

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

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Assistant Secretary.

[FR Doc. 2023-06781 Filed 3-31-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97211; File No. SR-NASDAQ-2023-006]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the SGI Dynamic Tactical ETF Under Nasdaq Rule 5750 (“Proxy Portfolio Shares”)

March 28, 2023.

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 March 17, 2023, 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 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 proposed a rule change relating to the SGI Dynamic Tactical ETF (the “Fund”) of The RBB Fund, Inc. (the “Company”), to list and trade shares of the Fund under Nasdaq Rule 5750 (“Proxy Portfolio Shares”). The shares of the Fund are collectively referred to herein as the “Shares.”

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 has adopted Nasdaq Rule 5750, which governs the listing and trading of Proxy Portfolio Shares on the Exchange.³

The Fund is an actively-managed exchange-traded fund (“ETF”). The Shares will be offered by the Company, which was established as a Maryland corporation on February 29, 1988.⁴ The Company, which is registered with the Commission as an investment company under the 1940 Act, has filed a registration statement on Form N-1A (“Registration Statement”) relating to the Fund with the Commission.⁵ The Fund is a series of the Company. Summit Global Investments, LLC (“Adviser”) is the investment adviser to the Fund. SG Trading Solutions, LLC, is the sub-adviser (“Sub-Adviser”) to the Fund. Quasar Distributors, LLC is the principal underwriter and distributor of the Fund’s Shares. U.S. Bank Global Fund Services acts as the administrator, transfer agent and provides fund accounting services to the Fund. U.S. Bank, N.A. acts as the custodian to the Fund.

Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the Investment Company (as defined herein) issuing Proxy Portfolio Shares⁶ is

³ The Exchange adopted Nasdaq Rule 5750 in Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032).

⁴ The Commission has issued an order, upon which the Company may rely, granting certain exemptive relief under the Investment Company Act of 1940 (the “1940 Act”). See Investment Company Act Release No. 34857 (March 15, 2023) (“Exemptive Order”). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Fund herein is based, in part, on the Registration Statement and Exemptive Order. The Exchange will not commence trading in the Fund’s Proxy Portfolio Shares until the Registration Statement is effective.

⁵ The Registration Statement (File No. 811-05518) is available on the Commission’s website at https://www.sec.gov/Archives/edgar/data/0000831114/000139834422007151/fp0074774_485apos.htm.

⁶ The term “Proxy Portfolio Share” 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 or Custom Basket, as applicable, and/or a cash

registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio,⁷ the Proxy Basket and/or Custom Basket, as applicable.⁸ In addition, Nasdaq Rule 5750(b)(5) further requires that changes to the Fund Portfolio, the Proxy Basket and/or Custom Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, and/or the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto.⁹

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 or Custom Basket, as applicable, 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.

⁷ The term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day.

⁸ The term “Proxy Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under Rule 5750, to the extent applicable: (A) Ticker symbol; (B) CUSIP or other identifier; (C) Description of holding; (D) Quantity of each security or other asset held; and (E) Percentage weight of the holding in the portfolio. For purposes of this proposed rule change, the term Custom Basket means a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Proxy Portfolio Shares.

⁹ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser, Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. The Adviser and Sub-Adviser are each not registered as a broker-dealer and are not affiliated with broker-dealers. The Adviser and Sub-Adviser will each implement and maintain a “fire wall” with respect to any future broker-dealer affiliates regarding access to information concerning the composition of and/or changes to the Fund Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. In addition, Rule 206(4)-7 under the

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¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

In addition, in accordance with Nasdaq Rule 5750(b)(6), any person or entity, including a custodian, Reporting Authority,¹⁰ distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket or Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto.

The issuer represents that with respect to each Proxy Basket and Custom Basket: (i) the Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time, and (ii) with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session, the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash.

Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

¹⁰ The term “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; Custom Basket; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

In the event (a) the Adviser or Sub-Adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the Fund Portfolio, the Proxy Basket and/or Custom Basket, as applicable and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund’s Principal Investment Strategies

The investment objective of the Fund will be to seek to provide long-term capital appreciation. Under normal market conditions,¹¹ the Fund will seek to achieve its investment objective by utilizing both fundamental analysis and proprietary quantitative frameworks that help inform the investment decision-making process regarding strategic investment opportunities.

Under the terms of the Exemptive Order,¹² the Fund’s investments are limited to the following: ETFs traded on a U.S. exchange, exchange-traded notes traded on a U.S. exchange, U.S. exchange-traded common stocks, U.S. exchange-traded preferred stocks, U.S. exchange-traded American Depositary Receipts, U.S. exchange-traded real estate investment trusts, U.S. exchange-traded commodity pools, U.S. exchange-traded metals trusts, U.S. exchange-traded currency trusts, and common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Fund’s Shares, exchange-traded futures that are traded on a U.S. futures exchange

contemporaneously with the Fund’s Shares; and cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The Fund will not borrow for investment purposes, hold short positions, or purchase any securities that are illiquid investments at the time of purchase.

The Fund’s holdings will conform to the permissible investments as set forth in the Registration Statement and Exemptive Order and the holdings will be consistent with all requirements in the Registration Statement and Exemptive Order. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund’s investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or –3X) of the Fund’s primary broad-based securities benchmark index (as defined in Form N–1A).

Surveillance

The Exchange represents that trading in the Proxy Portfolio Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by 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 represents that these surveillance procedures are adequate to properly monitor the trading of Proxy Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Proxy Portfolio Shares on the Exchange will be subject to the Exchange’s surveillance procedures for derivative products. The Fund’s investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).

The Exchange prior to the commencement of trading will require the issuer of each series of Proxy Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by

¹¹ The term “normal market conditions” as used herein, is defined in Nasdaq Rule 5750(c)(4). On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser or Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

¹² See *supra* note 4.

the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each series of Proxy Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange and/or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Proxy Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it and/or FINRA with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the Shares.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.¹³ Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading in Shares of the Fund will be halted if the circuit breaker parameters in Equity 4, Rule 4121 have been reached.

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Proxy Portfolio Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the

maintenance of a fair and orderly market are present. Trading in the Proxy Portfolio Shares also will be subject to Rule 5750(d)(2)(D), which sets forth circumstances under which a series of Proxy Portfolio Shares may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time in accordance with Equity 2, Section 8. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares traded on the Exchange is \$0.01. A "Creation Unit" will consist of at least 5,000 Shares.

With respect to Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

Availability of Information

The Fund's website (www.sgi.com) will include a form of the prospectus for the Fund that may be downloaded. The Exchange notes that a significant amount of information about the Fund and its Fund Portfolio is publicly available at all times and the website and information will be publicly available at no charge. The Fund will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis on the Fund's website (www.sgi.com). With respect to each Custom Basket, each business day, before the opening of trading in the regular market session, the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing

services. Each series of Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for the Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. On each business day, before the commencement of trading of Shares, the Fund will publish on its website the Proxy Basket and the "Guardrail Amount" (see description below) for that day.

Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available for free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. The Exchange also notes that the Exemptive Order provides that the issuer of the Fund will comply with Regulation Fair Disclosure. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Proxy Basket and Custom Baskets

Pursuant to the Exemptive Order, the Fund is permitted to use Custom Baskets. For the Fund, the Proxy Basket will consist of all of the Fund portfolio holdings but will be weighted differently, subject to a minimum

¹³ See Nasdaq Rules 4120 and 4121.

weightings overlap of 90% with the Fund Portfolio at the beginning of each business day. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that the Fund's net asset value ("NAV") will form the basis for creations and redemptions for the Fund and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares.¹⁴ The Adviser expects that the Shares of the Fund will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as the Fund's Proxy Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In addition, in accordance with the Exemptive Order, the Fund may determine to use Custom Baskets that differ from the Proxy Portfolio in that they include instruments that are not in the Proxy Portfolio, or are included in the Proxy Portfolio but in different weightings. In the event that the value of the Proxy Basket is not the same as the Fund's NAV, the creation and redemption baskets will consist of the securities included in the Proxy Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Proxy Basket.

Nasdaq Rule 5750(c)(6) defines "Custom Basket" for the purposes of Nasdaq Rule 5750 as a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Proxy Portfolio Shares.

The Proxy Basket will be constructed utilizing a proprietary algorithmic process that will be applied to the Fund Portfolio on a daily basis. The Proxy Basket holdings (including the identity and quantity of investments in the Proxy Basket) will be publicly available on the Fund's website before the commencement of trading in Fund Shares on each business day, although the weightings of such holdings in the Proxy Basket will differ from the Fund Portfolio. The Proxy Basket will have a minimum overlap of 90% with the Fund

Portfolio at the beginning of each business day, with the precise percentage of aggregate overlap in weightings from 90% to 100% to be randomly generated each day (the overlap and tracking error will be available on the Fund's website before the commencement of trading in Proxy Portfolio Shares on each business day and discussed further below).

In addition to the disclosure of the Proxy Basket, the Fund will also publish the Guardrail Amount on its website on each business day before the commencement of trading in the Proxy Portfolio Shares on the Exchange. The Guardrail Amount is the maximum deviation between the weightings of the specific instruments and cash positions in the Proxy Basket from the weightings of those specific instruments and cash positions in the Fund Portfolio. The Guardrail Amount is intended to ensure that no individual security in the Proxy Basket will be overweighted or underweighted by more than the publicly disclosed percentage when compared to the actual weighting of each security within the Fund Portfolio as of the beginning of each business day. The Adviser expects the performance of the Proxy Basket and the Fund Portfolio to be closely aligned in light of the construction of the Proxy Basket, and does not expect the "Tracking Error" to exceed 1% (available on the Fund's website before the commencement of trading in Proxy Portfolio Shares on each business day). "Tracking Error" is defined to mean the standard deviation over the past three months of the daily difference, in percentage terms, between the Proxy Basket per Share NAV and that of the Fund at the end of the business day.

The Fund will also disclose the entirety of its Fund Portfolio, including the name, identifier, market value and weight of each security and instrument in the portfolio, no less than 60 days following the end of every fiscal quarter.

Additional Information

The Exchange represents that the Shares will conform to the initial and continued listing criteria under Nasdaq Rule 5750, including the dissemination of key information such as the Proxy Basket, the Custom Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares.

Price information for the exchange-listed instruments held by the Fund, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. Moreover, U.S.-listed equity securities held by the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁵ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Fund may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets (as applicable) such as the Fund Portfolio and the Proxy Basket, the Custom Basket, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Nasdaq Rule 5750(d)(1)(B), the Exchange prior to the commencement of trading in the Proxy Portfolio Shares, will obtain a representation from the issuer of the Shares of the Fund that (i) the NAV per share for the Fund will be calculated daily, (ii) each of the following will be made available to all market participants at the same time

¹⁵ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹⁴ See Nasdaq Rule 5735.

when disclosed: the NAV, the Proxy Basket, and the Fund Portfolio, and (iii) the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Act,¹⁶ including with respect to any Custom Basket.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, 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, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Fund's holdings will conform to the permissible investments as set forth in the Registration Statement and Exemptive Order and the holdings will be consistent with all requirements in the Registration Statement and Exemptive Order. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities

benchmark index (as defined in Form N-1A).

The Exchange believes that the particular instruments that may be included in the Fund Portfolio and the Proxy Basket or Custom Basket do not raise any concerns related to the Proxy Basket or Custom Basket being able to closely track the NAV of the Fund because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, the Fund's Proxy Basket or Custom Basket is designed to reliably and consistently correlate to the performance of the Fund.

The Adviser anticipates that the returns between the Fund and its respective Proxy Basket or Custom Basket will have a consistent relationship and that the deviation in the returns between the Fund and its Proxy Basket or Custom Basket will be sufficiently small such that the Proxy Basket or Custom Basket will provide authorized participants, arbitrageurs and other market participants (collectively, "Market Makers") with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Fund will allow Market Makers to understand the relationship between the performance of the Fund and its Proxy Basket or Custom Basket. Market Makers will be able to estimate the value of and hedge positions in the Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

The Exchange notes that a significant amount of information about the Fund and its Fund Portfolio is publicly available at all times. The Fund will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis and will be available on the Fund's website before the commencement of trading in Proxy Portfolio Shares on each business day. With respect to each Custom Basket, each business day, before the opening of trading in the regular market session, the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash. Intraday pricing

information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The issuer of the Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings,¹⁷ including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

The Fund's website will include additional quantitative information updated on a daily basis,¹⁸ including, on a per Share basis for the Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. On each business day, before the commencement of trading of Shares, the Fund will publish on its website the Proxy Basket and the Guardrail Amount for that day.

The Exchange represents that the Shares of the Fund will continue to comply with all other proposed requirements applicable to Proxy Portfolio Shares, including the dissemination of key information such as the Proxy Basket, the Custom Basket, disclosure of the Fund Portfolio quarterly, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares and the orders approving such rules. Moreover, U.S.-listed equity securities, exchange-traded futures that are traded on a U.S. futures exchange, and non-U.S. listed equity securities held by the

¹⁶ 17 CFR 243.100-243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

¹⁷ This information will be made available on the Fund's website at www.sgi.com.

¹⁸ *Id.*

Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁹

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Closing Price or Bid/Ask Price and NAV.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that (i) the NAV per share for the Fund will be calculated daily, (ii) each of the following will be made available to all market participants at the same time when disclosed: the NAV, the Proxy Basket, and the Fund Portfolio, and (iii) the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Act,²⁰ including with respect to any Custom Basket.

FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purposes of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new type of actively-managed exchange-traded product, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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

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 Act²¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.²²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has noticed for immediate effectiveness proposed rule changes to permit listing and trading of Proxy Portfolio Shares on the Exchange and Active Proxy Portfolio Shares (which securities are substantively similar to Proxy Portfolio Shares but listed on another exchange) of

²¹ 15 U.S.C. 78s(b)(3)(A)(iii).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²³ 17 CFR 240.19b-4(f)(6)(iii).

numerous funds.²⁴ The proposed listing rule for the Fund raises no novel legal or regulatory issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁵

At any time within 60 days of the filing of such 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.

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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2023-006 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange

²⁴ See e.g., Securities Exchange Act Release No. 95082 (Feb 4, 2021), 88 FR 8972 (Feb. 10, 2021) (SR-NASDAQ-2021-005) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ALPS Active REIT ETF of ALPS ETF Trust To List and Trade Shares of the Fund Under Nasdaq Rule 5750) (Proxy Portfolio Shares); Securities Exchange Act Release Nos. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (SR-NYSEArca-2021-46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares)); 92958 (September 13, 2021), 86 FR 51933 (September 17, 2021) (SR-NYSEArca-2021-77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares)); and 93264 (October 6, 2021), 86 FR 56989 (October 13, 2021) (SR-NYSEArca-2021-84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Schwab Ariel ESG ETF Under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares)).

²⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ *Supra* note 15.

²⁰ See *supra* note 16.

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2023-006. This file number should be included on the subject line if email 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 website (<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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2023-006 and should be submitted on or before April 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-06782 Filed 3-31-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97212; File No. 4-698]

Joint Industry Plan; Notice of Withdrawal of Proposed Amendment to the National Market System Plan Governing the Consolidated Audit Trail, as Modified by Partial Amendment Nos. 1 and 2

March 28, 2023.

On May 13, 2022, the Operating Committee for Consolidated Audit Trail,

LLC ("CAT LLC"), on behalf of the Participants¹ to the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan"),² filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Exchange Act"),³ and Rule 608 of Regulation NMS thereunder,⁴ a proposed amendment to the CAT NMS Plan ("Proposed Amendment") to implement a revised funding model ("Executed Share Model") for the consolidated audit trail ("CAT") and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model. The Proposed Amendment was published for comment in the **Federal Register** on June 1, 2022.⁵

On August 30, 2022, the Commission instituted proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁶ to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.⁷ On November 15, 2022, CAT LLC submitted a letter to propose a

¹ The Participants are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange, LLC, MIAx Emerald, LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the "Participants").

² The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. See Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT ("Company"). On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC, which became the Company. The latest version of the CAT NMS Plan is available at <https://catnmsplan.com/about-cat/cat-nms-plan>.

³ 15 U.S.C. 78k-1.

⁴ 17 CFR 242.608.

⁵ See Securities Exchange Act Release No. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022) ("Notice").

⁶ 17 CFR 242.608(b)(2)(i).

⁷ See Securities Exchange Act Release No. 95634 (Aug. 30, 2022), 87 FR 54558 (Sept. 6, 2022) ("OIP"). Comments received in response to the OIP and the Notice can be found on the Commission's website at <https://www.sec.gov/comments/4-698/4-698-a.htm>.

partial amendment of the Proposed Amendment ("Partial Amendment No. 1") and to respond to the Commission's solicitation of comments in the OIP and comments received on the OIP.⁸ On November 23, 2022, pursuant to Rule 608(b)(2)(i) of Regulation NMS,⁹ the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to 240 days from the date of publication of the Notice.¹⁰ Notice of the filing of Partial Amendment No. 1 was published for comment in the **Federal Register** on December 2, 2022.¹¹

On January 20, 2023, the Commission extended the period within which to conclude proceedings regarding the Proposed Amendment to 300 days from the date of publication of the Notice.¹² On February 15, 2023, CAT LLC submitted a letter to propose an additional partial amendment to the Proposed Amendment ("Partial Amendment No. 2") and to respond to issues discussed in the comments on Partial Amendment No. 1.¹³ The Commission is publishing this notice to reflect that on March 1, 2023, prior to the end of the 300-day period provided for in Exchange Act Rule 608(b)(2)(ii),¹⁴ the Participants withdrew the Proposed Amendment, as modified by Partial Amendment Nos. 1 and 2.¹⁵

By the Commission.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-06784 Filed 3-31-23; 8:45 am]

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⁸ See Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 15, 2022).

⁹ See 17 CFR 242.608(b)(2)(i).

¹⁰ See Securities Exchange Act Release No. 96382 (Nov. 23, 2022), 87 FR 73366 (Nov. 29, 2022).

¹¹ See Securities Exchange Act Release No. 96394 (Nov. 28, 2022), 87 FR 74183 (Dec. 2, 2022). Comments received in response to Partial Amendment No. 1 can be found on the Commission's website at <https://www.sec.gov/comments/4-698/4-698-a.htm>.

¹² See Securities Exchange Act Release No. 96725 (Jan. 20, 2023), 88 FR 5059 (Jan. 26, 2023).

¹³ See Letter from Michael Simon, Chair Emeritus, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Feb. 15, 2023), available at <https://www.sec.gov/comments/4-698/4-698-a.htm>. Because CAT LLC withdrew the Proposed Amendment, as modified by Partial Amendment Nos. 1 and 2, before the Commission's 15-day deadline in Rule 608(b)(1)(ii) of Regulation NMS to send notice of the filing of a proposed amendment to any national market system plan to the **Federal Register**, the Commission did not publish notice of the filing of Partial Amendment No. 2. See 17 CFR 242.608(b)(1)(ii).

¹⁴ 17 CFR 242.608(b)(2)(ii).

¹⁵ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Mar. 1, 2023).

²⁶ 17 CFR 200.30-3(a)(12), (59).