

liquidity requirements arising from the physical settlement of equity American options involving a defaulting clearing member during any liquidation of such clearing member. Such changes should enhance LCH SA's daily LCR calculations to determine more accurate liquidity levels in the event of the assignment and exercise of equity American options involving a defaulting clearing member prior to expiry. The Commission believes the proposed rule change should help LCH SA anticipate increased liquidity needs and maintain appropriate levels of liquidity in a Cover 2 scenario in which LCH SA would be required, pursuant to the Framework, to step in and meet a defaulter's obligation in the event of the assignment or exercise of equity American options. The Commission also believes that, by anticipating and ensuring that LCH SA meets its liquidity needs in this manner, the proposed rule change should facilitate LCH SA's ability to meet its obligations as a central counterparty in stressed situations, which, in turn, should allow LCH SA to continue to meet its obligation to promptly and accurately clear and settle securities transactions in such situations.

In addition, the proposed rule change should help mitigate the funding risk that may arise when equity American options are exercised before expiry and settled during the liquidation period of a defaulting clearing member, which in turn should help LCH SA safeguard securities and funds for which it is responsible.

For the reasons stated above, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>18</sup>

#### *B. Consistency With Rule 17Ad-22(e)(7)(i)*

Rule 17Ad-22(e)(7)(i) requires that, among other things, LCH SA establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day, and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios, that

includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for LCH SA in extreme but plausible market conditions.<sup>19</sup>

As discussed above, LCH SA is proposing specific modifications to the Framework that would enable its daily LCR calculation to generate an enhanced liquidity need in a Cover 2 scenario involving the physical settlement of equity American options. By using the daily LCR calculation process to determine in advance LCH SA's liquidity needs in the event of the assignment and exercise of equity American options arising in a Cover 2 scenario, the Commission believes the amended Framework should enhance LCH SA's ability to determine whether it has sufficient resources to meet its liquidity needs should such a default occur, thus requiring LCH SA to step in and meet a defaulter's payment obligation. The Commission believes that this should, in turn, enable LCH SA to avoid any potential disruptions to its operations caused by the liquidity needs arising from such a default.

By applying both stressed and non-stressed scenarios to the underlying equities, and then selecting the option positions that are consistent with the two largest clearing members in terms of liquidity needs under both scenarios to determine the largest liquidity need, LCH SA's daily LCR calculation process under the amended Framework should help LCH SA determine a more accurate amount to add to the current cash equity settlement amount in the LCR to cover a potential increase in liquidity needs arising from the physical settlement of equity American options that are exercised prior to expiry under stressed liquidity conditions. The Commission therefore believes that the amended Framework should enable LCH SA to maintain sufficient liquid resources to effect settlement of its payment obligations under a wide range of foreseeable stress scenarios, including the default of the participant family that would generate the largest aggregate payment obligation for LCH SA in extreme but plausible market conditions.

For the above reasons, the Commission therefore finds that the proposed rule change is consistent with Rule 17Ad-22(e)(7)(i).<sup>20</sup>

#### **IV. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed

rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act<sup>21</sup> and Rule 17Ad-22(e)(7)(i) thereunder.<sup>22</sup>

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>23</sup> that the proposed rule change (SR-LCH SA-2020-006) be, and hereby is, approved.<sup>24</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meetings**

**TIME AND DATE:** 2:00 p.m. on Wednesday, December 9, 2020. **PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings;

<sup>21</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>22</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>20</sup> 17 CFR 240.17Ad-22(e)(7)(i).

Resolution of litigation claims; and Other matters relating to enforcement proceedings; and

Disclosure of non-public information.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: December 2, 2020.

**Vanessa A. Countryman,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90542; File No. SR-NASDAQ-2020-078]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Exempt Proxy Portfolio Shares From Certain Governance Requirements and Include Proxy Portfolio Shares to the List of Products Covered Under Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts)

December 1, 2020.

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 November 19, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 provide an exemption from certain governance requirements, as well as to include Proxy Portfolio Shares (listed on the Exchange pursuant to Nasdaq Rule 5750) to the list of products covered under Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts).

The text of the proposed rule change is available on the Exchange’s website at

<https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange recently adopted Nasdaq Rule 5750, which relates to the listing and trading of Proxy Portfolio Shares<sup>3</sup> on the Exchange.<sup>4</sup> Nasdaq proposes to amend the definition of “Derivative Securities” under Nasdaq Rule 5615(a)(6)(B) as well as certain portions of Nasdaq Rule 4120 to include and apply to a series of Proxy Portfolio Shares listed on the Exchange pursuant to Nasdaq Rule 5750.

Nasdaq notes that the proposed rule change, as discussed below, results from the Exchange proposing to make conforming changes to its corporate governance requirements in order to accommodate the listing of Proxy Portfolio Shares. This will subject Proxy

<sup>3</sup> The term “Proxy Portfolio Shares” means “a security that: (A) Represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.”

<sup>4</sup> See Securities and Exchange Act Release No. 34-89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032) (the “Rule Proposal”). The Rule Proposal was effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder and became operative 30 calendar days following the filing date of June 11, 2020.

Portfolio Shares to the same corporate governance requirements as other exchange-traded products listed on the Exchange.

Currently, Nasdaq Rule 5615(a)(5) provides management investment companies exemptions to certain corporate governance requirements.<sup>5</sup> Nasdaq Rule 5615(a)(5) also provides that management investment companies that are Derivative Securities (as defined in Nasdaq Rule 5615(a)(6)(B))<sup>6</sup> are also exempt from the additional requirements of Nasdaq Rule 5600 as outlined in Nasdaq Rule 5615(a)(6)(A). In addition to the exemptions found in Nasdaq Rule 5615(a)(5), Nasdaq Rule 5615(a)(6)(A) also includes exemptions from the audit committee requirements in Nasdaq Rule 5605(c), except for the applicable requirements of SEC Rule 10A-3.<sup>7</sup>

Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares are all considered Derivative Securities and, therefore, exempt from the audit committee requirements set forth in Nasdaq Rule 5605(c). They are exempted from such requirements because they are otherwise subject to the accounting and auditing requirements of the Investment Company Act of 1940 (the “1940 Act”), including Section 32(a).<sup>8</sup>

Proxy Portfolio Shares are also subject to the accounting and auditing requirements under the 1940 Act and are so similarly situated as Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares, that the Exchange believes Proxy Portfolio Shares should be subject to, and exempt from, the same corporate governance

<sup>5</sup> See Nasdaq Rule 5605(b) (Independent Directors); Nasdaq Rule 5605(d) (Compensation Committee); Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations); and Nasdaq Rule 5610 (Codes of Conduct).

<sup>6</sup> Nasdaq Rule 5615(a)(6)(B) states: “For the purposes of this Rule 5600 Series only, the term “Derivative Securities” is defined as the following: Exchange Traded Fund Shares (Rule 5704), Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Equity Index-Linked Securities (Rule 5710(k)(i)), Commodity-Linked Securities (Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (Rule 5710(k)(iii)), Futures-Linked Securities (Rule 5710(k)(iv)), Multifactor Index-Linked Securities (Rule 5710(k)(v)), Index-Linked Exchangeable Notes (Rule 5711(a)), Equity Gold Shares (Rule 5711(b)), Trust Certificates (Rule 5711(c)), Commodity-Based Trust Shares (Rule 5711(d)), Currency Trust Shares (Rule 5711(e)), Commodity Index Trust Shares (Rule 5711(f)), Commodity Futures Trust Shares (Rule 5711(g)), Partnership Units (Rule 5711(h)), Managed Trust Securities (Rule 5711(j)), SEEDS (Rule 5715), Trust Issued Receipts (Rule 5720), Managed Fund Shares (Rule 5735), and NextShares (Rule 5745). Derivative Securities are subject to certain exemptions to the Rule 5600 Series as described in Rule 5615(a)(6).”

<sup>7</sup> 17 CFR 240.10A-3.

<sup>8</sup> 15 U.S.C. 80a-31.

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

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