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Page 1 of * 24

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2021 - * 20
Amendment No. (req. for Amendments *)

Filing by New York Stock Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
- ☐ 19b-4(f)(1)
- ☐ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend Section 102.04 of the NYSE Listed Company Manual to establish limits on investments in unregistered investment vehicles by listed closed end funds

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * John Last Name * Carey

Title * Senior Director

E-mail * John.Carey@nyse.com

Telephone * (212) 656-5640 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 04/09/2021

By Clare Saperstein

(Name *)

(Title *)

Associate General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Clare Saperstein,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] New York Stock Exchange LLC ("NYSE" or the "Exchange") proposes to amend Section 102.04 of the NYSE Listed Company Manual ("Manual") to establish limits on investments in unregistered investment vehicles by listed closed end funds.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

John Carey
Senior Director
NYSE Group, Inc.
(212) 656-5640

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange will generally authorize the listing of a closed-end management investment company (a "Fund") registered under the Investment Company Act of 1940 (the "Investment Company Act") pursuant to the provisions of Section 102.04(A) of the Manual. Section 102.04(A) does not include any explicit restrictions on the kinds of investments a listed Fund may include in its portfolio.

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

2 17 CFR 240.19b-4.

The Exchange proposes to amend Section 102.04(A) to provide for a limited ability of listed Funds to invest in private fund vehicles that are not themselves registered under the Investment Company Act, including alternative asset classes such as hedge funds and private equity funds. The SEC has amended its own rules with respect to mutual funds to formally establish permitted levels of investments by mutual funds in illiquid investment categories. The longstanding guidance from SEC staff has been that mutual funds should not exceed a 15% limitation on illiquid investments, including private funds. In 2016, the Commission adopted Investment Company Act Rule 22e-4(b)(1)(iv) to codify this policy.[3] In light of this development in the SEC's regulation of mutual funds and the continuing interest demonstrated by issuers, the Exchange now proposes to amend Section 102.04(A) to provide for a limited ability of Funds to invest in private funds.

The proposed amendment to Section 102.04(A) of the Manual would include a new definition of "Private Funds." A "Private Fund" for purposes of Section 102.04(A) as amended would mean (1) in the case of an entity organized under the laws of the United States or any state therein, a limited partnership, limited liability company, trust, corporation or similar incorporated or unincorporated entity that would be an investment company under Section 3(a) of the Investment Company Act but for the exception provided from that definition by either Sections 3(c)(1) or 3(c)(7) of the Investment Company Act and (2) in the case of an entity not organized under the laws of the United States or any state, an entity that is only permitted to offer its securities in the United States in a private offering that complies with Section 7(d) and either 3(c)(1) or 3(c)(7) of the Investment Company Act and the interpretations of the SEC thereunder.

The Exchange proposes to exclude from the definition of Private Funds any funds that are issuers of collateralized debt obligations ("CDOs") or collateralized loan obligations ("CLOs"). The issuers of CDOs and CLOs are private investment vehicles not registered under the Investment Company Act, and differ from hedge funds and private equity funds in material respects. Most importantly, there is an active secondary trading market for CDOs and CLOs and there are services that report trading prices for those markets. As a result, there is a significant degree of transparency in the valuation of CDOs and CLOs, as the market typically values them based on general market prices for debt issuances with the same credit rating and seniority as the tranches included in the specific CDO or CLO. Considering the greater liquidity and transparency of CDOs and CLOs, the Exchange proposes to exclude investments in those asset classes from its definition of Private Funds and, thus, does not propose to apply to CDOs and CLOs the proposed limits on listed Funds' investments in Private Funds.

Accordingly, the Exchange proposes that a "Private Fund" not include any entity that meets the following requirements:

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[3] 17 CFR §270.22e-4(b)(1)(iv).

(i) the entity is engaged in the business of purchasing, or otherwise acquiring, and holding Eligible Assets (as defined below) (and in activities related or incidental thereto);

(ii) all securities issued by the entity are either (A) initially sold to qualified institutional buyers as defined in Rule 144A under the Securities Act or to persons involved in the organization or operation of the issuer or an affiliate, as defined in Rule 405 under the Securities Act, of such a person or (B) fixed-income securities or other securities which entitle their holders to receive payments that depend primarily on the cash flow from Eligible Assets;

(iii) the entity appoints a trustee that meets the requirements of Section 26(a)(1) of the Investment Company Act and that is not affiliated, as defined in Rule 405 under the Securities Act, with such entity or with any person involved in the organization or operation of such entity, which does not offer or provide credit or credit enhancement to such entity and that executes an agreement or instrument concerning such entity's securities containing provisions to the effect set forth in Section 26(a)(3) of the Investment Company Act;

(iv) the entity takes reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in those Eligible Assets that principally generate the cash flow needed to pay the fixed-income security holders, *provided* that such assets otherwise required to be held by the trustee may be released to the extent needed at the time for the operation of the issuer; and

(v) the entity takes actions necessary for the cash flows derived from Eligible Assets for the benefit of the holders of fixed-income securities to be deposited periodically in a segregated account that is maintained or controlled by the trustee consistent with the rating (if any) of the outstanding fixed-income securities.

"Eligible Assets" means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

Proposed Limitations on Investments in Private Funds

Under the proposed amended form of Section 102.04(A), the Exchange would not authorize the initial listing of any Fund where, at the time of original listing

(A) Private Funds on an aggregated basis represent more than 15% of the Fund's net assets

(B) any single Private Fund represents more than 5% of the Fund's net assets; or

(C) the Fund invests or intends to invest in Private Funds and has not adopted and does not maintain fundamental policies (as such term is used in the Investment Company Act of 1940) providing that:

(i) such Fund may not at any time make an additional investment in a Private Fund if, immediately after giving effect to such investment, Private Funds would represent more than 15% of such Fund's net assets or such individual Private Fund would represent more than 5% of such Fund's net assets; and

(ii) if at any time such Fund (a) holds more than 15% of its net assets in Private Funds or (b) violates its fundamental policy prohibiting any additional investment in a Private Fund such that, immediately after giving effect to such investment, such individual Private Fund would represent more than 5% of such Fund's net assets:

- the Fund must immediately inform the Exchange of such occurrence and publicly disclose such occurrence in a manner consistent with the Exchange's immediate release policy as set forth in Sections 202.05 and 202.06 of the Manual;
- management must report such an occurrence to the Fund's board of directors within one business day of the occurrence, with an explanation of the extent and causes of the occurrence, and how the Fund plans, as the case may be, to (i) reduce its investments in Private Funds to no more than 15% of its net assets within a reasonable period of time, or (ii) reduce its investment in the individual Private Fund with respect to which it has exceeded the ownership interest permitted by the applicable fundamental policy to a level no greater than its ownership interest immediately prior to the transaction giving rise to such condition, in each case within a reasonable period of time; and
- if the amount, as the case may be, of (i) the Fund's investments in Private Funds is still above 15% of its net assets, or (ii) the Fund's investment in the individual Private Fund with respect to which it has exceeded the investment limit of its fundamental policy is still above its ownership interest immediately prior to the transaction giving rise to such condition, in each case 30 days from the occurrence (and at each consecutive 30 day period thereafter), the Fund's board of directors, including a majority of directors who are not

interested persons (as such term is defined in Section 2(a)(19) of the Investment Company Act of 1940) of the Fund, must assess whether the plan presented to it pursuant to the requirements set forth above continues to be in the best interest of the Fund.

Any listed Fund in good standing may commence investing in Private Funds, but may do so only if it first adopts the required fundamental policies described above. The Fund must consult with the Exchange before taking this action. Any such Fund will also be subject to the ongoing requirements with respect to investments in Private Funds set forth above.

Today Exchange rules do not restrict the investment by listed Funds in Private Funds. The proposed amendment to Section 102.04(A) would amend the Exchange's listing rules to restrict the investment by Funds in Private Funds, such as hedge funds and private equity funds, which are illiquid and consequently difficult to value. The Exchange notes that the SEC has addressed identical concerns about the inclusion of illiquid asset classes in mutual fund portfolios by adopting a rule imposing a 15% limitation on the acquisition of such assets by mutual funds. By adopting an identical restriction for listed Funds, the Exchange believes that it is similarly appropriately addressing these concerns for listed Funds. Furthermore, the Exchange notes that its own proposal goes further than the restriction the SEC has imposed upon mutual funds by also requiring a diversification in any listed Fund's holdings of Private Funds. The Exchange believes that the proposed 5% limitation on any individual Private Fund investment would limit the materiality of any individual Private Fund investment with respect to the Fund portfolio as a whole and that this provision provides a significant additional protection for investors in listed Funds over and above the protection provided to mutual fund investors by the comparable rule under the Investment Company Act.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the proposal protects investors and the public interest because it strictly limits both the aggregate investment by listed Funds in Private Funds and the percentage any individual Private Fund investment may represent in a listed Fund's portfolio. The Exchange believes that these restrictions

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4 15 U.S.C. 78f(b).

5 15 U.S.C. 78f(b)(5).

appropriately address concerns about the illiquidity of Private Fund investments by limiting the materiality of Private Fund investments to a listed Fund's portfolio both in the aggregate and for any individual Private Fund investment. The Exchange notes that the 15% aggregate investment limit in the proposal is the same as the limit applied by the SEC to mutual funds under Investment Company Act rules, while the 5% limit on individual investments in the proposal is an augmentation of the SEC's limitations with respect to mutual funds. The Exchange believes that it is consistent with the protection of investors and the public interest to exempt CDOs and CLOs from these restrictions, as there is a more active trading market for CDOs and CLOs than for Private Funds and there is more consistency and transparency in valuing them.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The purpose of the proposal is to enhance competition by providing a listing market for Funds that wish to have the ability to invest in Private Funds, while appropriately restricting Funds in pursuing that strategy to protect investors. The proposed amendment would not impose any burden on competition between newly-listed Funds and those that are already listed, as currently-listed Funds that are in good standing would be eligible to invest in Private Funds on the same terms as newly-listed Funds. Other listing venues can adopt similar rules if they so desire. As such, the Exchange does not believe that the proposal imposes any burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSE-2021-20)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Section 102.04 of the NYSE Listed Company Manual to establish limits on investments in unregistered investment vehicles by listed closed end funds

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on April 9, 2021, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 amend Section 102.04 of the NYSE Listed Company Manual ("Manual") to establish limits on investments in unregistered investment vehicles by listed closed end funds. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange will generally authorize the listing of a closed-end management investment company (a "Fund") registered under the Investment Company Act of 1940 (the "Investment Company Act") pursuant to the provisions of Section 102.04(A) of the Manual. Section 102.04(A) does not include any explicit restrictions on the kinds of investments a listed Fund may include in its portfolio. The Exchange proposes to amend Section 102.04(A) to provide for a limited ability of listed Funds to invest in private fund vehicles that are not themselves registered under the Investment Company Act, including alternative asset classes such as hedge funds and private equity funds. The SEC has amended its own rules with respect to mutual funds to formally establish permitted levels of investments by mutual funds in illiquid investment categories. The longstanding guidance from SEC staff has been that mutual funds should not exceed a 15% limitation on illiquid investments, including private funds. In 2016, the Commission adopted

Investment Company Act Rule 22e-4(b)(1)(iv) to codify this policy.[4] In light of this development in the SEC's regulation of mutual funds and the continuing interest demonstrated by issuers, the Exchange now proposes to amend Section 102.04(A) to provide for a limited ability of Funds to invest in private funds.

The proposed amendment to Section 102.04(A) of the Manual would include a new definition of "Private Funds." A "Private Fund" for purposes of Section 102.04(A) as amended would mean (1) in the case of an entity organized under the laws of the United States or any state therein, a limited partnership, limited liability company, trust, corporation or similar incorporated or unincorporated entity that would be an investment company under Section 3(a) of the Investment Company Act but for the exception provided from that definition by either Sections 3(c)(1) or 3(c)(7) of the Investment Company Act and (2) in the case of an entity not organized under the laws of the United States or any state, an entity that is only permitted to offer its securities in the United States in a private offering that complies with Section 7(d) and either 3(c)(1) or 3(c)(7) of the Investment Company Act and the interpretations of the SEC thereunder.

The Exchange proposes to exclude from the definition of Private Funds any funds that are issuers of collateralized debt obligations ("CDOs") or collateralized loan obligations ("CLOs"). The issuers of CDOs and CLOs are private investment vehicles not registered under the Investment Company Act, and differ from hedge funds and private equity funds in material respects. Most importantly, there is an active secondary trading market for CDOs and CLOs and there are services that report trading prices for those markets. As a result, there is a significant degree of transparency in the valuation

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4 17 CFR §270.22e-4(b)(1)(iv).

of CDOs and CLOs, as the market typically values them based on general market prices for debt issuances with the same credit rating and seniority as the tranches included in the specific CDO or CLO. Considering the greater liquidity and transparency of CDOs and CLOs, the Exchange proposes to exclude investments in those asset classes from its definition of Private Funds and, thus, does not propose to apply to CDOs and CLOs the proposed limits on listed Funds' investments in Private Funds.

Accordingly, the Exchange proposes that a "Private Fund" not include any entity that meets the following requirements:

(i) the entity is engaged in the business of purchasing, or otherwise acquiring, and holding Eligible Assets (as defined below) (and in activities related or incidental thereto);

(ii) all securities issued by the entity are either (A) initially sold to qualified institutional buyers as defined in Rule 144A under the Securities Act or to persons involved in the organization or operation of the issuer or an affiliate, as defined in Rule 405 under the Securities Act, of such a person or (B) fixed-income securities or other securities which entitle their holders to receive payments that depend primarily on the cash flow from Eligible Assets;

(iii) the entity appoints a trustee that meets the requirements of Section 26(a)(1) of the Investment Company Act and that is not affiliated, as defined in Rule 405 under the Securities Act, with such entity or with any person involved in the organization or operation of such entity, which does not offer or provide credit or credit enhancement to such entity and that executes an agreement or

instrument concerning such entity's securities containing provisions to the effect set forth in Section 26(a)(3) of the Investment Company Act;

(iv) the entity takes reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in those Eligible Assets that principally generate the cash flow needed to pay the fixed-income security holders, *provided* that such assets otherwise required to be held by the trustee may be released to the extent needed at the time for the operation of the issuer; and

(v) the entity takes actions necessary for the cash flows derived from Eligible Assets for the benefit of the holders of fixed-income securities to be deposited periodically in a segregated account that is maintained or controlled by the trustee consistent with the rating (if any) of the outstanding fixed-income securities.

"Eligible Assets" means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

Proposed Limitations on Investments in Private Funds

Under the proposed amended form of Section 102.04(A), the Exchange would not authorize the initial listing of any Fund where, at the time of original listing

(A) Private Funds on an aggregated basis represent more than 15% of the Fund's net assets

(B) any single Private Fund represents more than 5% of the Fund's net assets; or

(C) the Fund invests or intends to invest in Private Funds and has not adopted and does not maintain fundamental policies (as such term is used in the Investment Company Act of 1940) providing that:

(i) such Fund may not at any time make an additional investment in a Private Fund if, immediately after giving effect to such investment, Private Funds would represent more than 15% of such Fund's net assets or such individual Private Fund would represent more than 5% of such Fund's net assets; and

(ii) if at any time such Fund (a) holds more than 15% of its net assets in Private Funds or (b) violates its fundamental policy prohibiting any additional investment in a Private Fund such that, immediately after giving effect to such investment, such individual Private Fund would represent more than 5% of such Fund's net assets:

- the Fund must immediately inform the Exchange of such occurrence and publicly disclose such occurrence in a manner consistent with the Exchange's immediate release policy as set forth in Sections 202.05 and 202.06 of the Manual;
- management must report such an occurrence to the Fund's board of directors within one business day of the occurrence, with an explanation of the extent and causes of the occurrence, and how the Fund plans, as the case may be, to (i) reduce its investments in Private Funds to no more than 15% of its net assets within a reasonable period of time, or (ii) reduce its investment in the

individual Private Fund with respect to which it has exceeded the ownership interest permitted by the applicable fundamental policy to a level no greater than its ownership interest immediately prior to the transaction giving rise to such condition, in each case within a reasonable period of time; and

- if the amount, as the case may be, of (i) the Fund's investments in Private Funds is still above 15% of its net assets, or (ii) the Fund's investment in the individual Private Fund with respect to which it has exceeded the investment limit of its fundamental policy is still above its ownership interest immediately prior to the transaction giving rise to such condition, in each case 30 days from the occurrence (and at each consecutive 30 day period thereafter), the Fund's board of directors, including a majority of directors who are not interested persons (as such term is defined in Section 2(a)(19) of the Investment Company Act of 1940) of the Fund, must assess whether the plan presented to it pursuant to the requirements set forth above continues to be in the best interest of the Fund.

Any listed Fund in good standing may commence investing in Private Funds, but may do so only if it first adopts the required fundamental policies described above. The Fund must consult with the Exchange before taking this action. Any such Fund will also be subject to the ongoing requirements with respect to investments in Private Funds set forth above.

Today Exchange rules do not restrict the investment by listed Funds in Private Funds. The proposed amendment to Section 102.04(A) would amend the Exchange's listing rules to restrict the investment by Funds in Private Funds, such as hedge funds and private equity funds, which are illiquid and consequently difficult to value. The Exchange notes that the SEC has addressed identical concerns about the inclusion of illiquid asset classes in mutual fund portfolios by adopting a rule imposing a 15% limitation on the acquisition of such assets by mutual funds. By adopting an identical restriction for listed Funds, the Exchange believes that it is similarly appropriately addressing these concerns for listed Funds. Furthermore, the Exchange notes that its own proposal goes further than the restriction the SEC has imposed upon mutual funds by also requiring a diversification in any listed Fund's holdings of Private Funds. The Exchange believes that the proposed 5% limitation on any individual Private Fund investment would limit the materiality of any individual Private Fund investment with respect to the Fund portfolio as a whole and that this provision provides a significant additional protection for investors in listed Funds over and above the protection provided to mutual fund investors by the comparable rule under the Investment Company Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and

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5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the proposal protects investors and the public interest because it strictly limits both the aggregate investment by listed Funds in Private Funds and the percentage any individual Private Fund investment may represent in a listed Fund's portfolio. The Exchange believes that these restrictions appropriately address concerns about the illiquidity of Private Fund investments by limiting the materiality of Private Fund investments to a listed Fund's portfolio both in the aggregate and for any individual Private Fund investment. The Exchange notes that the 15% aggregate investment limit in the proposal is the same as the limit applied by the SEC to mutual funds under Investment Company Act rules, while the 5% limit on individual investments in the proposal is an augmentation of the SEC's limitations with respect to mutual funds. The Exchange believes that it is consistent with the protection of investors and the public interest to exempt CDOs and CLOs from these restrictions, as there is a more active trading market for CDOs and CLOs than for Private Funds and there is more consistency and transparency in valuing them.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The purpose of the proposal is to enhance competition by providing a listing market for Funds that wish to have the ability to invest in Private Funds, while appropriately restricting Funds in pursuing that strategy to protect investors. The proposed amendment would not impose any burden on competition between newly-listed Funds and those that are already listed, as currently-listed Funds that are in good standing

would be eligible to invest in Private Funds on the same terms as newly-listed Funds. Other listing venues can adopt similar rules if they so desire. As such, the Exchange does not believe that the proposal imposes any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. 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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-

NYSE-2021-20 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-2021-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to

delegated authority.[7]

Eduardo A. Aleman
Deputy Secretary

[7] 17 CFR 200.30-3(a)(12).

Exhibit 5

Additions underlined;
Deletions in [brackets].

NYSE Listed Company Manual

* * * **

102.04 Minimum Numerical Standards - Closed-end Management Investment Companies

A. The Exchange will generally authorize the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a "Fund") that meets the requirements of Paras. 102.01A and 102.01B above, provided that the required market value of publicly held shares shall be $20,000,000 regardless of whether it is an IPO or an existing Fund. As an alternative to meeting the market value of publicly held shares requirement of Para. 102.01B, a Fund may list if it has net assets of $20,000,000. Para. 102.01C will not apply.

Notwithstanding the foregoing requirement for market value of publicly held shares or net assets of $20,000,000, the Exchange will generally authorize the listing of all the Funds in a group of Funds listed concurrently with a common investment adviser or investment advisers who are "affiliated persons", as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended, if:

- Total group market value of publicly held shares or net assets equals in the aggregate at least $75,000,000;
- The group market value of publicly held shares or net assets averages at least $15,000,000 per Fund; and
- Each Fund in the group has market value of publicly held shares or net assets of at least $10,000,000.

The Exchange will not authorize the initial listing of any Fund where, at the time of original listing,

(A) Private Funds, as defined in this Section 102.04, on an aggregated basis represent more than 15% of the Fund’s net assets

(B) any single Private Fund represents more than 5% of the Fund’s net assets; or

(C) the Fund invests or intends to invest in Private Funds and has not adopted and has not maintained fundamental policies (as such term is used in the Investment Company Act of 1940) providing that:

(i) such Fund may not at any time make an additional investment in a Private Fund if, immediately after giving effect to such investment, Private Funds would represent more than

15% of such Fund's net assets or such individual Private Fund would represent more than 5% of such Fund's net assets; and

(ii) if at any time such Fund (a) holds more than 15% of its net assets in Private Funds or (b) violates its fundamental policy prohibiting any additional investment in a Private Fund such that, immediately after giving effect to such investment, such individual Private Fund would represent more than 5% of such Fund's net assets:

- the Fund must immediately inform the Exchange of such occurrence and publicly disclose such occurrence in a manner consistent with the Exchange's immediate release policy as set forth in Sections 202.05 and 202.06 hereof;

- management must report such an occurrence to the Fund's board of directors within one business day of the occurrence, with an explanation of the extent and causes of the occurrence, and how the Fund plans, as the case may be, to (i) reduce its investments in Private Funds to no more than 15% of its net assets, or (ii) reduce its investment in the individual Private Fund with respect to which it has exceeded the ownership interest permitted by the applicable fundamental policy to a level no greater than its ownership interest immediately prior to the transaction giving rise to such condition, in each case within a reasonable period of time; and

- if the amount, as the case may be, of (i) the Fund's investments in Private Funds is still above 15% of its net assets, or (ii) the Fund's investment in the individual Private Fund with respect to which it has exceeded the investment limit of its fundamental policy is still above its ownership interest immediately prior to the transaction giving rise to such condition, in each case 30 days from the occurrence (and at each consecutive 30 day period thereafter), the Fund's board of directors, including a majority of directors who are not interested persons (as such term is defined in Section 2(a)(19) of the Investment Company Act of 1940) of the Fund, must assess whether the plan presented to it pursuant to the requirement set forth above continues to be in the best interest of the Fund.

A "Private Fund" for purposes of this Section 102.04(A) means (A) in the case of an entity organized under the laws of the United States or any state, a limited partnership, limited liability company, trust, corporation or similar incorporated or unincorporated entity that would be an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by either Sections 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940; and (B) in the case of an entity not organized under the laws of the United States or any state, an entity that is only permitted to offer its securities in the United States in a private offering that complies with Section 7(d) and either 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940 and the interpretations of the SEC thereunder; *provided*, however, that a "Private Fund" shall not include any entity that meets the following requirements:

(i) the entity is engaged in the business of purchasing, or otherwise acquiring, and holding Eligible Assets (and in activities related or incidental thereto);

(ii) all securities issued by the entity are either (a) initially sold to qualified institutional buyers as defined in Rule 144A under the Securities Act or to persons involved in the organization or operation of the issuer or an affiliate, as defined in Rule 405 under the Securities Act, of such a person or (b) fixed-income securities or other securities which entitle their holders to receive payments that depend primarily on the cash flow from Eligible Assets;

(iii) the entity appoints a trustee that meets the requirements of Section 26(a)(1) of the Investment Company Act of 1940 and that is not affiliated, as defined in Rule 405 under the Securities Act, with the entity or with any person involved in the organization or operation of such entity, which does not offer or provide credit or credit enhancement to such entity, and that executes an agreement or instrument concerning such entity's securities containing provisions to the effect set forth in Section 26(a)(3) of the Investment Company Act of 1940;

(iv) the entity takes reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in those Eligible Assets that principally generate the cash flow needed to pay the fixed-income security holders, *provided* that such assets otherwise required to be held by the trustee may be released to the extent needed at the time for the operation of the entity; and

(v) the entity takes actions necessary for the cash flows derived from Eligible Assets for the benefit of the holders of fixed-income securities to be deposited periodically in a segregated account that is maintained or controlled by the trustee consistent with the rating (if any) of the outstanding fixed-income securities.

"Eligible Assets" means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

Any listed Fund in good standing may commence investing in Private Funds, but may do so only if it first adopts the required fundamental policies. The Fund must consult with the Exchange before taking this action. Any such Fund will also be subject to the ongoing requirements with respect to investments in Private Funds set forth above.

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