

for ether Futures ETFs and premium/discount volatility and management fees for OTC Ether Funds. As discussed throughout, this growth investor protection concerns need to be re-evaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Ether Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Ether Futures market is a significant market as it relates to the CME Ether Futures market, but not a significant market as it relates to the ether spot market for the numerous reasons laid out above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBZX-2023-070 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-CboeBZX-2023-070. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2023-070 and should be submitted on or before June 20, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100220; File No. SR-NYSE-2024-18]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Section 102.06 of the NYSE Listed Company Manual To Provide That a Special Purpose Acquisition Company Can Remain Listed Until Forty-Two Months From Its Original Listing Date if It Has Entered Into a Definitive Agreement With Respect to a Business Combination Within Three Years of Listing

May 22, 2024.

On March 27, 2024, The New York Stock Exchange LLC ("NYSE" 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Section 102.06 of the NYSE Listed Company Manual ("Manual") to provide that a special purpose acquisition company ("SPAC") can remain listed until forty-two months from its original listing date if it has entered into a definitive agreement with respect to a business combination within three years of listing. The proposed rule change was published for comment in the **Federal Register** on April 10, 2024.<sup>3</sup> The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 25, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 99906 (April 4, 2024), 89 FR 25291.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>57</sup> 17 CFR 200.30-3(a)(12).

rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates July 9, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSE-2024-18).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**J. Matthew DeLesDernier,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100208; File No. SR-NASDAQ-2024-019]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Rules 5605, 5615 and 5810 To Clarify and Modify Phase-In Schedules for Certain Corporate Governance Requirements and Clarify Applicability of Certain Cure Periods

May 22, 2024

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 8, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to change Rules 5605, 5615 and 5810 to clarify and modify phase-in schedules for certain corporate governance requirements and clarify applicability of certain cure periods.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Nasdaq is proposing to clarify and modify the phase-in schedules to the independent director and committee requirement for certain companies. Nasdaq is also proposing to clarify the applicability of certain cure periods.

###### Initial Public Offerings

Nasdaq is proposing to clarify and modify the phase-in schedules to the independent director and committee requirements for IPOs. Specifically, Rule 5615(b)(1) currently references that a company listing in connection with an IPO is permitted to phase in its independent audit committee requirements in accordance with SEC Rule 10A-3(b)(1)(iv)(A) under the Act but does not restate the provisions of this rule. Nasdaq proposes to amend Rule 5615(b)(1) by specifically restating the phase-in provisions in the text of the rule and state that a company shall be permitted to phase in its compliance with the audit committee requirements set forth in Rule 5605(c)(2) as follows: (1) one member must satisfy the requirements by the date the company’s securities first trade on Nasdaq (the “Listing Date”); (2) a majority of members must satisfy the requirements within 90 days of the effective date of its registration statement; and (3) all members must satisfy the requirements within one year of the effective date of its registration statement.<sup>3</sup>

Rule 5605(c)(2)(A) requires a company to have a minimum of three members on the audit committee. As a result, companies listed in connection with an IPO which are not required to have a fully independent audit committee until one year from the Listing Date may appoint non-

independent directors to the audit committee in order to satisfy the three-person minimum requirement. Nasdaq proposes to amend Rule 5615(b)(1) to provide that companies listing in conjunction with an IPO may also phase in compliance with the three-person minimum on the following schedule: at least one member by the Listing Date, at least two members within 90 days of the Listing Date and at least three members within one year of the Listing Date. This proposal is consistent with the approach of the NYSE.<sup>4</sup> Nasdaq notes that in the NYSE Approval Order the Commission indicated that “permitting a company to have only one member on its audit committee by the listing date, at least two members within ninety days of the listing date, and three members within a year of the listing date, affords a reasonable accommodation for [affected] companies.”<sup>5</sup>

Rule 5615(b)(1) currently allows companies listing in connection with an IPO to phase in the requirements for their independent nominations and compensation committees but requires one member to satisfy the requirements at the time of listing. Some companies expressed a concern that this requirement interferes with a common practice to hold a meeting of a board of directors in order to appoint additional independent directors shortly after the Listing Date, but prior to the date IPO closes.<sup>6</sup> To accommodate this practice, Nasdaq proposes to amend Rule 5615(b)(1) to allow the companies to comply with the requirement to have one independent director on the compensation and nominations committees by appointing an independent director to such a committee no later than the earlier of the date of the initial public offering closes or five business days from the Listing Date. This proposal is consistent with the approach of the NYSE.<sup>7</sup>

<sup>4</sup> See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25, 2009), 74 FR 63808 (December 4, 2009) (approving SR-NYSE-2009-89) (the “NYSE Approval Order”).

<sup>5</sup> The NYSE Approval Order at 63811.

<sup>6</sup> See e.g. NYSE IPO Guide, page 41 at [https://www.nyse.com/publicdocs/nyse/listing/nyse\\_ipo\\_guide.pdf#process-timeline](https://www.nyse.com/publicdocs/nyse/listing/nyse_ipo_guide.pdf#process-timeline) (“After building a book of demand, the lead bookrunners will agree on the offering price with the company and shareholders, execute the underwriting agreement and allocate the IPO to investors. The following day, the company begins publicly trading on the NYSE or another exchange, rings the opening bell and hosts other key marketing events associated with being a public company. Two business days later, the IPO closes, at which point stock is delivered to investors against payment of the offering price, and various legal opinions are delivered by counsel.”)

<sup>7</sup> See Section 303A.00 Introduction; of the NYSE Listed Company Manual. See also Securities Exchange Act Release No. 61067 (November 25,

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See 17 CFR 240.10A-3(b)(1)(iv)(A).