

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96781; File No. SR-NASDAQ-2022-057)

January 31, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Listing Rule 5732 to Provide Listing Standards for Contingent Value Rights on Nasdaq Global Market

I. Introduction

On October 17, 2022, 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 adopt Listing Rule 5732 to provide listing standards for Contingent Value Rights (“CVRs”) on Nasdaq Global Market. The proposed rule change was published for comment in the Federal Register on November 3, 2022.³ On December 15, 2022, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁴ On January 26, 2023, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Commission received no comment letters on the proposed rule change. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96176 (October 28, 2022), 87 FR 66337 (“Notice”).

⁴ See Securities Exchange Act Release No. 96509, 87 FR 78166 (December 21, 2022) (extending the time period to February 1, 2023).

⁵ In Amendment No. 1, the Exchange revised the proposal to clarify that: (1) the Exchange will require the public disclosure of all the material terms of the CVR before listing; (2) under the CVR Continued Listing Standards of Nasdaq Proposed Rule 5732(d)(3), the \$1 million market value threshold requirement refers to Publicly Held Shares; (3) to initially list a CVR under Nasdaq Proposed Rule 5732(a)(4), the issuer’s common stock must be compliant with the listing standards of the national securities exchange upon which the

Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 1

Nasdaq proposes to adopt Listing Rule 5732 to provide listing standards for Price-Based and Event-Based Contingent Value Rights (each a “CVR” and collectively, “CVRs”) on Nasdaq Global Market, which are unsecured obligations of the issuer providing for a possible cash payment at maturity.⁶ As discussed in more detail below, CVRs provide for a possible cash payment for a “Price-Based CVR” at maturity based upon the price performance of an affiliate’s equity security or for an “Event-Based CVR”, within a specified time period, upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer.⁷

Specifically, under the proposal, at maturity, the holder of a Price-Based CVR is entitled to a cash payment if the average market price of the issuer’s related affiliate’s equity security is

common stock is listed, irrespective of whether listing a Price-Based or Event-Based CVR; and (4) in Nasdaq Proposed Rule 5732(d)(4), for Event-Based CVRs, the primary equity security to which the Event-Based CVR is linked and the issuer’s common stock must remain listed. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nasdaq-2022-057/srnasdaq2022057.htm>. See also notes 6-7 and accompanying text for definitions of Price-Based and Event Based CVRs.

⁶ According to the Exchange, the proposed rule change is based on Section 703.18 of the NYSE Listed Company Manual, related to initial listing of CVRs, and the provisions of Section 802.01D applicable to “Specialized Securities”, related to continued listing of CVRs. See Securities Exchange Act Release No. 26072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR-NYSE-90-15) (order approving original listing standards for CVRs (Priced-Based) on the Exchange); Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR-NYSE-2019-14) (order approving the listing of Event-Based CVRs on the Exchange).

⁷ See Nasdaq Proposed Rule 5732.

less than a pre-set target price.⁸ The proposal states that the target price is typically established at the time the Price-Based CVR is issued.⁹ Conversely, should the average market price of the related equity security equal or exceed the target price, the Price-Based CVR would expire worthless.¹⁰ In its proposal, Nasdaq states that Price-Based CVRs are generally distributed to shareholders of an acquired company who are receiving shares of the acquirer as acquisition consideration.¹¹ Nasdaq further states that Price-Based CVRs provide the acquiree's shareholders with some medium-term protection against poor stock price performance of the shares of the acquirer by guaranteeing them a specified cash payment if the acquirer's average stock price is below a specified level at the time of maturity of the Price-Based CVR.¹²

The Exchange states that Event-Based CVRs are also typically issued to the shareholders of an acquired entity as consideration in an acquisition transaction.¹³ Under the proposal, Event-Based CVRs entitle their holders to receive a cash payment upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer within a specified period of time that is determined at the time the Event-Based CVR is issued.¹⁴ In contrast, should the specified event or events not occur within the specified time period, the Event-based CVR would expire worthless.¹⁵ According to the Exchange, an Event-Based CVR provides the

⁸ See Nasdaq Proposed Rule 5732.

⁹ See id.

¹⁰ See id.

¹¹ See Notice, supra note 3, 87 FR at 66337.

¹² See id.

¹³ See id.

¹⁴ See id.; Nasdaq Proposed Rule 5732.

¹⁵ See Nasdaq Proposed Rule 5732.

shareholders of the acquiree an additional interest in the medium-term performance of the merged entity upon occurrence of its specified event(s).¹⁶

For initial listing of CVRs on the Nasdaq Global Market, the issuer must have assets in excess of \$100 million, satisfy the requirement of Nasdaq Rule 5315(f)(3)(A)¹⁷ or have at least \$200 million in global market capitalization and satisfy the requirement of Rule 5315(f)(2)(A) and (B)¹⁸ related to Market Value of Unrestricted Publicly Held Shares. In order to list a CVR, an issuer of the CVR must not be considered non-compliant with the listing standards of the national securities exchange where either: (i) the equity security to whose price performance a Price-Based CVR is linked or the issuer's common stock is listed, or (ii) in an Event-Based CVR where the primary equity security is linked or the issuer's common stock is listed.¹⁹

The CVR issue must also have a minimum of 400 holders; a minimum of 1 million CVRs outstanding; a minimum of \$4 million market value; a minimum life of one year; and a minimum \$4.00 bid price.²⁰ Nasdaq states that while these distribution and liquidity standards applicable to CVRs can help to ensure there should be adequate depth, liquidity, and investor interest to support an exchange listing, the issuer requirements, that are described above, will provide some

¹⁶ See Notice, supra note 3, 87 FR at 66337.

¹⁷ Specifically, to satisfy Nasdaq Rule 5315(f)(3)(A) a Company, other than a closed end management investment company, must aggregate income from continuing operations before income taxes of at least \$11 million over the prior three fiscal years, (ii) positive income from continuing operations before income taxes in each of the prior three fiscal years, and (iii) at least \$2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years.

¹⁸ See Nasdaq Rule 5315(f)(2)(A) and (B) requiring (i) a Market Value of at least \$110 million; or (ii) a Market Value of at least \$100 million, if the Company has stockholders' equity of at least \$110 million.

¹⁹ See Amendment No. 1, supra note 5, at 3.

²⁰ See id.

minimum level of indicia that the issuer of a CVR should be able to meet any future payment obligations to shareholders of Event-Based, as well as Price-Based, CVRs pursuant to the applicable CVR agreement.²¹

Prior to listing a CVR under the proposed rule, Nasdaq would issue a circular as described in proposed Nasdaq Rule 5732(c) reminding its members that because CVRs have certain unique characteristics investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, as well as the Exchange's know-your-customer, suitability, and other rules applicable thereto.²² Nasdaq will suggest to its members that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading or whom the member firm has otherwise ascertained that CVRs are suitable for.²³ In its proposal, Nasdaq stated that like other financial products with unique features trading on the Exchange, CVRs combine features of debt, equity, and securities derivative instruments.²⁴ Consequently, Nasdaq states this product may be more complex than straight stock, bond, or equity warrants and that the distribution of the information circular will help to alert members to the special disclosure and suitability obligations that apply to CVRs and that are relevant to making recommendation for investors in CVRs.²⁵

Prior to listing a Contingent Value Right, Nasdaq will require that all material terms of the Contingent Value Right be publicly disclosed.²⁶ While listed, the issuer of an Event-Based

²¹ See Notice, supra note 3, 87 FR at 66338.

²² See id.; Nasdaq Proposed Rule 5732(c).

²³ See Notice, supra note 3, 87 FR at 66338.

²⁴ See id.

²⁵ See Notice, supra note 3, 87 FR at 66338.

²⁶ See Amendment No. 1, supra note 5, at 3.

CVR will be required to make public disclosure: (i) upon the occurrence of any event that must occur as a condition to the issuer's obligation to make a cash payment with respect to the CVR (or if such an event is deemed to have occurred pursuant to the terms of the documents governing the CVR); or (ii) at any such time as it becomes clear that a condition to the cash payment with respect to the CVR has not been met as required by the documents governing the terms of the CVR.²⁷

Nasdaq will delist a CVR pursuant to the provisions of the Listing Rule 5800 Series if the CVR fails to maintain any of the following: (1) at least 100,000 Publicly Held Shares; (2) at least 100 Holders; or (3) at least \$1 million Market Value of Publicly Held Shares.²⁸ In addition, Nasdaq will promptly delist any CVR if the issuer's common stock, the equity security to whose price performance a Price-Based CVR is linked, or the primary equity security to which an Event-Based CVR is linked, ceases to be listed on a national securities exchange.²⁹ Also, Nasdaq will delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred.³⁰

²⁷ See Nasdaq Rule IM-5250-1. Disclosure of Material Information, among other things, requires Nasdaq companies to notify Nasdaq's MarketWatch Department prior to the distribution of certain material news at least 10 minutes prior to public announcement of the news when the public release of the information is made from 7:00 a.m. to 8:00 p.m. ET. Trading halts are instituted, among other reasons, to ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. See also Notice, supra note 3, 87 FR at 66338,

²⁸ See Notice, supra note 3, 87 FR at 66338; Nasdaq Proposed Rule 5732(d); Amendment No. 1, supra note 5, at 3.

²⁹ See Amendment No. 1, supra note 5, at 3-4.

³⁰ See id.

The Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³¹ The Exchange will monitor activity in CVRs to identify and deter any potential improper trading activity in such securities and monitor CVRs alongside the common equity securities of the issuer or its affiliates, as applicable.³² In addition, the Exchange will adopt enhanced surveillance procedures if necessary.³³ In addition, if the underlying security is listed and traded on another U.S. national securities exchange, Nasdaq will communicate as needed and may obtain information regarding trading from markets and other entities that are members of Intermarket Surveillance Group.³⁴

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁵ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,³⁶ 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 remove impediments to and perfect the mechanism of a free

³¹ See Notice, supra note 3, 87 FR at 66338.

³² See id.

³³ See id.

³⁴ See Notice, supra note 3, 87 FR at 66338, n. 8 and accompanying text.

³⁵ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁶ 15 U.S.C. 78f(b)(5).

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

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Meaningful listing standards are especially important given the expectations of investors regarding the nature of securities that have achieved an exchange listing and the role of an exchange in overseeing and assuring compliance with its listing standards. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

For the reasons discussed below, the Commission believes that the Exchange's proposed listing standards, as modified by Amendment No. 1, are consistent with the Act and in particular with Section 6(b)(5). The Exchange, as described above, has proposed to adopt listing standards for Price-Based CVRs and Event-Based CVRs on NASDAQ Global Market. CVRs are typically used as consideration offered to the shareholders of the target company in a business combination transaction, such as a merger or an exchange offer. As the Commission has previously stated CVRs have unique characteristics that combine features of debt, equity and

securities derivatives instruments.³⁷ The Commission believes that the Exchange's proposal to establish listing criteria for CVRs should adequately address the unique concerns raised by the listing of such securities and should help to ensure that only substantial companies capable of meeting their financial obligations can list such CVRs on the Exchange, thereby protecting investors and the public interest consistent with the Act. The proposal, as modified by Amendment No. 1, should also, consistent with the Act, aid the Exchange in maintaining fair and orderly markets for CVRs and preventing fraudulent and manipulative acts and practices.

The Commission believes the Exchange's proposed quantitative listing standards should help to ensure that only substantial companies capable of meeting their financial obligations issue CVRs. This is important in light of the contingent financial obligations created by these instruments, and should serve to protect investors and the public interest by ensuring that the companies listing Price-Based CVRs and Event-Based CVRs are of substantial size, which can help to indicate such companies have sufficient financial means to meet their settlement obligations. Specifically, an issuer of a CVR must 1) have assets in excess of \$100 million, 2) must satisfy Rule 5315(f)(3)(A) or have at least \$200,000,000 in global market capitalization, 3) must satisfy the Market Value of Unrestricted Publicly Held Shares requirement of Rule 5315(f)(2)(A) and (B) requiring (i) a Market Value of at least \$110 million; or (ii) a Market Value of at least \$100 million, if the Company has stockholders' equity of at least \$110 million.³⁸ Furthermore, the CVR issue must have a minimum of 400 holders; a minimum of 1 million

³⁷ See Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR-NYSE-2019-14) (order approving the listing of Event-Based CVRs on the Exchange); See also Securities Exchange Act Release No. 28072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR-NYSE-90-15) (order approving original listing standards for CVRs (Priced-Based) on the Exchange).

³⁸ See note 17-18, *supra*, and accompanying text.

CVRs outstanding; a minimum of \$4 million market value; a minimum life of one year; and a minimum \$4.00 bid price. The Commission believes these distribution and liquidity standards applicable to CVRs can help to ensure adequate depth, liquidity, and investor interest to support an exchange listing. The Commission also believes the issuer requirements will provide some minimum level of indicia that the issuer of a CVR should be able to meet any future payment obligations to shareholders of CVRs pursuant to the applicable CVR agreement. Furthermore, the proposed listing standards are substantially similar to the CVR listing standards on New York Stock Exchange (“NYSE”).³⁹

In addition, in order to list a CVR, an issuer of the CVR must not be considered non-compliant with the listing standards of the national securities exchange where either: (i) the equity security to whose price performance a Price-Based CVR is linked or the issuer’s common stock is listed, or (ii) in an Event-Based CVR where the primary equity security is linked or the issuer’s common stock is listed.⁴⁰ The Commission believes that this requirement protects investors and the public interest in accordance with Section 6(b)(5) of the Act in that it would not permit a CVR to be listed on the Exchange if the listed company is below compliance with

³⁹ See Section 703.18 of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 85812 (May 9, 2019), 84 FR 21861 (May 15, 2019) (SR-NYSE-2019-14) (Notice of Filing of proposed rule change to permit the listing of Event-Based CVRs on the Exchange).

⁴⁰ See Amendment No. 1, *supra* note 5, at 3. The issuer of a CVR also has to comply with the corporate governance requirements of the national securities exchange where its common stock or equity security linked to the CVR is listed. An issuer of a CVR may not be below compliance with these corporate governance standards, as well as the quantitative continued listing standards, for its common stock or equity security on the national securities exchange where such security is listed at the time of the listing of the CVR. This should provide additional protections for investors in both Event-Based and Price-Based CVRs.

listing standards, and therefore potentially subject to delisting, on the national securities exchange where its common stock, or equity security linked to the CVR, was listed.

Once listed, Nasdaq will delist a CVR pursuant to the provisions of the Listing Rule 5800 Series if the CVR fails to maintain any of the following: (1) at least 100,000 Publicly Held Shares; (2) at least 100 Holders; or (3) at least \$1 million Market Value of Publicly Held Shares. In addition, Nasdaq will promptly delist any CVR if the issuer's common stock, the equity security to whose price performance a Price-Based CVR is linked, or the primary equity security to which an Event-Based CVR is linked, ceases to be listed on a national securities exchange.⁴¹ Additionally, Nasdaq would delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred. The Commission believes the proposed delisting standards, which are also substantially similar to those of NYSE⁴², provide some indicia of a minimum level of liquidity for continued listing of CVRs. Further, the requirement that Price-Based CVRs and Event-Based CVRs be promptly delisted if either the common stock of the issuer of the CVR or the related linked equity security ceases to be listed on a national securities exchange is consistent with investor protection and the public interest in that it helps to ensure that the issuer of the CVR is meeting the continued quantitative and qualitative listing standards of a national securities exchange on an ongoing basis while the CVR is trading on the Exchange. These additional requirements for delisting also will protect investors by helping to maintain fair and orderly markets by ensuring that a CVR will not remain listed when the common stock of the issuer or any linked equity security to a

⁴¹ See Amendment No. 1, supra note 5, at 3-4.

⁴² See Section 703.18 of the NYSE Listed Company Manual.

CVR is delisted. For similar reasons, the requirement to delist an Event-Based CVR, when the event has occurred or the time period for the event or events has passed will also further investor protection and fair and orderly markets since any payout on the CVR should be conditioned on such events.

In addition, the proposed rule change would require that, prior to listing a Price-Based or Event-Based CVR, an issuer be required to publicly disclose all material terms of the CVR.⁴³ The proposed rule change would also require the issuer of an Event-Based CVR to make public disclosure, in accordance with the provisions of Rule 5250(b) and IM-5250-1, upon the occurrence of any event that must occur as a condition to the issuer's obligation to make a cash payment with respect to the CVR (or if such an event is deemed to have occurred pursuant to the terms of the documents governing the CVR) or at any such time as it becomes clear that a condition to the cash payment with respect to the CVR has not been met as required by the documents governing the terms of the CVR.⁴⁴ The Commission believes that these disclosure requirements should help to protect investors and the public interest by ensuring that investors have sufficient information to make investment decisions relating to CVRs. The Commission further believes that the requirement to publicly disclose whether a specified event has occurred or failed to occur should help to protect investors and prevent fraudulent manipulative acts and practices by ensuring that investors and market participants will have access to important information needed to trade, and make investment decisions in, the CVRs and that such information will be publicly available to all investors at the same time.⁴⁵ Notification to the

⁴³ See Amendment No. 1, supra note 5, at 3.

⁴⁴ See Notice, supra note 3, 87 FR at 66338; Nasdaq Proposed Rule 5732(b).

⁴⁵ Nasdaq Rule 5250 requires listed companies to disclose any material information that would reasonably be expected to affect the value of its securities or influence investor

Exchange, in accordance with the requirements of Nasdaq Rule 5250(b) and Nasdaq Rule IM-5250-1, will also provide the Exchange with the information necessary for it to determine whether a temporary trading halt may be appropriate for an Event-Based or Price-Based CVR in order to ensure fair and orderly markets.⁴⁶

Under the Exchange’s proposal, as described above, Event-Based CVRs must be based upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer. The Commission believes that requiring an Event-Based CVR to be related to the business of the issuer or an affiliate of the issuer is an essential requirement that will help to ensure that the company will have the information necessary to determine if the required events have occurred or not occurred within any required time frames under the terms of the CVR and make timely required public disclosure.⁴⁷

The Exchange’s proposed rule for listing CVRs also addresses the additional regulatory concerns raised by these products. Like other financial products with unique features trading on the Exchange, as noted above, CVRs combine features of debt, equity, and securities derivative instruments. As a result, this product may be more complex than straight stock, bond, or equity warrants. The Exchange has proposed to distribute an information circular apprising member

decisions.

⁴⁶ Notifications of material news to the Exchange at least 10 minutes prior to its release to the public when the information is released between 7:00 a.m. to 8:00 p.m. ET allows Nasdaq to determine if a trading halt is necessary in accordance with Nasdaq Rule IM-5250-1. As stated by Nasdaq, trading halts “ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making an investment decision.” See Notice, *supra* note 3, 87 FR at 66338 n. 7.

⁴⁷ The Commission notes that under the Exchange’s rules, Priced-Based CVRs are similarly related to the performance of an affiliate’s equity security.

firms of the special characteristics, risks, and suitability obligations associated with CVRs.⁴⁸ The Commission believes distribution of this information circular will help to alert members to the special characteristics, risks, disclosure and suitability obligations that apply to CVRs and the attendant requirements of members when making recommendations to investors to purchase CVRs.⁴⁹

The Exchange has represented that it will also monitor activity in CVRs to identify and deter any potential improper trading activity in such securities and will monitor CVRs alongside the common equity securities of the issuer or its affiliates, as applicable.⁵⁰ The Exchange states it will adopt enhanced surveillance procedures to do so if necessary.⁵¹ Since news and information concerning a company and the linked equity security and issuer's common stock can have an impact on the company's CVRs, this surveillance should help to monitor the trading activity in the CVRs. To the extent the common equity security is traded on another national securities exchange, these procedures are expected to ensure proper coordination.⁵² The Commission believes that these safeguards and standards should help to ensure that the listing, and continued listing, of any CVRs on the Exchange will be consistent with investor protection,

⁴⁸ See Nasdaq Proposed Rule 5732(c).

⁴⁹ For example, the circular states, among other things, that it is suggested that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading and that members recommending transactions in CVRs should have a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks and special characteristics, and is financially able to bear the risks, of a recommendation to invest in CVRs. See id.

⁵⁰ As noted above, the Exchange will rely on its existing trading surveillances, administered by the Exchange, or the FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. See Note 31, supra.

⁵¹ See Notice, supra note 3, 87 FR at 66338.

⁵² See Note 34, supra, and accompanying text.

the public interest, and the maintenance of fair and orderly markets. In this regard, the Commission expects the Exchange to thoroughly review any potential listing of Price-Based and Event-Based CVRs to ensure that its listing standards have been met and continue to be met, as well as to monitor trading in the Event-Based and Price-Based CVRs and related common stock or equity security of the issuer.

Based on the above, the Commission believes the proposed rule change, as modified by Amendment no. 1, is reasonable and should provide for the listing of CVRs with baseline investor protection and other standards. The Commission believes, as discussed above, that the Exchange has developed sufficient standards to allow the listing of both Price-Based CVRs and Event Based CVRs on the Exchange and finds the proposal consistent with the requirements set forth under the Act, and in particular, Section 6(b)(5).

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

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

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2022-057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet 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-2022-057, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. As discussed above, in Amendment No. 1, the Exchange revised the proposal to clarify that: (1) the Exchange will require the public disclosure of all the material terms of the CVR before listing the CVR; (2) under the CVR Continued Listing Standards of Proposed Rule 5732(d)(3), the \$1 million market value threshold

requirement refers to Publicly Held Shares; (3) to initially list a CVR under Proposed Rule 5732(a)(4), the issuer's common stock must be compliant with the listing standards of the national securities exchange upon which the common stock is listed, irrespective of whether listing a Price-Based or Event-Based CVR; and (4) in Proposed Rule 5732(d)(4), for Event-Based CVRs, the primary equity security to which the Event-Based CVR is linked and the issuer's common stock must remain listed.

The Commission believes that Amendment No. 1 does not raise any novel regulatory issues from the original proposal, which was subject to a full notice and comment period during which no comments were received. Rather, Amendment No. 1 strengthens the original proposal by requiring the material terms of the CVR to be publicly disclosed prior to the Exchange listing of a CVR which will increase transparency to investors in CVRs and potential investors seeking to make an informed investment decision. In addition, the change to the continued listing standards to require the market value standard to include only Publicly Held Shares strengthens the requirements for continued listing in the original proposal and can help in ensuring adequate liquidity for continued listing of CVRs. Finally, the changes in Amendment No. 1 applicable to Nasdaq Proposed Rules 5732(a)(4) and (d)(4) provide additional specificity and clarity regarding the circumstances in which the Exchange would list and delist a CVR, which will provide additional protections for potential investors and current investors in CVRs. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁵³ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

⁵³ 15 U.S.C. 78s(b)(2).

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁴ that the proposed rule change (SR-NASDAQ-2022-57), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

Sherry R. Haywood,
Assistant Secretary.

⁵⁴ 15 U.S.C. 78s(b)(2).

⁵⁵ 17 CFR 200.30-3(a)(12).