closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits an interval fund to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–0 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs.

Asset-Based Service and Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Funds to impose asset-based service and distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based service and distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based service and distribution fees is consistent with the provisions, policies, and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–19918 Filed 9–8–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89739; File No. SR–NASDAQ–2020–028]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend IM–5101–1 (Use of Discretionary Authority) To Deny Listing or Continued Listing or To Apply Additional and More Stringent Criteria to an Applicant or Listed Company Based on Considerations Related to the Company's Auditor or When a Company's Business Is Principally Administered in a Jurisdiction That Is a Restrictive Market

September 2, 2020.

I. Introduction

On May 19, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend IM–5101–1 (Use of Discretionary Authority) to deny listing or continued listing or to apply additional and more stringent criteria to an applicant or listed company based on considerations related to the company's auditor or when a company's business is principally administered in a jurisdiction that has secrecy laws, blocking statutes, national security laws,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction. The proposed rule change was published for comment in the **Federal Register** on June 8, 2020.[3] On July 20, 2020, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission is publishing this order to solicit comments on the proposed rule change from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Exchange's Description of the Proposed Rule Change

The Exchange states that its listing rules include requirements to provide transparent disclosure to investors as well as corporate governance requirements for listed companies.[7] In addition to these requirements, the Exchange further states that Rule 5101 describes the Exchange's broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Pursuant to this rule, the Exchange states that it may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.[8]

The Exchange further states that, under Exchange rules and federal securities laws, a company's financial statements included in its initial registration statement or annual report must be audited by an independent public accountant that is registered with the Public Company Accounting Oversight Board (''PCAOB'').[9] According to the Exchange, company management is responsible for preparing the company's financial statements and for establishing and maintaining disclosure controls and procedures and internal control over financial reporting.[10] The Exchange states that the company's auditor, based on its independent audit of the evidence supporting the amounts and disclosures in the financial statements, expresses an opinion on whether the financial statements present fairly, in all material respects, the company's financial position, results of operations, and cash flows.[11] The Exchange further states that the auditor, in turn, is normally subject to inspection by the PCAOB, which assesses compliance with PCAOB and Commission rules and professional standards in connection with the auditor's performance of audits.[12] According to the Exchange, it relies on the work of auditors to provide reasonable assurances that the financial statements provided by a company are free of material misstatements, and further relies on the PCAOB's role in overseeing the quality of the auditor's work.[13] The Exchange believes that accurate financial statement disclosure is critical for investors to make informed investment decisions and is concerned that constraints on the PCAOB's ability to inspect auditor work in countries with national barriers on access to information may weaken assurances that the disclosures and financial information of companies with operations in such countries are not misleading.[14]

In light of the foregoing, the Exchange now proposes to amend IM–5101–1 to add a new subparagraph (b) to state that the Exchange may rely upon Rule 5101 to deny initial or continued listing or to apply additional and more stringent criteria to an applicant or listed company based on the following factors related to the qualifications of the company's auditor:

(1) Whether the auditor has been subject to a PCAOB inspection, such as where the auditor is newly formed and has therefore not yet undergone a PCAOB inspection or where the auditor, or an accounting firm engaged to assist with the audit, is located in a jurisdiction that limits the PCAOB's ability to inspect the auditor;

(2) if the company's auditor has been inspected by the PCAOB, whether the results of that inspection indicate that the auditor has failed to respond to any requests by the PCAOB or that the inspection has uncovered significant deficiencies in the auditor's conduct in other audits or in its system of quality controls;

(3) whether the auditor can demonstrate that it has adequate personnel in the offices participating in the audit with expertise in applying U.S. GAAP, GAAS, or IFRS, as applicable, in the company's industry;

(4) whether the auditor's training program for personnel participating in the company's audit is adequate;

(5) for non-U.S. auditors, whether the auditor is part of a global network or other affiliation of individual auditors where the auditors draw on globally common technologies, tools, methodologies, training, and quality assurance monitoring; and

(6) whether the auditor can demonstrate to the Exchange sufficient resources, geographic reach, or experience as it relates to the company's audit.[15]

The Exchange states that it would consider these factors holistically and may be satisfied with an auditor's qualifications notwithstanding the fact that the auditor raises concerns with respect to some of the factors set forth above.[16] The proposed rule further

[3] *See* Securities Exchange Act Release No. 88987 (June 2, 2020), 85 FR 34774. Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nasdaq-2020-028/srnasdaq2020028.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 89344, 85 FR 44951 (July 24, 2020). The Commission designated September 6, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3, at 35134. *See also* Rule 5000 Series.

[8] *See id. See also* Rule 5101.

[9] *See* Notice, *supra* note 3, at 35134 (citing Rules 5210(b) and 5250(c)(3), which reference Section 102 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002)).

[10] *See id.*

[11] *See id.* (quoting PCAOB Auditing Standard 1101.03—Audit Risk, *available at https://pcaobus.org/Standards/Auditing/Pages/AS1101.aspx* (''To form an appropriate basis for expressing an opinion on the financial statements, the auditor must plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement due to error or fraud.'')).

[12] *See id.*

[13] *See id.* at 35135.

[14] *See id.*

[15] The Exchange also proposes to identify certain existing paragraphs within IM–5101–1 as subparagraphs (a), (d), and (e); add descriptive headings to the subparagraphs within IM–5101–1; and relocate existing text describing the Exchange's review process to subparagraph (e). The Exchange also proposes to revise the term ''listing qualifications panel'' in subparagraph (e) to ''Hearings Panel (as defined in Rule 5805(d))'' for consistency within the rulebook.

[16] *See* Notice, *supra* note 3, at 35135. For example, the Exchange states that it may be satisfied that an auditor that is not subject to

Continued

provides examples of additional and more stringent criteria that the Exchange may apply to an applicant or a listed company to obtain comfort that the company satisfies the financial listing requirements and is suitable for listing.[17] These criteria may include requiring: (i) Higher equity, assets, earnings, or liquidity measures than otherwise required under the Rule 5000 Series; (ii) that any offering be underwritten on a firm commitment basis, which typically involves more due diligence by the broker-dealer than would be done in connection with a best-efforts offering; or (iii) companies to impose lock-up restrictions on officers and directors to allow market mechanisms to determine an appropriate price for the company before such insiders can sell shares.[18] The Exchange states that it may impose each of these additional requirements separately or in combination, or may determine that listing is not appropriate and deny initial or continued listing to a company.[19]

The Exchange further states that risks to U.S. investors related to the accuracy of disclosures, accountability, and access to information are heightened when a company's business is principally administered in a jurisdiction that has secrecy laws, blocking statutes, national security laws, or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction.[20] Accordingly, the Exchange also proposes to amend IM–5101–1 to add a new subparagraph (c) to state that the Exchange may use its discretionary authority to impose additional or more stringent criteria, including the criteria set forth in proposed IM–5101–1(b), in other circumstances, including when a company's business is principally administered in a jurisdiction that the Exchange determines to have secrecy laws, blocking statutes, national security laws, or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction (a ''Restrictive Market''). In determining whether a company's business is principally administered in a Restrictive Market (''Restrictive Market Company''), proposed IM–5101–1(c)(4) provides that the Exchange may consider the geographic locations of the company's: (a) Principal business segments, operations, or assets; (b) board and shareholders' meetings; (c) headquarters or principal executive offices; (d) senior management and employees; and (e) books and records.[21] The Exchange states that this definition would capture both foreign private issuers based in Restrictive Markets and companies based in the U.S. or another jurisdiction that principally administer their businesses in Restrictive Markets.[22]

The Exchange represents that, in the event it relies on its discretionary authority pursuant to the proposed rule changes and determines to deny the initial or continued listing of a company, it would issue a denial or delisting letter to the company that will inform the company of the factual basis for the Exchange's determination and the company's right for review of the decision pursuant to the Rule 5800 Series.[23] The proposed rule changes would apply to all companies listed and seeking to list on the Exchange.[24]

III. Summary of the Comment Letters Received

One commenter stated that it supports the proposed rule change inasmuch as it seems reasonably tailored to help ensure full, complete, and transparent financial and other disclosure from Restrictive Market Companies.[25] Another commenter expressed its support for the proposed rule change and agreed with many of the concerns raised by the Exchange related to Restrictive Market Companies.[26] However, this commenter also suggested that the Exchange consider modifications to the proposed rule change, including narrowing the degree of discretion provided by the proposed rule change for situations where the applicant or listed company has an auditor or an accounting firm engaged to assist with the audit that is located in a jurisdiction that limits the PCAOB's ability to inspect the auditor, and where the applicant or listed company is a Restrictive Market Company.[27] Specifically, this commenter recommended that the Exchange modify the proposed rule change to replace proposed IM–5101–1(b)(1) and (c) with new rules that would require that applicants and listed companies from a Restrictive Market be prohibited from having an auditor or accounting firm engaged to assist with their company audit that is located in a jurisdiction that limits the PCAOB's ability to inspect the auditor.[28] This commenter further recommended that the Exchange also amend Rule 5810 to provide a Nasdaq Hearings Panel the discretion to grant a listed company an exception from such new rules for a period not to exceed 540 days from the date of the delisting letter issued by the Exchange.[29]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2020–028 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section

PCAOB inspection has mitigated the risk that it may have significant undetected deficiencies in its system of quality controls by being a part of a global network where the auditors draw on globally common technologies, tools, methodologies, training, and quality assurance monitoring. *See id.*

[17] The Exchange states that if a company's auditor does not satisfy the proposed criteria in IM–5101–1(b), the Exchange may still obtain comfort that the company truly satisfies the financial listing criteria by imposing a higher standard on such company. *See id.* at 35136.

[18] *See* proposed IM–5101–1(b). The Exchange states that it may also have concerns that a company listing on the Exchange through an initial public offering, business combination, direct listing, or issuing securities previously trading over-the-counter may not develop sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly trading, resulting in a security that is illiquid. *See* Notice, *supra* note 3, at 35136. In such cases, the Exchange states that it may impose additional liquidity measures on the company, such as requiring a higher public float percentage, market value of unrestricted publicly held shares, or average over-the-counter trading volume. *See id.* The Exchange further states that it may obtain additional comfort regarding the quality of a company's financial statements by requiring the offering to be underwritten, which the Exchange believes would help to ensure that third parties other than the auditor are conducting significant due diligence on the company, its registration statement, and its financial statements. *See id.* The Exchange also believes that, if material misstatements are detected by the company's auditors and have not been disclosed to investors, it may be appropriate to impose lock-up restrictions on officers and directors to allow market mechanisms to determine an appropriate price for the company before such insiders can sell shares. *See id.*

[19] *See* Notice, *supra* note 3, at 35136.

[20] *See id.*

[21] *See* proposed IM–5101–1(c)(4).

[22] *See* Notice, *supra* note 3, at 35136 n.11. The Exchange further provides the following example: a company's headquarters could be located in Country A, while the majority of its senior management, employees, assets, operations, and books and records are located in Country B, which is a Restrictive Market. In this case, the Exchange would consider the company's business to be principally administered in Country B, which is a Restrictive Market, and the Exchange may use its discretionary authority pursuant to proposed IM–5101–1(c) to apply additional or more stringent criteria to the company. *See id.* at 35136.

[23] *See id.* See also Rule 5815, which sets forth the review of staff determinations by a Hearings Panel, including the procedures for requesting and preparing for a hearing and the scope of the Hearing Panel's discretion.

[24] *See id.*

[25] *See* Letter from Annemarie Tierney, Founder and Principal, Liquid Advisors, Inc. (July 2, 2020), at 5.

[26] *See* Letter from Jeffrey P. Mahoney, General Counsel, Council of Institutional Investors (June 18, 2020), at 5.

[27] *See id.* at 6.

[28] *See id.* at 6–7.

[29] *See id.* at 7.

19(b)(2)(B) of the Act [30] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[31] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be 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 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 to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[32]

The Exchange is proposing to adopt new rule text to specifically permit it to utilize its broad discretionary authority to deny initial or continued listing or to apply additional and more stringent criteria to an applicant or listed company based on certain factors, as described in more detail above, related to the qualifications of the company's auditor. However, the Exchange does not state how these broad factors would be considered in its determination of whether an applicant or listed company will be denied initial or continued listing, or subject to additional and more stringent criteria, other than to note that the factors will be considered ''holistically.'' In addition, the Exchange states that it may also find a particular auditor's qualifications sufficient despite the fact that the auditor raises concerns with respect to some of the specified factors. Further, the Exchange does not state what specific additional or more stringent criteria it would impose, if it decided to impose additional or more stringent criteria. Whether an applicant or listed company is denied listing or subject to additional criteria and what that additional criteria is, however determined, appears to be subject to wide discretion under the proposed rule.

Similarly, under the proposed rule, the Exchange may also use its broad discretionary authority to impose similar additional or more stringent criteria on a Restrictive Market Company. The Exchange does not provide any information in its filing regarding when it generally will or will not use its authority to subject a Restrictive Market Company to such additional criteria, but rather just provides that a Restrictive Market Company ''may'' be subject to additional or more stringent criteria. In addition, the Exchange does not state what specific additional or more stringent criteria it would impose, if it decided to impose additional or more stringent criteria. These provisions appear to be subject to wide discretion by the Exchange.

The Exchange stated that its proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the Exchange has identified additional concerns around companies with auditors that do not have sufficient PCAOB inspection history, quality controls, resources, geographic reach, and experience to adequately perform the company's audit and Restrictive Market Companies, and because applying additional and more stringent criteria may not be appropriate in all circumstances.[33] As discussed above, however, the Exchange's proposal provides it wide discretion to determine: (1) Whether to deny initial or continued listing or to apply additional and more stringent criteria to an applicant or listed company based on factors related to the qualifications of the company's auditor, and what specific additional or more stringent criteria it would impose, if it decided to impose additional or more stringent criteria; and (2) whether to apply additional or more stringent criteria to a Restrictive Market Company, and what specific additional or more stringent criteria it would impose, if it decided to impose additional or more stringent criteria. Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Act and its requirement, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [34] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[35] and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[36]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposal is consistent with the Act.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [37] of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[38] any request for an opportunity to make an oral presentation.[39]

[30] 15 U.S.C. 78s(b)(2)(B).

[31] *Id.*

[32] 15 U.S.C. 78f(b)(5).

[33] *See* Notice, *supra* note 3, at 35137–38.

[34] 17 CFR 201.700(b)(3).

[35] *See id.*

[36] *See id.*

[37] 15 U.S.C. 78f(b)(5).

[38] 17 CFR 240.19b–4.

[39] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of

Continued

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 30, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 14, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[40] in addition to any other comments they may wish to submit about the proposed rule change.

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–2020–028 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–2020–028. 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–2020–028 and should be submitted by September 30, 2020. Rebuttal comments should be submitted by October 14, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–19841 Filed 9–8–20; 8:45 am]

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1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[40] *See* Notice, *supra* note 3.

[41] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89737; File No. SR–FINRA–2020–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Amend FINRA Rules 1015, 9261, 9524 and 9830 To Permit Hearings Under Those Rules To Be Conducted by Video Conference

September 2, 2020.

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 August 31, 2020, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. FINRA files the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to temporarily amend FINRA Rules 1015, 9261, 9524 and 9830 to grant FINRA's Office of Hearing Officers (''OHO'') and the National Adjudicatory Council (''NAC'') authority[5] to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. As proposed, these temporary amendments would be in effect through December 31, 2020.[6]

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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 outbreak of COVID–19 has disrupted critical adjudicatory functions nationwide due to the serious public health risks it poses in connection with conducting traditional, in-person hearings. In order to comply with the guidance of public health authorities and to ensure the safety and well-being

[5] For OHO hearings under FINRA Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For NAC hearings under FINRA Rules 1015 and 9524, this temporary authority is granted to the NAC or relevant Subcommittee.

[6] If FINRA requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, FINRA may submit a separate rule filing to extend the expiration date of the temporary amendments under these rules. The amended FINRA rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.