pricing date, the entire procedure will be completed before the next notification is sent out to shareholders, thus avoiding any overlap. Applicants believe that these procedures will eliminate any possibility of investor confusion. Applicants also state that monthly repurchase offers will be a fundamental feature of the Funds, and their prospectuses will provide a clear explanation of the repurchase program.

7. Applicants submit that for the reasons given above the requested relief is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Fund (and any Future Fund relying on this relief) will make a repurchase offer pursuant to rule 23c–3(b) for a repurchase offer amount of not less than 5% in any one-month period. In addition, the repurchase offer amount for the then-current monthly period, plus the repurchase offer amounts for the two monthly periods immediately preceding the then-current monthly period, will not exceed 25% of the Fund's (or Future Fund's, as applicable) outstanding common shares. The Fund (and any Future Fund relying on this relief) may repurchase additional tendered shares pursuant to rule 23c–3(b)(5) only to the extent the percentage of additional shares so repurchased does not exceed 2% in any three-month period.

2. Payment for repurchased shares will occur at least five business days before notification of the next repurchase offer is sent to shareholders of the Fund (or Future Fund relying on this relief).

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

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–11296 Filed 5–24–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 206(4)–3, SEC File No. 270–218, OMB Control No. 3235–0242

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 206(4)–3 (17 CFR 275.206(4)–3) under the Investment Advisers Act of 1940, which is entitled ''Cash Payments for Client Solicitations,'' provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized advisory services to the prospective client, the solicitor must, at the time of the solicitation or referral, indicate to the prospective client that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized advisory services to the prospective client, the solicitor must, at the time of the solicitation or referral, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. Amendments to rule 206(4)–3, adopted in 2010 in connection with rule 206(4)–5, specify that solicitation activities involving a government entity, as defined in rule 206(4)–5, are subject to the additional limitations of rule 206(4)–5. The information rule 206(4)–3 requires is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so the prospective clients may consider the solicitor's potential bias, and to protect clients against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all Commission-registered investment advisers. The Commission believes that approximately 4,395 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 30,941 total burden hours ($7.04 \times 4{,}395$) for all advisers.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 18, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–11219 Filed 5–24–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83294; File No. SR–NASDAQ–2018–008]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rule and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value

May 21, 2018.

I. Introduction

On January 30, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''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 modify the listing requirements contained in Nasdaq Rule 5635(d) to (1) change the definition of market value for purposes of shareholder approval under Nasdaq Rule 5635(d); (2) eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value; and (3) make other conforming changes. The proposed rule change was published for comment in the **Federal Register** on February 20, 2018.[3] On April 4, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82702 (February 13, 2018), 83 FR 7269 (February 20, 2018) (''Notice'').

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

proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received three comments on the proposed rule change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Nasdaq Rule 5635(d) to modify the circumstances in which shareholder approval is required for issuances of securities in private placement transactions. Currently, under Nasdaq Rule 5635(d), the Exchange requires a Nasdaq-listed company to obtain shareholder approval prior to the issuance of securities in connection with a private placement transaction (*i.e.* a transaction other than a public offering[8]) involving: (1) The sale, issuance, or potential issuance by the company of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors, or Substantial Shareholders[9] of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance; or (2) the sale, issuance, or potential issuance by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.[10]

''Market value'' is defined in Nasdaq Rule 5005(a)(23) as the consolidated closing bid price multiplied by the measure to be valued (*e.g.,* a company's market value of publicly held shares is equal to the consolidated closing bid price multiplied by a company's publicly held shares).[11] This definition applies to the shareholder approval rules as well as other listing rules. The Exchange has proposed to amend the definition of market value only for purposes of Nasdaq Rule 5635(d). The new definition, to be known as the ''Minimum Price,'' is defined as the price that is the lower of (1) the closing price (as reflected on *Nasdaq.com*) or (2) the average closing price of the common stock (as reflected on *Nasdaq.com*) for the five trading days immediately preceding the signing of the binding agreement.[12] Under the proposal, shareholder approval will only be required for private placement transactions that are priced below the Minimum Price as described above.

In proposing to use the closing price on Nasdaq, rather than the Nasdaq bid price as under the current rule, the Exchange explained, in its proposal, that the closing price reported on *Nasdaq.com* is the Nasdaq Official Closing Price, which is derived from the closing auction on Nasdaq, reflects actual sale prices at one of the most liquid times of the day, and is highly transparent to investors.[13] According to the Exchange, the closing price reported on *Nasdaq.com* is a better reflection of the market price of the security than the closing bid price.[14] The Exchange also noted that this use of closing price is consistent with the approach of other exchanges.[15]

Further, in proposing to also use a five-day average closing price to determine if a shareholder vote is required under Nasdaq Rule 5635(d), the Exchange noted that while investors and companies sometimes prefer to use an average when pricing transactions, there are potential negative consequences to using a five-day average as the sole measure of whether shareholder approval is required. For example, in a declining market, the Exchange noted that the five-day average price will be above the current market price, which, according to the Exchange, could make it difficult for companies to close transactions because investors could buy shares at a lower price in the market. The Exchange also noted concerns with using a five-day average in a rising market, in that the five-day average price will appear to be at a discount to the closing current market price. Further, according to the Exchange, if material news is announced during the five-day period, the average price could be a worse reflection of market value than the closing price after the news is disclosed. The Exchange stated, however, that it believed that these risks of using the five-day average price are already accepted by the market, as evidenced by the use of an average price in transactions that do not require shareholder approval, such as those transactions where less than 20% of the outstanding shares are being issued. In its rule filing, the Exchange also noted that several commenters raised concerns regarding a 2017 solicitation of comments by the Exchange on a proposal to use the five-day average price as the sole measure of market value (''2017 Solicitation'').[16] The Exchange stated that it believed these concerns were justified and, as such, proposed to define market value as the lower of the closing price or five-day average price. As the Exchange noted, this means that, under its proposal, an issuance would not require shareholder approval as long as the issuance occurs

[5] *See* Securities Exchange Act Release No. 82994 (April 4, 2018), 83 FR 15441 (April 10, 2018). The Commission designated May 21, 2018, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Letters to Brent J. Fields, Secretary, Commission, from Michael A. Adelstein, Partner, Kelley Drye & Warren LLP, dated February 28, 2018 (''Kelley Drye letter''); Penny Somer-Greif, Chair, and Gregory T. Lawrence, Vice-Chair, Committee on Securities Law of the Business Law Section of the Maryland State Bar Association, dated March 13, 2018 (''MSBA Letter''); and Greg Rodgers, Latham Watkins, dated March 14, 2018 (''Latham Watkins Letter'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Nasdaq Rule IM–5635–3 (Definition of a Public Offering).

[9] An interest consisting of less than either 5% of the number of shares of common stock or 5% of the voting power outstanding of a Company or party will not be considered a substantial interest or cause the holder of such interest to be regarded as a ''Substantial Shareholder.'' *See* Nasdaq Rule 5635(e)(3).

[10] *See* Nasdaq Rule 5635(d). The Commission notes that Nasdaq Rule 5635 also requires shareholder approval under Nasdaq Rules 5635(a), (b), and (c) for issuances involving an acquisition of stock or assets of another company, a change of control, and equity compensation. Nasdaq is not proposing to amend these other shareholder approval provisions in its proposal.

[11] *See* Nasdaq Rule 5005(a)(23).

[12] *See* proposed Nasdaq Rule 5635(d)(1)(A).

[13] *See* Notice, *supra* note 3, at 7270, which discusses the Nasdaq Official Closing Price and notes, among other things, that the closing auction is ''highly transparent to all investors through the widespread dissemination of stock-by-stock information about the closing auction, including the potential price and size of the closing auction.'' The Exchange stated that the closing price is published on *Nasdaq.com* with a 15 minute delay and is available without registration or fee. According to the Exchange, Nasdaq does not currently intend to charge a fee for access to this data or otherwise restrict availability of this data. The Exchange further stated that it would file a proposed rule change under Section 19(b) of the Act before implementing any such change and, in such filing, address the impact of the proposed rule change on compliance with this rule. *See id.* at 7270 n.6.

[14] *See* Notice, *supra* note 3, at 7270. According to the Exchange, the price of an executed trade generally is viewed as a more reliable indicator of value than a bid quotation. *See id.*

[15] *See* Notice, *supra* note 3, at 7270 & n.3 (citing Section 312.04(i) of the NYSE Listed Company Manual).

[16] As the Exchange stated in the Notice, in 2017, the Exchange solicited comments on a proposal to amend Nasdaq Rule 5635(d) and the Exchange based its current proposal on its experience and comments received during that process. *See* Notice, *supra* note 3, at 7270. The Commission notes that, in its rule filing, the Exchange stated that it received support for this proposal in its 2017 Solicitation, but four commenters raised concerns about reliance on the five-day average price to measure market value in certain circumstances. *See id.* at 7271.

at a price greater than the lower of the two measures.[17]

The Exchange also proposed, in conjunction with its proposal to redefine market value for purposes of determining when a shareholder vote is triggered under Rule 5635(d), to eliminate its current requirement for shareholder approval of private placement issuances at a price that is less than book value. Currently, as noted above, the Exchange's rules require shareholder approval of a private placement transaction if it is priced below market or book value. Accordingly, under the proposal, private placement transactions that are priced below book value but above market value, as defined by the Minimum Price, would not require shareholder approval. In its proposal, the Exchange stated that book value is an accounting measure that is based on the historic cost of assets rather than their current value. According to the Exchange, book value is not an appropriate measure of whether a transaction is dilutive or should otherwise require shareholder approval.[18]

Further, the Exchange proposed to revise Nasdaq Rule 5635(d) to provide that shareholder approval is required prior to a 20% Issuance at a price that is less than the Minimum Price.[19] Under the proposal, the Exchange would define ''20% Issuance'' for purposes of Rule 5635(d) as a transaction, other than a public offering as defined in IM–5635–3, involving the sale, issuance, or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which alone or together with sales by officers, directors, or Substantial Shareholders of the Company, equals 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance.[20] According to the Exchange, the Exchange is not making a substantive change to the threshold for quantity or voting power of shares being sold that would give rise to the need for shareholder approval, although, as described above, the applicable market value pricing test will change.[21]

In addition, the Exchange proposed to amend the preamble to Nasdaq Rule 5635 and the title of Nasdaq Rule 5635(d) to replace references to ''private placements'' with ''transactions other than public offerings'' [22] to, according to the Exchange, conform the language to that in Nasdaq Rule IM–5635–3, which defines a public offering,[23] and to make other conforming changes to Nasdaq Rules IM–5635–3 and IM–5635–4.[24]

III. Summary of Comments

The Commission received three comments on the proposed rule change, all of which supported the proposal.[25] Of these commenters, one stated it supported the proposed rule change without reservation and the Exchange's reevaluation of its shareholder approval rules in light of changes in market practice and investor protection mechanisms that have taken place since the adoption of these rules.[26] Another commenter stated that, while it supported more significant changes to Nasdaq Rule 5635(d), the proposed rule change would be a strong first step in correcting the inadequacies and inequitableness of Nasdaq Rule 5635(d).[27]

Two of the commenters in support of the proposal specifically addressed the changes to the definition of market value. One commenter stated that the proposed method to determine market value using the lower of the Nasdaq closing price and five-day average of Nasdaq closing prices is a better determination of market value than the current use of closing bid price because it will more accurately reflect the type of price that would occur in an arms-length transaction. This commenter stated that the proposed measure will provide flexibility to account for market fluctuations and events, without incurring the typical adverse consequence of material movements, positive or negative, in a stock price at or near the end of a five-day period.[28]

Another commenter noted that parties often prefer to structure a transaction using an average price to smooth out unusual price fluctuations. This commenter stated that the proposed changes to the definition of market value provides listed companies with additional flexibility in structuring their securities transactions, brings the shareholder approval rule more in line with how transactions are structured when the rule is not a consideration, and provides a reasonable indication of market value.[29] This commenter also supported the proposed change to use the Nasdaq Official Closing Price.[30]

As to the proposal to eliminate book value, two of the commenters specifically discussed their support of this change. One commenter stated that book value does not reflect the actual value of securities and is not relied upon in connection with investment decisions, whereas market price of an issuer's common stock represents the market's consensus on the value of the security. This commenter also stated that in the rare instances where book value exceeds market value, this usually occurs due to the accounting treatment of certain types of capital investments by the issuer and should not impact the issuer's ability to raise capital at market prices.[31] Another commenter strongly supported the proposed elimination of book value and stated it agreed with statements in the Notice that book value is not an appropriate measure of current value and, therefore, whether a transaction is dilutive or should require shareholder approval.[32]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2018–008 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.[33] Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is

[17] *See* Notice, *supra* note 3, at 7270–71.

[18] *See* Notice, *supra* note 3, at 7271. The Commission notes that, in its rule filing, the Exchange stated that it received support for this change in its 2017 Solicitation, but also received comments opposing the change, one of which raised specific concerns that the Exchange acknowledged in its proposal. *See id.* at 7271, 7274.

[19] *See* proposed Nasdaq Rule 5635(d)(2).

[20] *See* proposed Nasdaq Rule 5635(d)(1)(B).

[21] *See* Notice, *supra* note 3, at 7271.

[22] *See* proposed Nasdaq Rule 5635 and subsection (d).

[23] *See* Notice, *supra* note 3, at 7271.

[24] *See* proposed Nasdaq Rules IM–5635–3 and IM–5635–4.

[25] *See* Kelley Drye Letter, MSBA Letter, and Latham Watkins Letter, *supra* note 6. These three commenters previously provided comment letters to the Exchange in response to the 2017 Solicitation. For a summary prepared by the Exchange of these comment letters, see the Notice, *supra* note 3, at 7273–74.

[26] *See* Latham Watkins Letter, *supra* note 6.

[27] *See* Kelley Drye Letter, *supra* note 6, at 1–2.

[28] *See* Kelley Drye Letter, *supra* note 6, at 3.

[29] *See* MSBA Letter, *supra* note 6, at 1–2.

[30] *See* MSBA Letter, *supra* note 6, at 2.

[31] *See* Kelley Drye Letter, *supra* note 6, at 2. In addition, this commenter stated that book value may exceed market value due to a market correction, burst bubble, or financial crisis, which is a time when an issuer needs to be able to raise sufficient capital. *See id.*

[32] *See* MSBA Letter, *supra* note 6, at 2.

[33] 15 U.S.C. 78s(b)(2)(B).

instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act [34] and, in particular, 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 remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[35]

As discussed above, the Exchange proposed to modify Nasdaq Rule 5635(d) to change the definition of market value for purposes of shareholder approval of private placement transactions such that (1) shareholder approval would be required prior to an issuance of 20% or more at a price that is less than the lower of the closing price or the five-day average price; and (2) shareholder approval would not be required prior to an issuance of 20% or more at a price that is less than book value but greater than market value. In response to the Exchange's 2017 Solicitation, as noted above, some commenters had raised questions about the use of a five-day average price as a measure of market value under certain market conditions and the elimination of the book value standard. Accordingly, the Commission is specifically requesting additional comment on these two parts of the Exchange's proposal in light of the questions raised in connection with the Exchange's 2017 Solicitation.[36]

V. Commission's Solicitation of 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 view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) 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, any request for an opportunity to make an oral presentation.[37]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 15, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 29, 2018. 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,[38] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment, including where relevant, any specific data, statistics, or studies, on the following:

1. Is the five-day average closing price a reasonable alternative to determining market value for purposes of shareholder approval requirements under Nasdaq Rule 5635(d)? If so, what are the benefits and/or risks to companies and their shareholders? Do the benefits and risks to companies and shareholders change under certain market conditions, such as rising markets, and if so how?

2. Are there benefits and/or risks to listed companies and shareholders by permitting sales in private placements that are above market value but below book value? Could there be any potential impact on share price? Would the assessment of any potential impact, if any, change depending on the reason why a stock is trading above market price but below book value (*i.e.,* market conditions, accounting issues)?

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–2018–008 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–2018–008. 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 such 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–2018–008 and should be submitted on or before June 15, 2018. Rebuttal comments should be submitted by June 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–11224 Filed 5–24–18; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78f(b)(5).

[35] *Id.*

[36] The Commission also notes that the Exchange proposal stated that the "closing price" used is the closing price (as reflected on Nasdaq.com) at the time of the transaction. The Exchange should address in its rule proposal if "at the time of the transaction" would use the previous day's close or the close on the day of the transaction and should clarify this in the rule text. Unlike the closing price reference, the five-day average closing price provision, as proposed, currently makes clear it is based on the five days immediately preceding the signing of a binding agreement.

[37] Section 19(b)(2) of the Exchange 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 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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

[39] 17 CFR 200.30–3(a)(57).