term performance of the merged entity upon occurrence of its specified event(s). An example of a typical Event-Based CVR occurs in mergers of life sciences companies, when the CVR payment is triggered by the receipt of FDA approval of a new drug application. Another example of an Event-Based CVR is a CVR issued in connection with a merger whose payment triggering event is the achievement of a specified level of financial performance by the combined entity or by a division of the combined entity representing the assets from the acquired company. Event-Based CVRs, which are transferrable, have become increasingly common in recent years, especially in connection with mergers of life sciences companies.

For initial listing on the Nasdaq Global Market, the issuer must have assets in

excess of \$100 million, satisfy the requirement of Nasdaq Rule 5315(f)(3)(A)<sup>4</sup> or have at least \$200 million in global market capitalization and satisfy the requirement of Rule 5315(f)(2)(A) and (B)<sup>5</sup> related to Market Value of Unrestricted Publicly Held Shares. In order to list a CVR, an issuer of the CVR must not be considered non-compliant with the listing standards of the national securities exchange where either the equity security to whose price performance a Price-Based CVR, or in an Event-Based CVR, where the primary equity security is linked or the issuer's common stock is listed.

Also, the CVR issue must have a minimum of 400 holders; a minimum of 1 million CVRs outstanding; a minimum of \$4 million market value; a minimum life of one year; and a minimum \$4.00 bid price. While these distribution and liquidity standards applicable to CVRs can help to ensure there should be adequate depth, liquidity, and investor interest to support an exchange listing, the issuer requirements will provide some minimum level of indicia that the issuer of a CVR should be able to meet any future payment obligations to shareholders of Event-Based, as well as Price-Based, CVRs pursuant to the applicable CVR agreement.

Prior to listing a CVR under the proposed rule, Nasdaq would issue a circular as described in proposed Nasdaq Rule 5732(c) reminding its members that because CVRs

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<sup>4</sup> Specifically, to satisfy Nasdaq Rule 5315(f)(3)(A) a Company, other than a closed end management investment company, must aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years, (ii) positive income from continuing operations before income taxes in each of the prior three fiscal years, and (iii) at least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years.

<sup>5</sup> See Nasdaq Rule 5315(f)(2)(A) and (B) requiring (i) a Market Value of at least \$110 million; or (ii) a Market Value of at least \$100 million, if the Company has stockholders' equity of at least \$110 million.

have certain unique characteristics investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, as well as the Exchange's know-your-customer, suitability, and other rules applicable thereto. Nasdaq will suggest to its members that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading or whom the member firm has otherwise ascertained that CVRs are suitable for. Like other financial products with unique features trading on the Exchange, CVRs combine features of debt, equity, and securities derivative instruments. Consequently, this product may be more complex than straight stock, bond, or equity warrants. The Exchange believes distribution of this information circular will help to alert members to the special disclosure and suitability obligations that apply to CVRs and that are relevant in making recommendations for investors to purchase such securities.<sup>6</sup>

While listed, the issuer of an Event-Based CVR will be required to make public disclosure: (i) upon the occurrence of any event that must occur as a condition to the issuer's obligation to make a cash payment with respect to the CVR (or if such an event is deemed to have occurred pursuant to the terms of the documents governing the CVR); or (ii) at any such time as it becomes clear that a condition to the cash payment with respect to the CVR has not been met as required by the documents governing the terms of

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<sup>6</sup> In particular, the circular states, among other things, that it is suggested that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading and that members making recommendations in CVRs should make a determination that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks and special characteristics, and is financially able to bear the risks, of a recommendation to invest in CVRs. Nasdaq believes these requirements, among others set forth in the circular, should help to ensure that members recommend transactions only to those customers with an understanding of the risks attendant to the trading of CVRs.

the CVR.<sup>7</sup>

Nasdaq will delist a CVR pursuant to the provisions of the Listing Rule 5800 Series if the CVR fails to maintain any of the following: (1) at least 100,000 Publicly Held Shares; (2) at least 100 Holders; or (3) at least \$1 million Market Value of Listed Securities. In addition, Nasdaq would delist the CVR if either the equity security to whose price performance a Price-Based CVR is linked or the issuer's common stock does not remain listed. Also, Nasdaq would delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred.

The Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange will monitor activity in CVRs to identify and deter any potential improper trading activity in such securities and monitor CVRs alongside the common equity securities of the issuer or its affiliates, as applicable. In addition, the Exchange will adopt enhanced surveillance procedures if necessary. Since news and information concerning a company and its primary equity security or common stock can have an impact on a company's Event-Based CVRs and Price-Based CVRs, the

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<sup>7</sup> IM-5250-1. Disclosure of Material Information, among other things, requires Nasdaq companies to notify Nasdaq's MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made from 7:00 a.m. to 8:00 pm. ET. Trading halts are instituted, among other reasons, to ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions.



surveillance should help to monitor the trading activity in the Event-Based CVRs and Price-Based CVRs. In addition, if the underlying security is listed and traded on another U.S. national securities exchange, Nasdaq will communicate as needed and may obtain information regarding trading from markets and other entities that are members of ISG.<sup>8</sup>

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal to permit the listing of CVRs under proposed Listing Rule 5732 is designed to protect investors and the public interest. The purpose of the proposed rule change is to provide a transparent regulated market for the trading of those securities. The listing of Price-Based CVRs has been permitted under Section 703.18 of the New York Stock Exchange LLC (“NYSE”) Listed Company Manual (“Section 703.18”) for many years, and several years ago NYSE also amended Section 703.18 to accommodate

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<sup>8</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

Event-Based CVRs.<sup>11</sup> The Exchange notes that, with the exception of the payment triggering event, Event-Based CVRs are identical in structure to Price-Based CVRs. Listed companies have been issuing transferable Event-Based CVRs as acquisition consideration for a number of years.<sup>12</sup>

The Exchange will distribute a circular as described in proposed Listing Rule 5732(c) prior to the commencement of trading of any CVR reminding its members that because CVRs have certain unique characteristics investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, as well as the Exchange's know-your-customer, suitability, and other rules applicable thereto. The Exchange believes that the distribution of this circular will help address concerns, among others, that the complexity of a CVR could lead to investor confusion and create certain risks. In addition, the Exchange will monitor activity in CVRs, to identify and deter any potential improper trading activity in such securities and monitor CVRs together with the common equity securities of the issuer or its affiliates, as applicable. The Exchange also will adopt enhanced surveillance procedures if necessary. The Exchange believes these measures will reduce the risks of manipulative or other improper activity in connection with CVRs.

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<sup>11</sup> See Securities Exchange Act Release No. 26072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR-NYSE-90-15) (adopting NYSE rules related to Price-Based CVRs); Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR-NYSE-2019-14) (adopting NYSE rules related to Event-Based CVRs).

<sup>12</sup> See, for example, CVRs listed by Sanofi (cash payment tied to achieving sales targets of certain drugs) and Wright Medical Group N.V. (cash payment tied to FDA approval of a certain drug and achieving revenue milestones), which were both listed on the Exchange under current Rule 5730. No similar CVRs are currently listed at the time of this filing.

Proposed Listing Rule 5732 is designed to protect investors and the public interest, as it requires that only larger, well capitalized companies can list CVRs. The issuer requirements under proposed Listing Rule 5732 are those applied to the initial listing of common stocks of operating companies on the Nasdaq Global Select Market, and, as such, the Exchange believes that they are sufficiently rigorous to be used in connection with the listing of CVRs on Nasdaq Global Market. The Exchange further believes that issuers that meet the Global Select Market issuer qualification requirements are likely to be substantial companies capable of meeting their financial obligations under the terms of a listed CVR. The Exchange also notes that it will require issuers of listed CVRs to have at least \$100 million in total assets at the time of original listing.

Nasdaq will delist a CVR pursuant to the provisions of the Listing Rule 5800 Series if the CVR fails to maintain any of the following, which are set forth in the continued listing requirements of Listing Rule 5732(d): (1) at least 100,000 Publicly Held Shares; (2) at least 100 Holders; or (3) at least \$1 million Market Value of Listed Securities. In addition, Nasdaq would delist the CVR if either the equity security to whose price performance a Price-Based CVR is linked or the issuer's common stock does not remain listed. Also, Nasdaq would delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred. This is designed to protect investors and the public interest, as it ensures that issuers whose CVRs are listed on the Exchange will meet the qualitative and quantitative standards for listing on a national securities exchange on a continuous basis.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will increase competition by providing an additional listing venue for CVRs, which can currently be listed on other securities exchanges and does not impose any burden on competition.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

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

The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable. The Exchange believes that approval of the proposed rule change on an accelerated basis will permit an additional listing venue to list CVRs, which can currently already be listed on other securities exchanges.<sup>13</sup> This will serve to increase competition in this space to the benefit of issuers seeking to list CVRs. The proposed rules are substantially identical to those already approved for listing CVRs on the NYSE, except that the proposed earnings requirement for issuers that do not have \$200 million global market capitalization and the market value of publicly held shares requirement are each higher than the comparable NYSE requirement.

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<sup>13</sup> See supra note 11.

The proposal to permit the listing of CVRs under proposed Listing Rule 5732 is designed to protect investors and the public interest. The purpose of the proposed rule change is to provide a transparent regulated market for the trading of those securities. The proposed rule change will aid in the protection of investors and the public interest. The Exchange believes it is appropriate for the Commission to approve the proposed rule change on an accelerated basis.

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

The proposed rule change is based on Section 703.18 of the NYSE Listed Company Manual, related to initial listing of CVRs, and the provisions of Section 802.01D applicable to “Specialized Securities”, related to continued listing of CVRs.<sup>14</sup>

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

Not applicable.

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

Not applicable.

11. Exhibits

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

5. Text of the proposed rule change.

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<sup>14</sup> Id. The proposed rules are substantially identical to those already approved for listing CVRs on the NYSE, except that the proposed earnings requirement for issuers that do not have \$200 million global market capitalization and the market value of publicly held shares requirement are each higher than the comparable NYSE requirement.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2022-057)

October \_\_, 2022

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt Listing Rule 5732 to Provide Listing Standards for Contingent Value Rights on Nasdaq Global Market

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 17, 2022, 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 adopt Listing Rule 5732 to provide listing standards for Contingent Value Rights on Nasdaq Global Market.

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.

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

<sup>2</sup> 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

Nasdaq proposes to adopt Listing Rule 5732 to provide listing standards for Price-Based and Event-Based Contingent Value Rights (each a “CVR” and collectively, “CVRs”) on Nasdaq Global Market, which are unsecured obligations of the issuer providing for a possible cash payment at maturity.<sup>3</sup> The Exchange believes that the proposed rule change will increase competition by providing an additional listing venue for CVRs, which can currently be listed on other securities exchanges. CVRs are often used to bridge valuation gaps relating to uncertain future events that may influence the value of a target company and, more generally, may be employed to aid in the completion of deals by helping to solve certain of the valuation and closing challenges that the parties encounter.

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<sup>3</sup> The proposed rule change is based on Section 703.18 of the NYSE Listed Company Manual, related to initial listing of CVRs, and the provisions of Section 802.01D applicable to “Specialized Securities”, related to continued listing of CVRs. See Securities Exchange Act Release No. 26072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR-NYSE-90-15) (adopting NYSE rules related to Price-Based CVRs); Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR-NYSE-2019-14) (adopting NYSE rules related to Event-Based CVRs).

Specifically, the cash payment at maturity for a CVR can be based upon the price performance of an affiliate's equity security (a "Price-Based CVR") or upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer (an "Event-Based CVR"). At maturity, the holder of a Price-Based CVR is entitled to a cash payment if the average market price of the related equity security is less than a pre-set target price. The target price is established at the time the Price-Based CVR is issued. Conversely, should the average market price of the related equity security equal or exceed the target price, the Price-Based CVR would expire worthless. Price-Based CVRs are generally distributed to shareholders of an acquired company who are receiving shares of the acquirer as acquisition consideration. The Price-Based CVRs provide the acquiree's shareholders with some medium-term protection against poor stock price performance of the shares of the acquirer by guaranteeing them a specified cash payment if the acquirer's average stock price is below a specified level at the time of maturity of the Price-Based CVR.

Event-Based CVRs are also typically issued to the shareholders of an acquired entity as consideration in an acquisition transaction. Event-Based CVRs entitle their holders to receive a specified cash payment upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer prior to the maturity date of the Event-Based CVR. The Event-Based CVR provides the shareholders of the acquiree an additional interest in the medium-term performance of the merged entity upon occurrence of its specified event(s). An example of a typical Event-Based CVR occurs in mergers of life sciences companies, when the CVR payment is triggered by the receipt of FDA approval of a new drug application. Another example of an Event-Based



CVR is a CVR issued in connection with a merger whose payment triggering event is the achievement of a specified level of financial performance by the combined entity or by a division of the combined entity representing the assets from the acquired company.

Event-Based CVRs, which are transferrable, have become increasingly common in recent years, especially in connection with mergers of life sciences companies.

For initial listing on the Nasdaq Global Market, the issuer must have assets in excess of \$100 million, satisfy the requirement of Nasdaq Rule 5315(f)(3)(A)<sup>4</sup> or have at least \$200 million in global market capitalization and satisfy the requirement of Rule 5315(f)(2)(A) and (B)<sup>5</sup> related to Market Value of Unrestricted Publicly Held Shares. In order to list a CVR, an issuer of the CVR must not be considered non-compliant with the listing standards of the national securities exchange where either the equity security to whose price performance a Price-Based CVR, or in an Event-Based CVR, where the primary equity security is linked or the issuer's common stock is listed.

Also, the CVR issue must have a minimum of 400 holders; a minimum of 1 million CVRs outstanding; a minimum of \$4 million market value; a minimum life of one year; and a minimum \$4.00 bid price. While these distribution and liquidity standards applicable to CVRs can help to ensure there should be adequate depth, liquidity, and

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<sup>4</sup> Specifically, to satisfy Nasdaq Rule 5315(f)(3)(A) a Company, other than a closed end management investment company, must aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years, (ii) positive income from continuing operations before income taxes in each of the prior three fiscal years, and (iii) at least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years.

<sup>5</sup> See Nasdaq Rule 5315(f)(2)(A) and (B) requiring (i) a Market Value of at least \$110 million; or (ii) a Market Value of at least \$100 million, if the Company has stockholders' equity of at least \$110 million.

investor interest to support an exchange listing, the issuer requirements will provide some minimum level of indicia that the issuer of a CVR should be able to meet any future payment obligations to shareholders of Event-Based, as well as Price-Based, CVRs pursuant to the applicable CVR agreement.

Prior to listing a CVR under the proposed rule, Nasdaq would issue a circular as described in proposed Nasdaq Rule 5732(c) reminding its members that because CVRs have certain unique characteristics investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, as well as the Exchange's know-your-customer, suitability, and other rules applicable thereto. Nasdaq will suggest to its members that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading or whom the member firm has otherwise ascertained that CVRs are suitable for. Like other financial products with unique features trading on the Exchange, CVRs combine features of debt, equity, and securities derivative instruments. Consequently, this product may be more complex than straight stock, bond, or equity warrants. The Exchange believes distribution of this information circular will help to alert members to the special disclosure and suitability obligations that apply to CVRs and that are relevant in making recommendations for investors to purchase such securities.<sup>6</sup>

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<sup>6</sup> In particular, the circular states, among other things, that it is suggested that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading and that members making recommendations in CVRs should make a determination that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks and special characteristics, and is financially able to bear the risks, of a recommendation to invest in CVRs. Nasdaq believes these requirements, among others set forth in the circular, should help to ensure

While listed, the issuer of an Event-Based CVR will be required to make public disclosure: (i) upon the occurrence of any event that must occur as a condition to the issuer's obligation to make a cash payment with respect to the CVR (or if such an event is deemed to have occurred pursuant to the terms of the documents governing the CVR); or (ii) at any such time as it becomes clear that a condition to the cash payment with respect to the CVR has not been met as required by the documents governing the terms of the CVR.<sup>7</sup>

Nasdaq will delist a CVR pursuant to the provisions of the Listing Rule 5800 Series if the CVR fails to maintain any of the following: (1) at least 100,000 Publicly Held Shares; (2) at least 100 Holders; or (3) at least \$1 million Market Value of Listed Securities. In addition, Nasdaq would delist the CVR if either the equity security to whose price performance a Price-Based CVR is linked or the issuer's common stock does not remain listed. Also, Nasdaq would delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred.

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that members recommend transactions only to those customers with an understanding of the risks attendant to the trading of CVRs.

<sup>7</sup> IM-5250-1. Disclosure of Material Information, among other things, requires Nasdaq companies to notify Nasdaq's MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made from 7:00 a.m. to 8:00 pm. ET. Trading halts are instituted, among other reasons, to ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions.

The Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange will monitor activity in CVRs to identify and deter any potential improper trading activity in such securities and monitor CVRs alongside the common equity securities of the issuer or its affiliates, as applicable. In addition, the Exchange will adopt enhanced surveillance procedures if necessary. Since news and information concerning a company and its primary equity security or common stock can have an impact on a company’s Event-Based CVRs and Price-Based CVRs, the surveillance should help to monitor the trading activity in the Event-Based CVRs and Price-Based CVRs. In addition, if the underlying security is listed and traded on another U.S. national securities exchange, Nasdaq will communicate as needed and may obtain information regarding trading from markets and other entities that are members of ISG.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a

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<sup>8</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal to permit the listing of CVRs under proposed Listing Rule 5732 is designed to protect investors and the public interest. The purpose of the proposed rule change is to provide a transparent regulated market for the trading of those securities. The listing of Price-Based CVRs has been permitted under Section 703.18 of the New York Stock Exchange LLC (“NYSE”) Listed Company Manual (“Section 703.18”) for many years, and several years ago NYSE also amended Section 703.18 to accommodate Event-Based CVRs.<sup>11</sup> The Exchange notes that, with the exception of the payment triggering event, Event-Based CVRs are identical in structure to Price-Based CVRs. Listed companies have been issuing transferable Event-Based CVRs as acquisition consideration for a number of years.<sup>12</sup>

The Exchange will distribute a circular as described in proposed Listing Rule 5732(c) prior to the commencement of trading of any CVR reminding its members that because CVRs have certain unique characteristics investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, as well

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<sup>11</sup> See Securities Exchange Act Release No. 26072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR-NYSE-90-15) (adopting NYSE rules related to Price-Based CVRs); Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR-NYSE-2019-14) (adopting NYSE rules related to Event-Based CVRs).

<sup>12</sup> See, for example, CVRs listed by Sanofi (cash payment tied to achieving sales targets of certain drugs) and Wright Medical Group N.V. (cash payment tied to FDA approval of a certain drug and achieving revenue milestones), which were both listed on the Exchange under current Rule 5730. No similar CVRs are currently listed at the time of this filing.

as the Exchange's know-your-customer, suitability, and other rules applicable thereto. The Exchange believes that the distribution of this circular will help address concerns, among others, that the complexity of a CVR could lead to investor confusion and create certain risks. In addition, the Exchange will monitor activity in CVRs, to identify and deter any potential improper trading activity in such securities and monitor CVRs together with the common equity securities of the issuer or its affiliates, as applicable. The Exchange also will adopt enhanced surveillance procedures if necessary. The Exchange believes these measures will reduce the risks of manipulative or other improper activity in connection with CVRs.

Proposed Listing Rule 5732 is designed to protect investors and the public interest, as it requires that only larger, well capitalized companies can list CVRs. The issuer requirements under proposed Listing Rule 5732 are those applied to the initial listing of common stocks of operating companies on the Nasdaq Global Select Market, and, as such, the Exchange believes that they are sufficiently rigorous to be used in connection with the listing of CVRs on Nasdaq Global Market. The Exchange further believes that issuers that meet the Global Select Market issuer qualification requirements are likely to be substantial companies capable of meeting their financial obligations under the terms of a listed CVR. The Exchange also notes that it will require issuers of listed CVRs to have at least \$100 million in total assets at the time of original listing.

Nasdaq will delist a CVR pursuant to the provisions of the Listing Rule 5800 Series if the CVR fails to maintain any of the following, which are set forth in the continued listing requirements of Listing Rule 5732(d): (1) at least 100,000 Publicly Held Shares; (2) at least 100 Holders; or (3) at least \$1 million Market Value of Listed

Securities. In addition, Nasdaq would delist the CVR if either the equity security to whose price performance a Price-Based CVR is linked or the issuer's common stock does not remain listed. Also, Nasdaq would delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred. This is designed to protect investors and the public interest, as it ensures that issuers whose CVRs are listed on the Exchange will meet the qualitative and quantitative standards for listing on a national securities exchange on a continuous basis.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will increase competition by providing an additional listing venue for CVRs, which can currently be listed on other securities exchanges and does not impose any burden on competition.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2022-057 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-2022-057. 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-2022-057 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.<sup>13</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>13</sup> 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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5732. Contingent Value Rights

Nasdaq will list Contingent Value Rights (“CVRs”) on the Nasdaq Global Market. CVRs are unsecured obligations of the issuer, which provide for a possible cash payment either: (i) at maturity based upon the price performance of an affiliate’s equity security (a “Price-Based CVR”); or (ii) within a specified time period, upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer (an “Event-Based CVR”).

At maturity, the holder of a Price-Based CVR is entitled to a cash payment if the average market price of the related equity security is less than a pre-set target price. The target price is typically established at the time the Price-Based CVR is issued. Conversely, should the average market price of the related equity security equal or exceed the target price, the Price-Based CVR would expire worthless.

Within a specified time period, the holder of an Event-Based CVR is entitled to a cash payment upon occurrence of an event or events related to the business of the issuer or an affiliate of the issuer specified at the time the Event-Based CVR is issued. Conversely, should the specified event or events not occur within the specified time period, the Event-Based CVR would expire worthless.

**(a) Initial Listing Requirements**

(1) The Company must have assets in excess of \$100 million.

(2) The Company must satisfy Rule 5315(f)(3)(A) or have at least \$200,000,000 in global market capitalization.

(3) The Company must satisfy the Market Value of Unrestricted Publicly Held Shares requirement of Rule 5315(f)(2)(A) and (B) requiring (i) a Market Value of at least \$110 million; or (ii) a Market Value of at least \$100 million, if the Company has stockholders' equity of at least \$110 million.

(4) The issuer of the CVR must not be considered non-compliant with the listing standards of the national securities exchange where either the equity security to whose price performance a Price-Based CVR, or in an Event-Based CVR, where the primary equity security is linked or the issuer’s common stock is listed.

(5) The CVR issue must have:

- (A) a minimum of 400 holders;
- (B) a minimum of 1 million CVRs outstanding;
- (C) a minimum of \$4 million market value;
- (D) a minimum life of one year; and
- (E) a minimum \$4.00 bid price.

**(b) Disclosure Requirements**

The issuer of an Event-Based CVR will be required to make public disclosure in accordance with the provisions of Rule 5250(b) and IM-5250-1: (i) upon the occurrence of any event that must occur as a condition to the issuer's obligation to make a cash payment with respect to the CVR (or if such an event is deemed to have occurred pursuant to the terms of the documents governing the CVR); or (ii) at any such time as it becomes clear that a condition to the cash payment with respect to the CVR has not been met as required by the documents governing the terms of the CVR.

**(c) Circular**

Prior to listing a CVR, Nasdaq will distribute an information circular to its members in substantially the following form:

The following Contingent Voting Rights of COMPANY NAME have been approved for listing and will commence trading at a date to be announced.

NUMBER ISSUED Contingent Value Rights expiring DATE unless extended as more fully explained in the joint proxy/prospectus.

The Contingent Value Rights will trade with the ticker symbol XXXX.

Since the Contingent Value Rights have certain unique characteristics, investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, including the possibility that the maturity date may be extended and that the CVR's may possibly expire without value (consult the joint proxy/prospectus for full details). The Exchange suggests that transactions in CVR's be recommended only to investors whose accounts have been approved for options trading. If a customer has not been approved for options trading, or does not wish to open an options account, the firm should ascertain that CVR's are suitable for the customer.

Before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the Contingent Value Rights, such member or member organization should make a determination that such Contingent Value Rights are suitable for such customer and the person making the recommendation should have a reasonable basis for believing, at the

time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and special characteristics of recommended transaction and is financially able to bear the risks of the recommended transaction.

**(d) Continued Listing Requirements**

(1) At least 100,000 Publicly Held Shares;

(2) At least 100 Holders;

(3) Market Value of Listed Securities of at least \$1 million;

(4) Either the equity security to whose price performance a Price-Based CVR is linked or the issuer's common stock must remain listed; and

(5) Nasdaq will delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred.

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