

submissions should refer to File Number SR–NASDAQ–2022–038 and should be submitted on or before August 3, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- 95214; File No. SR–ICC–2022–006]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICC Model Validation Framework

July 7, 2022.

I. Introduction

On May 17, 2022, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² a proposed rule change to amend its Model Validation Framework (the “Framework”). The proposed rule change was published for comment in the **Federal Register** on June 3, 2022.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change⁴

A. Background

The Framework describes the process for ICC assuring the effectiveness of its models, including changes to existing models and the adoption of new models. ICC’s processes rely on four controls: initial validation; ongoing monitoring and validation; investigation; and independent periodic review. The proposed rule change would: (a) expand the scope of the Framework to include all of ICC’s

models; (b) reorganize certain sections of the Framework; (c) update and strengthen ICC’s requirements regarding initial validation, ongoing monitoring and validation, and independent periodic review; (d) assign additional responsibilities under the Framework to ICC’s Risk Oversight Officer (“ROO”); and (e) clarify the independence requirements for validators.

B. Scope

The current Framework applies to ICC’s models that make up its risk management system, meaning its models relating to margin, guaranty fund, and liquidity. The proposed rule change would expand the scope of the Framework so that it applies to all of ICC’s models and not just those related to its risk management system. The proposed rule change therefore would define a “Model” as a quantitative method, system, or approach that applies statistical, economic, financial, or mathematical theories, techniques, and assumptions to process input data into quantitative estimates. This change would bring within the scope of the Framework ICC’s Model related to counterparty credit.⁵ Thus, after the proposed rule change, the Framework would apply to all of ICC’s Models, not only those related to its risk management system. ICC is making this change because it determined it was beneficial to apply the requirements of the Framework to all of its Models, and not just those related to its risk management system.

As part of this change, the proposed rule change would make two changes to the organization of the current Framework. First, the current Framework begins with an introductory section that describes ICC’s risk management system and the Models that comprise the risk management system. Given that, as proposed, the Framework would apply to all of ICC’s Models and not just those Models that are part of its risk management system, the proposed rule change would delete the current introductory section and replace it with a new overview section. Instead of describing ICC’s risk management system and the components of the risk management system, the new overview section would provide a general description of ICC’s Models. The new overview section further would define the purpose of the Framework as providing assurances that ICC’s Models are performing as expected, in line with their design objectives and business use.

Second, throughout the Framework, the proposed rule change would replace references to ICC’s risk management system with references to ICC’s Models. For example, the current Framework classifies changes to ICC’s Models based on how the changes affect the risk management system’s assessment of risk. The proposed rule change instead would classify changes based on how they affect a Model’s assessment of risk.

C. Other Organizational Changes

The proposed rule change would make three organizational changes that would, in ICC’s view, more appropriately position details regarding Model controls, Model Change materiality, and Model development. First, with regard to controls, the proposed rule change would move information found in current Subsection 1.3 to a new Subsection 3.1. Current Subsection 1.3 provides an overview of the four controls used by ICC to assure the effectiveness of its Models, including changes to existing Models and new Models; initial validation; ongoing monitoring and validation; investigation; and independent periodic review. The proposed rule change would move the description of these controls, including a visual diagram of how the controls work together, to a new Subsection 3.1. Because Section 3 of the Framework describes each of the four controls in detail, ICC maintains that this overview of the controls is more appropriate in new Subsection 3.1, rather than at the beginning of the Framework.⁶

Second, with regard to materiality, the proposed rule change would renumber current Subsection 2.2 as new Subsection 1.3. New Subsection 1.3 would be substantively the same as current Subsection 2.2 and would contain a discussion of how ICC classifies proposed changes to its Models. ICC classifies Model Changes as either Materiality A or Materiality B, depending on how substantially the proposed change affects a Model’s assessment of risk.⁷

Finally, with regard to development, the proposed rule change would move to new Subsection 1.4 language currently found in Subsection 1.2 regarding the development of Models and Model Change, while maintaining the substance of this language.⁸ Thus, under the proposed rule change, as in the current Framework, new Model and

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICC Model Validation Framework; Exchange Act Release No. 95002 (May 27, 2022); 87 FR 33851 (June 3, 2022) (File No. SR–ICC–2022–006) (“Notice”).

⁴ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Framework or ICC’s Clearing Rules, as applicable.

⁵ Notice, 87 FR at 33851.

⁶ Notice, 87 FR at 33852.

⁷ Notice, 87 FR at 33852.

⁸ The change would clarify, without changing ICC’s processes, that the model development process is applicable to new Models as well as Model Changes.

Model Change development includes design, implementation, user-acceptance testing, and deployment phases, and is subject to additional ICC governance, as appropriate.⁹

D. Controls

As mentioned above, the current Framework describes ICC's process for assuring the effectiveness of its Models, including Model changes and the adoption of new Models, using four controls: initial validation; ongoing monitoring and validation; investigation; and independent periodic review. While maintaining the overall substance of these four controls, the proposed rule change would revise certain details relating to how ICC carries out the first, second, and fourth controls.

Initial Validation

The current Framework requires that ICC complete an internal initial validation for all changes to its Models and an independent initial validation for Materiality A Model Changes. ICC relies on this control to validate the conceptual soundness of a change, as well as the soundness of the proposed approach to ongoing monitoring and validation of the change.

Under the proposed rule change, ICC would be required to complete an internal initial validation for all changes to its Models and an independent initial validation for Materiality A Model Changes, the same as the current Framework. The proposed rule change also would require that ICC conduct an independent initial validation for all new Models, consistent with the application of the Framework to all of ICC's Models. As part of this revision, the proposed rule change would add the term Model or new Model to certain provisions that describe the components of the independent initial validation.

Moreover, as part of the independent initial validation, the current Framework requires a report detailing all open items reflecting the independent validator's comments, rated using a priority scale. The proposed rule change would maintain this requirement for a report, but would further specify that the report should include information describing the work performed by the independent validator as part of the independent initial validation process, including, but not limited to, any analysis of or challenges to the assumptions of the change to existing Model or the new Model. This change would memorialize ICC's

current practice with respect to these reports.¹⁰

Ongoing Monitoring and Validation

The current Framework requires that ICC use the second control, ongoing monitoring and validation, to assure that it has appropriately configured and calibrated a Model and any change, and to assure that a Model is performing as desired. Under the proposed rule change, ICC would be required to conduct ongoing monitoring and validation, the same as in the current Framework, but the proposed rule change would apply the ongoing monitoring and validation to all of ICC's Models, in accordance with the change to the scope of the Framework discussed above.

The current Framework describes three components of ongoing monitoring and validation: parameter setting, execution monitoring, and outcome analysis. The proposed rule change would retain these same three components, while revising the description of parameter setting and outcome analysis as described below.

The current Framework describes parameter setting, which ICC conducts pursuant to its Risk Parameter Setting and Review Policy. The proposed rule change would maintain the current description of parameter setting but would replace the specific reference to the Risk Parameter Setting and Review Policy with a general reference to ICC's policies. As described in the Notice, ICC is making this change because ICC considers such references unnecessary, as the Framework is not intended to introduce other policies.¹¹

The current Framework describes outcome analysis, which involves comparing the results of a Model to actual or hypothetical outcomes. The current Framework explains that ICC performs two types of outcome analysis: historical back testing and forward looking stress testing. The current Framework goes on to state that ICC describes its back-testing practices in the ICC Back-Testing Framework and its stress testing practices in the ICC Stress-Testing Framework. The proposed rule change would revise this description to note that ICC conducts several types of outcome analyses, rather than just two, and further would remove the references to the ICC Back-Testing Framework and the ICC Stress-Testing Framework. ICC is making this change because ICC in fact performs other outcome analysis, in addition to historical back testing and forward

looking stress testing, such as liquidity stress testing.¹²

Independent Periodic Review

The current Framework describes the purpose of the fourth and final control, independent periodic review, as confirming that a Model or change is still fit for purpose, that underlying assumptions are still valid, and that ICC has performed the ongoing monitoring and validation as required in the initial validation. The proposed rule change would not alter this overall description, but would revise aspects of the independent periodic review, as currently described in the Framework.

First, the current Framework states that ICC's Chief Risk Officer ("CRO") provides support and information to allow the independent validators to perform periodic reviews of all ICC Model Components and related practice at least every twelve months. The proposed rule change would revise this language slightly, to state that the CRO would provide support and information to allow the independent validators to perform the periodic reviews of all ICC Model Components and related practices, in line with the established periodicity of review.

To clarify the periodicity of review, the proposed rule change would add language explaining that, under applicable regulations issued by the Commission and the Commodity Futures Trading Commission, ICC is required to perform independent periodic reviews on its Models related to financial risk management and liquidity risk management on an annual basis.¹³ Moreover, the proposed rule change would add language to explain that for those Models not subject to these regulatory requirements, ICC's ROO, in consultation with the Risk Committee, would set an established periodicity for independent periodic review, and ICC would rely on the date of the engagement letter to track the requirement.¹⁴ ICC noted that currently the ROO, as the individual responsible for the operation and maintenance of the Framework, determines the appropriate periodicity of review for Models, in consultation with the Risk Committee.¹⁵

Moreover, the proposed rule change would revise the description of the

¹² Notice, 87 FR at 33852.

¹³ ICC stated that in practice ICC would continue to ensure that not more than twelve months passes between each independent periodic review. Notice, 87 FR at 33852.

¹⁴ ICC explained in the Notice that this language memorializes a current responsibility of the ROO. Notice, 87 FR at 33852.

¹⁵ Notice, 87 FR at 33852.

⁹ Notice, 87 FR at 33852.

¹⁰ Notice, 87 FR at 33852.

¹¹ Notice, 87 FR at 33852.

components of the independent periodic review. The current Framework provides that the independent periodic review must demonstrate that a Model or change is fit for purpose; that its underlying assumptions are still valid; that ICC has complied with any conditions associated with approval of the Model or change; and that ICC has been complying with its ongoing monitoring and validation requirements. The proposed rule change would add language to note that the third component, compliance with any conditions associated with the approval of the Model or change, may not always be applicable. This component would not be applicable, for example, if there were no open items or conditions established during ICC's approval of the Model or change.

The proposed rule change also would revise the description of the report that an independent periodic review must produce. The current Framework requires that an independent periodic review produce a report from the independent validator providing a summary of the completed evaluation and details of any remaining open items for remediation, classified by priority. The proposed rule change would maintain this requirement, but would further specify that the report should include information describing the work performed by the independent validator as part of the independent periodic review process, including, but not limited to, any analysis of or challenges to the assumptions of the Model.¹⁶

The proposed rule change also would add language stating that timelines for remedial actions would consider any applicable governance or regulatory actions, or technology implementations, and ICC would consult with the Risk Committee regarding closure of any priority items or observation items, and any changes to previously presented timeframes. ICC stated in the Notice that it is making this change to ensure that it remediates high priority items as soon as possible and considers any applicable governance or regulatory actions or technology implementations in timelines for remedial actions.¹⁷

Finally, the proposed rule change would add language to state that ICC, at its discretion, could undertake ad hoc reviews of methodologies that do not meet the definition of a Model under the Framework. These methodologies could include, for example, third-party or vendor-supplied products. The current

Framework does not contain provisions related to ad hoc reviews of third-party products. This change would allow ICC to apply the Framework to such products that could include, for example, the ISDA pricing model.

E. Risk Oversight Officer

Currently, the ROO is the owner of the Framework, and in that role is responsible to the ICC President for the successful operation and maintenance of the Framework. The current Framework assigns certain responsibilities to the ROO, such as maintaining a list of pre-approved Independent Model Validators. Under the proposed rule change, the ROO would remain the owner of the Framework and would retain its current responsibilities. The proposed rule change would specify certain other responsibilities for the ROO, in addition to these current responsibilities, as described below.¹⁸

The current Framework requires ICC's CRO to review and determine what changes to ICC's Models qualify as Model Changes, and further classify such changes as Materiality A or Materiality B. The current Framework further states that if the ROO and CRO cannot reach agreement on a specific change, ICC classifies the change as Materiality A. Thus, the current Framework contemplates the ROO having a role in reviewing and classifying Model Changes. The proposed rule change would make this role explicit by requiring that the ROO, in addition to the CRO, review and determine what changes to ICC's Models qualify as Model Changes, and further classify such changes as Materiality A or Materiality B.

The current Framework requires ICC's Risk Department to maintain the ICC Model Inventory, which is a central repository of key information about all ICC Models, their components, and any changes to the Models. Under the proposed rule change, the ROO, rather than the Risk Department, would maintain the Model Inventory. In addition, the current Framework requires the ROO to review the model inventory at least quarterly. Under the proposed rule change, the ROO also would review the model inventory at least quarterly, but the ROO would do so in conjunction with the Risk Department.

Before implementing a Materiality A Model Change, the current Framework requires ICC to, among other things,

complete an independent validation, obtain a report of the independent validation, and receive no objection to the independent validation from the Risk Committee. As part of receiving the no-objection, the current Framework requires that the CRO or its designee present the independent validation report to the Risk Committee. Under the proposed rule change, ROO and CRO (or its designee) together would present this report to the Risk Committee.

Similarly, when completing an independent periodic review, the current Framework requires the independent validator to produce a report, as described above. The current Framework requires that the CRO or its designee present the independent periodic review report to the Risk Committee. Under the proposed rule change, ROO and CRO (or its designee) together would present this report to the Risk Committee.

Moreover, the proposed rule change would assign the ROO an additional responsibility with respect to independent periodic reviews. As discussed above, applicable regulations specify how often ICC must review certain of its Models. For those Models not subject to these regulatory requirements, the ROO, in consultation with the Risk Committee, would establish the periodicity for review.

Finally, the current Framework requires the ROO to maintain a list of pre-approved Independent Model Validators. The current Framework further provides that the CRO or ROO can propose new Model Validators to add to the list and makes the ROO responsible for adding a new Model Validator. As part of adding a Model Validator, the current Framework requires that the ROO provide a written summary describing how the proposed new Model Validator meets the necessary technical expertise and independence requirements. Under the proposed rule change, the ROO would continue to maintain a list of pre-approved Independent Model Validators, the CRO or ROO would propose new Model Validators, and the ROO would continue to be responsible for adding a new Model Validator. As part of adding a new Model Validator, the proposed rule change would further require that the ROO review resums/CVs of the proposed new Model Validator, in addition to providing a written summary demonstrating how the proposed new Model Validator meets the necessary technical expertise and independence requirements.

¹⁶ ICC stated in the Notice that this change would memorialize current practices. Notice, 87 FR at 33852.

¹⁷ Notice, 87 FR at 33852.

¹⁸ ICC explained in the Notice that these changes would memorialize current responsibilities of the ROO. Notice, 87 FR at 33853.

F. Independence Requirements

The current Framework requires that independent validators meet certain independence and technical expertise requirements. The proposed rule change would maintain these requirements while further specifying that in cases of a team of validators, all members must meet the independence requirements, and ICC will consider members on a collective basis when evaluating for technical expertise requirements.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.¹⁹ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act²⁰ and Rules 17Ad-22(e)(2)(v) and 17Ad-22(e)(3)(i) thereunder.²¹

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions.²² Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed rule change is consistent with the promotion of the prompt and accurate clearance and settlement of securities transactions at ICC because it would expand the scope of the Framework and improve the operation of the Framework.

With respect to the scope of the Framework, as discussed in Part II.B above, the proposed rule change would apply the Framework to all of ICC's Models. This change would bring into the Framework ICC's Model related to counterparty credit and other Models that ICC may adopt in the future. The Commission believes this change should help ICC to maintain the effectiveness of its Model related to counterparty credit—and any other Models that ICC may adopt in the future—by subjecting these Models to the Framework's requirements and controls. The Commission further believes that having an effective counterparty credit Model may in turn allow ICC to avoid credit

losses that could disrupt its ability to promptly and accurately clear transactions.

The Commission believes the other aspects of the proposed rule change discussed above should improve the operation of the Framework. For example, the Commission believes that the changes discussed in Part II.C above should help to improve the organization and readability of the Framework and therefore make it easier to use and apply. The Commission further believes that memorializing additional responsibilities for the ROO, as discussed in Part II.E above, should clarify these responsibilities and help to ensure that ICC personnel, including the current ROO and successor ROOs, can review, understand, and follow these responsibilities. Finally, the Commission believes that specifying how the independence requirements would apply to a team of validators, as discussed in Part II.F above, should help to ensure a clear and consistent application of these requirements to such teams. The Commission believes these changes, overall, should improve the operation of the Framework.

The Commission also believes that the changes discussed in Part II.D above should improve the Framework by revising certain details with respect to the four controls. For example, specifying that ICC must conduct an independent initial validation for all new Models should help to ensure that ICC personnel complete such validations, consistent with current practice. Because independent initial validations can identify errors and issues, the Commission believes that requiring independent initial validations for all new Models should help to ensure that any new Model is effective and well calibrated. Specifying that an independent validator's report must describe the work performed by the independent validator, including, but not limited to, any analysis of or challenges to the assumptions of the change to existing Model or the new Model should help ICC to revise and improve such assumptions, as needed. Revising the description of parameter setting and outcome analysis to remove references to other extraneous ICC policies would simplify this description and help to ensure that it does not become out of date due to changes to other policies. Finally, the Commission believes that the revisions to the independent periodic review would help to ensure that ICC completes validations as required by applicable regulations, while making the provisions broad enough to encompass reviews not covered by applicable

regulations, including ad hoc reviews of methodologies that do not meet the definition of a Model.

For these reasons, the Commission believes the proposed rule change would expand the scope of the Framework and improve the operation of the Framework. The Commission further believes that because the Framework enables ICC to confirm the appropriate functioning of its Models, expanding the scope and improving the operation of the Framework should in turn help ICC to maintain effective and well-designed Models. Such Models may in turn allow ICC to avoid credit losses or liquidity shortfalls that could disrupt its ability to promptly and accurately clear transactions.

The Commission therefore believes that, by improving the Framework, the proposed rule change would help to ensure the effectiveness of ICC's models and therefore its ability to promptly and accurately clear and settle securities transactions, consistent with Section 17A(b)(3)(F) of the Act.²³

B. Consistency With Rule 17Ad-22(e)(2)(v)

Rule 17Ad-22(e)(2)(v) requires that ICC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.²⁴ As discussed in Part II.E above, the proposed rule change would make a number of amendments to the Framework to memorialize additional responsibilities of ICC's ROO.²⁵ The Commission believes that memorializing these responsibilities in the Framework, as opposed to following unwritten practices, is consistent with the maintaining written policies and procedures designed to provide for clear and direct lines or responsibility. The Commission believes this is true because memorializing these responsibilities should help to ensure that they can be reviewed, understood, and followed by ICC personnel, including the current ROO and successor ROOs. The Commission therefore believes these changes would specify clear and direct lines of responsibility for the ROO, consistent with Rule 17Ad-22(e)(2)(v).²⁶

C. Consistency With Rule 17Ad-22(e)(3)(i)

Rule 17Ad-22(e)(3)(i) requires that ICC establish, implement, maintain and

¹⁹ 15 U.S.C. 78s(b)(2)(C).

²⁰ 15 U.S.C. 78q-1(b)(3)(F).

²¹ 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3)(i).

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 17 CFR 240.17Ad-22(e)(2)(v).

²⁵ Notice, 87 FR at 33852.

²⁶ 17 CFR 240.17Ad-22(e)(2)(v).

enforce written policies and procedures reasonably designed to, as applicable, maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by ICC, which, among other things, includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by ICC, that are subject to review on a periodic basis and approved by the board of directors annually.²⁷ As discussed above, the proposed rule change would expand the scope of the Framework so that it applies consistently across all of ICC's Models and not just those related to its risk management system. For example, bringing within the scope of the Framework ICC's Model related to counterparty credit. Moreover, under the revised Framework, ICC would review this Model on a periodic basis. The Commission further believes that this Model helps ICC manage a risk borne by ICC, the risk created by credit exposures to ICC's counterparties. The Commission therefore believes this change should help ensure that ICC reviews on a periodic basis a policy that ICC uses to identify, measure, monitor, and manage a risk borne by ICC, consistent with Rule 17Ad-22(e)(3)(i).²⁸

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act²⁹ and Rules 17Ad-22(e)(2)(v) and 17Ad-22(e)(3)(i) thereunder.³⁰

It is therefore ordered pursuant to Section 19(b)(2) of the Act³¹ that the proposed rule change (SR-ICC-2022-006), be, and hereby is, approved.³²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier,
Assistant Secretary.

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²⁷ 17 CFR 240.17Ad-22(e)(3)(i).

²⁸ 17 CFR 240.17Ad-22(e)(3)(i).

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

³⁰ 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3)(i).

³¹ 15 U.S.C. 78s(b)(2).

³² In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95220; File No. SR-NASDAQ-2022-027]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Modify Certain Pricing Limitations for Companies Listing in Connection With a Direct Listing With a Capital Raise

July 7, 2022

I. Introduction

On March 21, 2022, The Nasdaq Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify certain pricing limitations for companies listing in connection with a direct listing with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange. The proposed rule change was published for comment in the **Federal Register** on April 8, 2022.³ On May 19, 2022, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵

On May 23, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 was published for comment in the **Federal Register** on June 2, 2022.⁶ The Commission has received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act⁷ to determine whether to approve or

disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Nasdaq Listing Rule IM-5315-2 provides listing requirements for Nasdaq's Global Select Market for a company that has not previously had its common equity securities registered under the Exchange Act to list its common equity securities on the Exchange at the time of effectiveness of a registration statement⁸ pursuant to which the company will sell shares itself in the opening auction on the first day of trading on the Exchange (a "Direct Listing with a Capital Raise").⁹ Securities qualified for listing under Nasdaq Listing Rule IM-5315-2 must begin trading on the Exchange following the initial pricing through the mechanism outlined in Nasdaq Rule 4120(c)(9) and Nasdaq Rule 4753 for the opening auction, otherwise known as the Nasdaq Halt Cross.¹⁰ Currently, in the case of a Direct Listing with a Capital Raise, the Exchange will release the security for trading on the first day of listing if, among other things, the actual price calculated by the Nasdaq Halt Cross is at or above the lowest price and at or below the highest price of the price range established by the issuer in its effective registration statement¹¹ (the "Pricing Range Limitation").

⁸ The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 ("Securities Act").

⁹ A Direct Listing with a Capital Raise includes listings where either: (i) only the company itself is selling shares in the opening auction on the first day of trading; or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction. See Nasdaq Listing Rule IM-5315-2. See also Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169 (May 25, 2021) (order approving rules to permit a Direct Listing with a Capital Raise and adopting related rules concerning how the opening transaction for such listing will be effected) ("2021 Order"). The Exchange's rules provide for a company listing pursuant to a Direct Listing with a Capital Raise to list only on the Nasdaq Global Select Market.

¹⁰ See Nasdaq Listing Rule IM-5315-2. "Nasdaq Halt Cross" means the process for determining the price at which Eligible Interest shall be executed at the open of trading for a halted security and for executing that Eligible Interest. See Nasdaq Rule 4753(a)(4). "Eligible Interest" means any quotation or any order that has been entered into the system and designated with a time-in-force that would allow the order to be in force at the time of the Nasdaq Halt Cross. See Nasdaq Rule 4753(a)(5). Pursuant to Nasdaq Rule 4120, the Exchange will halt trading in a security that is the subject of an initial public offering (or direct listing), and terminate that halt when the Exchange releases the security for trading upon certain conditions being met, as discussed further below. See Nasdaq Rule 4120(a)(7) and (c)(8).

¹¹ The Exchange states that references in the proposal to the price range established by the issuer in its effective registration statement refer to the price range disclosed in the prospectus in such effective registration statement. See Notice, *supra*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 94592 (April 4, 2022), 87 FR 20905 (April 8, 2022).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 94947 (May 19, 2022), 87 FR 31915 (May 25, 2022). The Commission designated July 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ See Securities Exchange Act Release No. 94989 (May 26, 2022), 87 FR 33558 (June 2, 2022) ("Notice").

⁷ 15 U.S.C. 78s(b)(2)(B).