

to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

Asset-Based Distribution and/or Service Fees

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

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

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act. Applicants also state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

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

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

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-26968 Filed 12-13-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93741; File No. SR-NYSE-2021-45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt Listing Standards for Subscription Warrants Issued by a Company Organized Solely for the Purpose of Identifying an Acquisition Target

December 8, 2021.

I. Introduction

On August 24, 2021, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 adopt listing standards for subscription warrants issued by a company organized solely for the purpose of identifying an acquisition target. The proposed rule change was published for comment in

the **Federal Register** on September 10, 2021.³ On September 30, 2021, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt new Section 102.09 of the NYSE Listed Company Manual ("LCM") to permit the listing of subscription warrants, which would be warrants issued by a company organized solely for the purpose of identifying an acquisition target and exercisable into the common stock of such company upon entry into a binding agreement with respect to such acquisition.

Pursuant to proposed LCM Section 102.09(b), the Exchange proposes to list subscription warrants subject to the following requirements:

(i) The issuer of the subscription warrants must be a company formed solely for the purpose of issuing the subscription warrants and consummating the acquisition of one or more operating businesses or assets with a value (calculated at the time of entry into the acquisition agreement) equal to at least 80% of the aggregate exercise price of the subscription warrants (an "Acquisition");

(ii) for a transaction to qualify as an Acquisition, the resultant entity must qualify for initial listing on the Exchange and the acquisition agreement must provide that the transaction will be consummated only if the resultant entity will be listed on the Exchange or another national securities exchange;

(iii) at the time of initial listing, the subscription warrants must: (A) Have an aggregate exercise price of at least \$250 million; (B) have at least 1,100,000 publicly held subscription warrants outstanding, with an aggregate exercise

³ See Securities Exchange Act Release No. 92876 (September 3, 2021), 86 FR 50748. Comments received on the proposal are available on the Commission's website at: <https://www.sec.gov/comments/sr-nyse-2021-45/srnyse202145.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 93221, 86 FR 55662 (October 6, 2021). The Commission designated December 9, 2021 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

price of at least \$200 million; (C) have at least 400 holders of round lots; (D) have an exercise price per share of common stock of at least \$10.00; and (E) expire in no more than 10 years;⁷

(iv) the subscription warrants may not be fully exercisable for common stock of a company until after such company enters into a binding agreement with respect to the Acquisition and may not limit the ability of holders to exercise such warrants in full prior to the closing of such Acquisition;

(v) the proceeds of the exercise of the subscription warrants must be held in an interest-bearing custody account controlled by an independent custodian, pending the closing of such Acquisition;

(vi) the shares of common stock issued upon exercise of the subscription warrants must promptly be redeemed by the issuer of such subscription warrants for cash: (A) Upon termination of the acquisition agreement; or (B) if the Acquisition does not close within twelve months from the date of exercise of the subscription warrants, or such earlier time as is specified in the operative agreements;⁸

(vii) the sale of the subscription warrants and the issuance of the common stock of the issuer in exchange for the subscription warrants must both be registered under the Securities Act of 1933 ("Securities Act");

(viii) the issuer of the subscription warrants would be subject to the same corporate governance requirements under LCM Section 303A as an issuer of listed common stock; and

(ix) the Acquisition must be approved by a majority of the independent directors of the issuer of the subscription warrants.

The Exchange also proposes to amend LCM Section 802.01B to set forth continued listing criteria for subscription warrants listed under proposed LCM Section 102.09. The proposed amendments would specify that the Exchange would immediately initiate suspension and delisting procedures of an issuer's subscription warrants if:

(i) The number of publicly-held subscription warrants is fewer than 100,000;

(ii) the number of public holders of such subscription warrants is fewer than 100;⁹ or

(iii) the total market capitalization of such subscription warrants is below \$15 million over 30 consecutive trading days.¹⁰

An issuer of subscription warrants would not be eligible to submit a compliance plan as outlined in LCM Sections 802.02 and 802.03 with respect to the above continued listing criteria and any such security would be subject to delisting procedures as set forth in LCM Section 804 (Procedure for Delisting).¹¹

III. Proceedings To Determine Whether To Approve or Disapprove SR-NYSE-2021-45 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹² to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Exchange Act and, in particular, with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and not be designed to

permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁴

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.¹⁵

As described above, the proposal would allow the Exchange to list subscription warrants, which would be warrants issued by a company organized solely for the purpose of identifying an Acquisition target and exercisable into the common stock of such company upon entry into a binding agreement with respect to such Acquisition. The Exchange states that the proposed requirements applicable to the listing of subscription warrants would provide adequate protections for investors and the public interest.¹⁶ According to the Exchange, the proposal would facilitate the listing and trading of an additional type of security that will enhance competition among market participants.¹⁷

The Commission received two comment letters from representatives of an issuer seeking to list subscription

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, 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. *See, e.g.*, Securities Exchange Act Release Nos. 91947 (May 19, 2021), 86 FR 28169, 28172 n.47 (May 25, 2021) (SR-NASDAQ-2020-057) ("Nasdaq 2021 Order"); 90768 (December 22, 2020), 85 FR 85807, 85811 n.55 (December 29, 2020) (SR-NYSE-2019-67) ("NYSE 2020 Order"); 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR-NYSE-2017-30) ("NYSE 2018 Order"); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR-NYSE-2017-31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR-NYSE-2017-11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.*, Nasdaq 2021 Order, 86 FR 28172 n.47; NYSE 2020 Order, 85 FR 85811 n.55; NYSE 2018 Order, 83 FR 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR-NASDAQ-2019-059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR-NASDAQ-2020-001).

¹⁶ *See* Notice, *supra* note 3, at 50749.

¹⁷ *See id.*

⁷ For purposes of proposed LCM Section 102.09, public holders of subscription warrants would not include those held by directors, officers, or their immediate families and other concentrated holdings of 10 percent. *See* proposed LCM Section 102.09(c).

⁸ If the shares issuable upon exercise of the subscription warrants were redeemed, the holders would receive cash payments equal to their proportional share of the funds in the custody account, including any interest earned on those funds. *See* proposed LCM Section 102.09(b)(vi).

⁹ For purposes of proposed LCM Section 802.01B, public holders of subscription warrants would not include those held by directors, officers, or their immediate families and other concentrated holdings of 10 percent. *See* proposed LCM Section 802.01B(b).

¹⁰ *See* proposed LCM Section 802.01B(a).

¹¹ *See* proposed LCM Section 802.01B(c).

¹² 15 U.S.C. 78s(b)(2)(B).

¹³ *Id.*

warrants should the Exchange's proposal be approved.¹⁸ These commenters stated that the proposal would provide an alternative to the current listing rules for Special Purpose Acquisition Companies ("SPACs")¹⁹ but that investors in subscription warrants would be required to contribute less upfront capital than investors in a traditional SPAC.²⁰ These commenters also stated that the proposed 10-year term for subscription warrants would provide enhanced negotiating leverage to an acquisition company sponsor than that provided by a traditional SPAC.²¹ One of these commenters asserted that subscription warrants would give investors a greater opportunity to consider the quality of an acquisition because they would require investors to affirmatively "opt-in" to a potential acquisition through exercise of the warrants, as compared to the traditional SPAC structure where the default action is for an investor's shares to be converted into the combined company unless the shareholder elects to redeem those shares (*i.e.*, the investor has to "opt out").²² This commenter further stated that the Exchange's proposed quantitative standards for subscription warrants would require a sponsor to have a "sufficient track record and reputation for creating shareholder value."²³ One commenter offered suggested modifications to the proposed rule change, including: (1) That the proposed subscription warrants not be exercisable prior to the time at which a post-effective amendment to the company's initial registration statement, containing comprehensive disclosure regarding the proposed Acquisition, has been declared effective by the Commission; (2) modifications to the proposed exercise and redemption process; (3) that the issuer be required to consummate its Acquisition within 12 months of entering into its Acquisition agreement; (4) that the proposed rule change provide for a

minimum number of shares that may be purchased upon the exercise of a subscription warrant at a fixed per share price; and (5) that the proposed rule change permit the issuance of an additional class of subscription warrants with a higher exercise price that would remain exercisable up to five years after the date of the Acquisition.²⁴

The Commission also received comments from individual investors broadly supporting the proposed rule change. These commenters generally asserted that the proposed listing and trading of subscription warrants would allow retail investors to invest in early-stage companies without tying up excessive capital.²⁵ The Commission also received some comments from individual investors voicing concerns that, as proposed, subscription warrants may be susceptible to fraud and manipulation.²⁶ One of these commenters stated that the valuation of a subscription warrant would be highly subjective due to the fact that the issuer would not have any underlying assets or business operations, and that the subscription warrants would thereby derive their value solely from the reputation of the sponsor or speculation of possible Acquisition targets.²⁷ This commenter stated that this could create a conflict of interest if the sponsor were permitted to sell its subscription warrants or distribute the subscription warrants in an inequitable manner.²⁸ Another commenter expressed concerns regarding the length of time a subscription warrant may remain outstanding, stating that it would lead to uncertainty regarding when an Acquisition may occur.²⁹

The Commission has concerns about whether the proposal is sufficiently designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest, as required by Section 6(b)(5) of the Exchange Act. As described above, the Exchange proposes to list subscription warrants that would be exercisable into the common stock of

a company upon its entry into an acquisition agreement with an unknown target, on unknown terms, at any time up to ten years from the date of issuance. Subscription warrants could be issued for no consideration, and the Exchange has proposed no minimum price per warrant.

Current Exchange rules for listed warrants, among other things, require that they be exercisable on specified terms into a specified security listed on the Exchange.³⁰ Current Exchange rules for listed SPACs, among other things, require a minimum \$4 initial price per share and a substantial market value reflecting the cash held in trust, and that an acquisition be completed within three years.³¹

The Exchange justifies its proposal simply by stating that it "is consistent with Section 6(b)(5) of the Act in that it contains requirements in relation to the listing of Subscription Warrants that provide adequate protections for investors and the public interest," and then listing some of the elements of the proposal.³² The Exchange also states, without elaboration, that its proposal "is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of security and that it will enhance competition among market participants, to the benefit of investors and the marketplace."³³

The Exchange does not explain how market participants would effectively value this novel listed security, or how it would be expected to trade consistent with fair and orderly markets and the protection of investors and the public interest. As noted above, subscription warrants could be issued for no consideration³⁴ and have negligible

¹⁸ See letters to Vanessa Countryman, Secretary, Commission, from William A. Ackman, Pershing Square Capital Management, L.P., dated September 26, 2021 ("Ackman Letter"); and Cadwalader, Wickersham & Taft LLP, dated September 30, 2021 ("CWT Letter").

¹⁹ The Exchange's listing standards for SPACs are set forth in LCM sections 102.06 and 802.01. The Commission notes that throughout this order we have used the term "SPAC." This term has the same meaning as "Acquisition Company," which is the term used by the Exchange in the LCM.

²⁰ See Ackman Letter at 4–5; CWT Letter at 1–2.

²¹ See Ackman Letter at 5; CWT Letter at 2. Pursuant to LCM section 102.06, a SPAC has three years to consummate a business combination.

²² See Ackman Letter at 5. See also LCM Section 102.06, which sets forth the Exchange's listing requirements for SPACs.

²³ See *id.* at 6.

²⁴ See CWT Letter at 3–5.

²⁵ See, *e.g.*, letters from Stephan Kroeber, dated September 7, 2021; William J. Hooy, Esq., dated September 7, 2021; Brian Hwang, dated October 18, 2021; and James Porteous, dated October 18, 2021.

²⁶ See, *e.g.*, letters from Nikesh Bhattarai, dated September 6, 2021; Maksim P. Martynyuk, dated September 7, 2021; Nicholas Jenzer, dated September 7, 2021; and Hedgely, dated October 12, 2021.

²⁷ See letter from Nicholas Jenzer.

²⁸ See *id.* See also letter from Maksim P. Martynyuk (expressing similar concerns regarding sponsor conflicts).

²⁹ See Anonymous letter received September 7, 2021.

³⁰ See LCM Section 703.12. See also LCM Section 802.01D (providing that the Exchange will consider delisting warrants if the related security is delisted). Exchange listing standards for equity investment tracking stocks and subscription receipts have similar requirements. See LCM Sections 102.07 and 102.08. See also LCM Section 802.01B (providing that the Exchange will immediately initiate suspension and delisting procedures if the listed equity security or securities whose value is tracked by the equity investment tracking stock ceases or cease to be listed on the Exchange and the equity investment tracking stock does not qualify for initial listing at that time under another applicable listing standard); and LCM Section 802.01B (providing that the Exchange will immediately initiate suspension and delisting procedures if the subscription receipt issuer's related common equity security ceases to be listed on the Exchange).

³¹ See LCM Section 102.06. See also LCM Section 802.01.

³² See Notice, *supra* note 3, at 50749.

³³ See *id.*

³⁴ The Exchange's proposal also would appear to permit subscription warrants to be issued for value.

value. The value of a subscription warrant, if any, would appear to derive primarily from expectations that the sponsor ultimately will offer holders the ability to exercise the warrant on attractive terms once a target company is identified and an acquisition agreement signed. The Exchange does not address, among other things, the types of market information that could create a positive value for subscription warrants, the reliability and availability of such information, or whether such information could support fair and efficient trading of an Exchange-listed security for a period as long as ten years.

The Exchange also does not explain how it would effectively address the risk the price of subscription warrants could be manipulated, or how its proposal otherwise would be designed to prevent fraudulent and manipulative acts and practices. For example, the price of subscription warrants would appear to be particularly susceptible to rumors about potential acquisition targets and the terms of potential transactions. Because subscription warrants may trade at a very low price, they may permit a bad actor to efficiently manipulate these securities with little upfront cost. The Exchange does not address how its proposal is designed to prevent the risk that subscription warrants may be particularly susceptible to manipulation.

Further, the Exchange does not explain the rationale for the various numerical standards and criteria set forth in its proposal, or how they together are designed to be consistent with the Exchange Act and the rules and regulations thereunder. For example, the Exchange proposes that an issuer's subscription warrants may initially be listed on the Exchange if there are at least 1,100,000 publicly held warrants outstanding, but also proposes a continued listing standard that requires immediate suspension and delisting procedures if the total market capitalization of the subscription warrants is below \$15 million over 30 consecutive trading days. This would imply a minimum price in these circumstances of more than \$13 per warrant. Because subscription warrants may trade at a very low price, as discussed above, they may become

subject to delisting very soon after listing, depending on the number of warrants outstanding. The Exchange has not addressed how such a scenario would be consistent with the protection of investors and the public interest and other relevant provisions of the Exchange Act, or how the other numerical standards and criteria set forth in its proposal have been designed to work together to avoid similar outcomes.

In addition, while the proposal states that the sale of both the subscription warrants and the issuance of the common stock in exchange for the subscription warrants must be registered under the Securities Act, the proposal is unclear as to the requirements relating to Securities Act registration at the time the warrants become eligible to be exercised into common stock. In particular, the proposal does not appear to require a registration statement or, if possible, a post-effective amendment at the critical time when warrant holders have to make a decision on exercising their warrants for common stock. Therefore, it is unclear how investors will have the information necessary to make an informed decision regarding their purchase of securities, including a discussion of the target's business as well as any required financial statements. Further, and importantly, without registration or a post-effective amendment, investors will not necessarily have the protections of the private liability provisions of the Securities Act when exercising their warrants for the common stock. For example, the filing of a new registration statement or post-effective amendment would effectively restart the Section 11 statute of limitations with a new effective date and would permit staff review of the filing. Without this investors may not have a remedy available under the Securities Act for material misstatements. Given these important investor protection issues, there are questions raised about the proposal's consistency with the investor protection and public interest requirements under Section 6(b)(5) of the Exchange Act.

Finally, it is unclear under the Exchange's proposal whether the company would meet the definition of investment company under the Investment Company Act of 1940 ("1940 Act"). If so, the company may need to register under the 1940 Act, which would require a new listing rule, proposed by the Exchange and approved by the Commission, that contemplates the company's status under the 1940 Act.

Accordingly, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Exchange Act and its requirements, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest, and not be designed to permit unfair discrimination.

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."³⁵ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,³⁶ and any failure of a self-regulatory organization to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.³⁷

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act³⁸ to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)³⁹ of the Exchange Act or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Exchange Act,⁴⁰ any request for an

While the proposal would require the proceeds of the exercise of subscription warrants to be held in an interest-bearing custody account controlled by an independent custodian, pending the closing of an Acquisition, it does not address the handling of the proceeds of the issuance of the subscription warrants themselves, or why the lack of similar protections is consistent with Section 6(b)(5) and other provisions of the Exchange Act.

³⁵ 17 CFR 201.700(b)(3).

³⁶ See *id.*

³⁷ See *id.*

³⁸ 15 U.S.C. 78s(b)(2)(B).

³⁹ 15 U.S.C. 78f(b)(5).

⁴⁰ 17 CFR 240.19b-4.

opportunity to make an oral presentation.⁴¹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by January 4, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 18, 2022. 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,⁴² in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2021-45 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-NYSE-2021-45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the

filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-45 and should be submitted by January 4, 2022. Rebuttal comments should be submitted by January 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0006, SEC File No. 270-022]

Submission for OMB Review; Comment Request, Extension: Form 13F

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

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 (the "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.

Section 13(f) ¹ of the Securities Exchange Act of 1934 ² (the "Exchange

⁴¹ 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).

⁴² *See supra* note 3.

⁴³ 17 CFR 200.30-3(a)(57).

Act") empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f-1 ³ under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts that have in the aggregate a fair market value of at least \$100,000,000 of certain U.S. exchange-traded equity securities, as set forth in rule 13f-1(c), to file quarterly reports with the Commission on Form 13F.⁴

The information collection requirements apply to institutional investment managers that meet the \$100 million reporting threshold. Section 13(f)(6)(A) of the Exchange Act defines an "institutional investment manager" as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f-1(b) under the Exchange Act defines "investment discretion" for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The currently approved burden estimates include a total hour burden of 472,521.6 hours, with an internal cost burden of \$31,186,425.60, to comply with Form 13F.⁵ Consistent with a recent rulemaking proposal that made adjustments to these estimates due primarily to the Commission's belief that the currently approved estimates do not appropriately reflect the information collection costs associated with Form 13F,⁶ the table below reflects the revised estimates.

³ 17 CFR 240.13f-1.

⁴ 17 CFR 249.325.

⁵ This estimate is based on the last time the rule's information collection was submitted for PRA renewal in 2018.

⁶ *See* Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F, Investment Company Release No. (Nov. 4, 2021).

³⁹ 15 U.S.C. 78f(b)(5).

⁴⁰ 17 CFR 240.19b-4.