

securities to Canadian retirement accounts without registering as investment companies under the Investment Company Act.

Rule 7d-2 contains a “collection of information” requirement within the meaning of the Paperwork Reduction Act of 1995.⁴ Rule 7d-2 requires written offering materials for securities offered or sold in reliance on that rule to disclose prominently that those securities and the fund issuing those securities are not registered with the Commission, and that those securities and the fund issuing those securities are exempt from registration under U.S. securities laws. Rule 7d-2 does not require any documents to be filed with the Commission.

Rule 7d-2 requires written offering documents for securities offered or sold in reliance on the rule to disclose prominently that the securities are not registered with the Commission and may not be offered or sold in the United States unless registered or exempt from registration under the U.S. securities laws, and also to disclose prominently that the fund that issued the securities is not registered with the Commission. The burden under the rule associated with adding this disclosure to written offering documents is minimal and is non-recurring. The foreign issuer, underwriter, or broker-dealer can redraft an existing prospectus or other written offering material to add this disclosure statement, or may draft a sticker or supplement containing this disclosure to be added to existing offering materials. In either case, based on discussions with representatives of the Canadian fund industry, the staff estimates that it would take an average of 10 minutes per document to draft the requisite disclosure statement.

The staff estimates that there are 3164 publicly offered Canadian funds that potentially would rely on the rule to offer securities to participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act.⁵ The staff estimates that all of these funds have previously relied upon the rule and have already made the one-time change to their offering documents required to rely on the rule. The staff estimates that 158 (5 percent) additional Canadian funds would newly rely on the rule each year to offer securities to Canadian-U.S. Participants and sell securities to their Canadian retirement accounts, thus incurring the paperwork burden required under the rule. The staff

estimates that each of those funds, on average, distributes 3 different written offering documents concerning those securities, for a total of 474 offering documents. The staff therefore estimates that 158 respondents would make 474 responses by adding the new disclosure statement to 474 written offering documents. The staff therefore estimates that the annual burden associated with the rule 7d-2 disclosure requirement would be 79 hours (474 offering documents × 10 minutes per document). The total annual cost of these burden hours is estimated to be \$30,020 (79 hours × \$380 per hour of attorney time).⁶

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or send an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

⁶ The Commission's estimate concerning the wage rate for attorney time is based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (“SIFMA”). The \$380 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2013*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

Dated: May 24, 2016.

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77898; File No. SR–NYSEArca–2016–11]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Section 4.01(a) of the NYSE Arca's Bylaws and NYSE Arca Rule 3.3 to Establish a Committee for Review as a Sub-Committee of the ROC and Making Conforming Changes to NYSE Arca Rules

May 24, 2016.

I. Introduction

On March 24, 2016, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ a proposed rule change to amend Section 4.01(a) of the Bylaws of the Exchange and to amend various rules of the Exchange, as described below. On April 4, 2016, the Exchange filed Amendment No. 1 to its proposal.⁴ The proposed rule change, as modified by the amendment thereto, was published for comment in the **Federal Register** on April 12, 2016.⁵ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by the amendment thereto.

II. Description of the Proposal

As part of a regulatory restructuring, NYSE Arca proposes to: (i) Amend Section 4.01(a) of the NYSE Arca's Bylaws and NYSE Arca Rule 3.3 to establish a Committee for Review as a subcommittee of the Regulatory Oversight Committee (“ROC”)⁶ and

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Amendment No. 1 amended and replaced the original filing in its entirety. In Amendment No. 1, the Exchange, among other things, deleted language in the description of the proposed rule change that was not relevant to the proposed rule change.

⁵ See Securities Exchange Act Release No. 77535 (April 6, 2016), 81 FR 21615 (“Notice”).

⁶ The Commission recently approved the Exchange's proposal to establish the ROC as a committee of the Exchange's Board of Directors (“NYSE Arca Board”) to be composed solely of

⁴ 44 U.S.C. 3501–3502.

⁵ Investment Company Institute, 2015 Investment Company Fact Book (2015) at 238, tbl. 66.

delete NYSE Arca Rule 3.2(b)(3) governing the OTP Advisory Committee and NYSE Arca Equities, Inc.⁷ (“NYSE Arca Equities”) Rule 3.2(b)(3) governing the Member Advisory Committee, both of whose functions would be assumed by the Committee for Review, and make conforming changes to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 3.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13; (ii) delete references to “NYSE Regulation, Inc.” and “NYSE Regulation”⁸ in NYSE Arca Rule 0 and NYSE Arca Equities Rule 0 and NYSE Arca Equities Rule 5.3(i)(1); (iii) replace a reference to the “NYSE Regulation, Inc. Chief Executive Officer” in NYSE Arca Equities Rule 2.100; and (iv) make certain technical and non-substantive changes.

The Exchange proposes that these rule revisions would be operative no later than June 30, 2016, on a date to be determined by the NYSE Arca Board.⁹

A. Establishing a Committee for Review and Conforming Exchange Rules

The Exchange proposes to establish a Committee for Review (“CFR”) as a subcommittee of the ROC by amending Section 4.01(a) (Committees of the Board) of the NYSE Arca’s Bylaws and NYSE Arca Rule 3.3 (Board Committees), deleting NYSE Arca Rule 3.2(b)(3) (Options Committees) and NYSE Arca Equities Rule 3.2(b)(3) (Equity Committees), and making conforming changes to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 3.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13.¹⁰ The proposed CFR would be the successor to the current NYSE Arca Board Appeals Committee (“NYSE Arca BAC”) and the NYSE Arca Equities Board Appeals Committee (“NYSE Arca Equities BAC”), which are committees of the NYSE Arca Board and NYSE Arca Equities Board of Directors, respectively, that review appeals of

Exchange disciplinary actions regarding options and equities matters, respectively.¹¹ The Exchange represents that by creating a single CFR, the Exchange’s appellate process would be consistent with the processes of its affiliates, the NYSE and NYSE MKT LLC (“NYSE MKT”), both of which recently established a CFR as a subcommittee of their respective ROCs.¹²

NYSE Arca Rule 3.3(a)(2)(A) would provide that the NYSE Arca Board shall annually appoint a CFR as a subcommittee of the ROC. The Exchange notes that proposed Rule 3.3(a)(2) incorporates member organization association requirements of the current NYSE Arca BAC.¹³

The proposed CFR would be comprised of the OTP Director(s),¹⁴ the ETP Director(s)¹⁵ and the Public Directors¹⁶ of both NYSE Arca and NYSE Arca Equities.¹⁷

The proposed CFR would be responsible for reviewing the disciplinary decisions on behalf of the NYSE Arca Board and reviewing determinations to limit or prohibit the continued listing of an issuer’s securities on NYSE Arca Equities.¹⁸ In addition, the Exchange proposes to incorporate the roles of the OTP Advisory Committee of NYSE Arca and the Member Advisory Committee of NYSE Arca Equities into the proposed CFR.¹⁹ As a result, the proposed CFR

also would be charged with acting in an advisory capacity to the NYSE Arca Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules. The Exchange states that the proposed CFR would therefore serve in the same advisory capacity as the current OTP Advisory and Member Advisory Committees.²⁰

According to the Exchange, member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.²¹

The Exchange further proposes to amend NYSE Arca Rule 3.3(a)(2)(B) and NYSE Arca Equities Rule 3.3(a)(1)(A) to provide that the CFR may, but would not be required to, appoint an appeals panel (“CFR Appeals Panel”) to conduct a review thereunder and make a decision regarding the disposition of the appeal.²² Similar to current appeals panels that can be appointed by the NYSE Arca BAC, a CFR Appeals Panel would consist of at least three and no more than five individuals.²³ The Exchange represents that any CFR Appeals Panel appointed by the CFR for matters related to the equities market would be composed of at least one Public Director and at least one director that is an ETP Holder or Allied Person or Associated Person of an ETP Holder.²⁴ The Exchange further

similar structures in place with respect to their respective CFRs. *See id.*

²⁰ The Exchange also notes that this proposal is consistent with the structure recently approved for its affiliate, NYSE, which abolished its advisory committees and transferred the functions of its newly created NYSE CFR, whose mandate includes acting in an advisory capacity to the NYSE board of directors with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules. *See id.*

²¹ *See id.* and 15 U.S.C. 78f(b)(3).

²² The Exchange notes that under current NYSE Arca and NYSE Arca Equities Rules, any decisions by an appeals panel appointed by the NYSE Arca BAC or NYSE Arca Equities BAC are final unless appealed to the NYSE Arca Board or called for review by the NYSE Arca Board. *See id.* at 21617 n.25 and accompanying text. The Exchange proposes that CFR Appeals Panels retain this ability to resolve appeals and therefore does not propose that a CFR Appeals Panel would make recommendations to the CFR, as is the case with appellate panels for the Exchange’s affiliate NYSE MKT, which it notes did not previously have appellate panels. *See id.*

²³ *See id.* at 21617. The Exchange notes that NYSE Arca Equities Rule 3.3(a)(1) currently provides that the NYSE Arca Equities Board determines the size of any “Appeals Committee” it creates. *See id.* at 21617 n.29.

²⁴ *See id.* at 21617.

public directors who satisfy the Exchange’s Public Director requirements, as set forth in the Exchange’s Bylaws. *See* Securities Exchange Act Release No. 75155 (June 11, 2015), 80 FR 34744 (June 17, 2015).

⁷ NYSE Arca, a registered securities exchange, operates a marketplace for trading options and, through its wholly-owned subsidiary NYSE Arca Equities, a marketplace for trading equities. *See* Notice, *supra* note 5, at 21615.

⁸ NYSE Regulation, Inc. (“NYSE Regulation”), a not-for-profit subsidiary of the Exchange’s affiliate New York Stock Exchange LLC (“NYSE”), performed regulatory functions for the Exchange pursuant to an intercompany Regulatory Services Agreement (“RSA”) that gave the Exchange the contractual right to review NYSE Regulation’s performance. The RSA terminated on February 16, 2016. *See id.* at 21615 n.5.

⁹ *See id.* at 21615 n.6.

¹⁰ *See id.* at 21616.

¹¹ *See id.*

¹² *See* Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (NYSE–2015–27); Securities Exchange Act Release No. 77008 (February 1, 2016), 81 FR 6311 (February 5, 2016) (NYSEMKT 2015–106).

¹³ *See* Notice, *supra* note 5, at 21616–17.

¹⁴ The Exchange notes that an “OTP Director” is a director nominated by the Options Trading Permit (“OTP”) Holders of the Exchange. *See id.* at 21616 n.13; *see also* Article III, Section 3.02 of the Exchange Bylaws.

¹⁵ The Exchange notes that an “ETP Director” is a director nominated by the Equities Trading Permit (“ETP”) Holders of NYSE Arca Equities, Inc. *See id.* at 21616 n.13; *see also* Article III, Section 3.02 of the Exchange Bylaws.

¹⁶ Under the Bylaws of the Exchange, “Public Directors” of the Exchange are directors that are “persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.” *See* Section 3.02 of the Exchange Bylaws.

¹⁷ *See* Notice, *supra* note 5, at 21616–17.

¹⁸ The Exchange notes that the NYSE Arca Equities BAC currently has the same mandate to review determinations to limit or prohibit the continued listing of an issuer’s securities, but that the NYSE Arca BAC’s mandate does not include reviews of delisting determinations. *See id.* at 21616 n.23.

¹⁹ *See id.* at 21618. The Exchange notes that the same profile of members who historically have served on these advisory committees would be represented on the proposed CFR and that the Exchange’s affiliates NYSE and NYSE MKT have

represents that any CFR Appeals Panel appointed by the CFR for matters related to the options market would be composed of at least one Public Director and at least one Director that is an OTP Holder or Allied Person or Associated Person of an OTP Firm.²⁵ According to the Exchange, participation on the proposed CFR Appeals Panels of permit holders and persons allied or associated with permit holders would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.²⁶

The Exchange proposes to make conforming amendments to Article IV, Section 4.01(a) of its Bylaws governing board committees by replacing references to the “Board Appeals Committee” with references to the “Committee for Review as a subcommittee of the Regulatory Oversight Committee” and “its subcommittee, the CFR.” The Exchange also proposes to make conforming amendments to NYSE Arca Rules 2.4, 10.3, 10.6, 10.8, 10.11, 10.12, 10.14 and NYSE Arca Equities Rules 2.3, 5.5, 10.3, 10.6, 10.8, 10.11, 10.12, and 10.13 by generally replacing references to the current NYSE Arca BAC and NYSE Arca Equities BAC with references to the “Committee for Review” or “CFR” and to replace references to the “Appeals Panel” with the “CFR Appeals Panel.”²⁷

B. Modifying Exchange Rules To Delete References to NYSE Regulation

The Exchange proposes in connection with the its termination of the intercompany RSA pursuant to which NYSE Regulation provided regulatory services to the Exchange, to amend

NYSE Arca Rule 0 (Regulation of the Exchange, OTP Holders and OTP Firms) and NYSE Arca Equities Rule 0 (Regulation of the Exchange and Exchange Trading Permit Holders) to delete references to “NYSE Regulation, Inc.” and “NYSE Regulation staff or departments,” and NYSE Arca Equities Rule 5.3(i)(1) (Financial Reports and Related Notices) to delete the reference to “NYSE Regulation” and to replace such reference with “regulatory staff.”²⁸

C. Modifying Exchange Rules To Reference the Exchange’s Chief Regulatory Officer

The Exchange proposes to amend NYSE Arca Equities Rule 2.100 (Emergency Powers) to replace a reference to “NYSE Regulation, Inc. Chief Executive Officer” with “Chief Regulatory Officer.”

D. Certain Technical and Non-Substantive Changes

The Exchange proposes to make certain technical and non-substantive changes to amend NYSE Arca Rules 0 and 10.8, and NYSE Arca Equities Rules 10.3, 10.12, and 10.13.

The Exchange proposes to delete the semi-colon at the end of the heading of NYSE Arca Rule 0; to make grammatical corrections to NYSE Arca Rule 10.8; to replace outdated references to the NYSE Arca Board of Governors in NYSE Arca Equities Rules 10.3, 10.12 and 10.13 with references to the “NYSE Arca Board of Directors”; and to amend the heading of NYSE Arca Equities Rule 10.13 to delete the reference to “the Corporation.”²⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons

associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange.³¹ The Commission finds that the proposal also is consistent with the requirements of Section 6(b)(3) of the Act, which provides that the rules of an exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.³² In addition, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.³³ Finally, the Commission finds that the proposal is consistent with Section 6(b)(7) of the Act, which requires that the rules of the exchange provide a fair procedure for the disciplining of its members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange with respect to access to services offered by the exchange or a member thereof.³⁴

The Exchange represents that the proposed single CFR would be a successor to both the current NYSE Arca BAC and NYSE Arca Equities BAC, which are committees of the NYSE Arca Board and NYSE Arca Equities Board of Directors, respectively, that review appeals of Exchange disciplinary actions in their respective markets.³⁵ The Exchange also proposes to incorporate the responsibilities of the OTP Advisory Committee of NYSE Arca and the Member Advisory Committee of NYSE Arca Equities into the proposed CFR.³⁶ The CFR’s responsibilities therefore would be expanded to include acting in an advisory capacity to the

²⁵ See *id.*

²⁶ See *id.* at 21619.

²⁷ With respect to the replacement of references to “Appeals Panel,” the Exchange notes that NYSE Arca Rule 10.11(e)(1) currently provides that appellate review of Floor citations and minor rule plan sanctions are referred directly to an appropriate Board Appeals Committee Panel (defined as an “Appeals Panel”) appointed by the NYSE Arca Board, and current NYSE Arca Rule 10.11(e)(2) governs decisions by such Appeals Panels. The Exchange proposes to replace “an appropriate Board Appeals Committee Panel (‘Appeals Panel’) appointed by the Board” in NYSE Arca Rule 10.11(e)(1) with “CFR” because it believes that it would be more appropriate for such matters to be directly referred to the CFR, which can then determine whether to appoint a CFR Appeals Panel as is currently proposed for disciplinary appeals under NYSE Arca Rule 10.8(b). See *id.* at 21617 n.28 and accompanying text. Accordingly, the Exchange also proposes to add text to NYSE Arca Rule 10.11(e)(2) to provide that the CFR may appoint a CFR Appeals Panel to conduct reviews under this subsection or may decide to conduct review proceedings on its own. See *id.*

²⁸ See *id.* at 21618.

²⁹ See *id.* at 21618. With respect to the deletion of the reference to “the Corporation,” which the Exchange explains refers to NYSE Arca Equities, the Exchange notes that the hearings and review of decisions referred to in the rule would be conducted by the CFR, a subcommittee of the NYSE Arca Board.

³⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³¹ 15 U.S.C. 78f(b)(1).

³² 15 U.S.C. 78f(b)(3).

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78f(b)(7).

³⁵ See Notice, *supra* note 5, at 21616.

³⁶ See *id.* at 21618. The Exchange notes that the same categories of permit holders that were represented on the OTP Advisory Committee and the Member Advisory Committee would be represented on the proposed CFR. See *id.*

NYSE Arca Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules.³⁷ The Commission notes that the proposed CFR incorporates the salient features of the current NYSE Arca BAC and NYSE Arca Equities BAC, including by incorporating the requirement that the CFR be comprised of the Public Directors, the OTP Directors and ETP Directors.³⁸ As such, the Commission finds that the Exchange's proposed revisions to its appellate procedure for disciplinary matters and for determinations to limit or prohibit the continued listing of an issuer's securities on NYSE Arca Equities ensures sufficient independence of the appellate function of the Exchange, and therefore helps to ensure that the Exchange is organized and has the capacity to carry out the purposes of the Act, as required by Section 6(b)(1) of the Act.³⁹

The Commission also finds that the composition of the proposed CFR ensures the fair representation of members in the administration of the Exchange's affairs.⁴⁰ Proposed NYSE Arca Rule 3.3(a)(2)(A) provides that the CFR would be composed of the OTP Director(s), the ETP Director(s) and the Public Directors of both NYSE Arca and NYSE Arca Equities.⁴¹ Because NYSE Arca and NYSE Arca Equities members would serve on the proposed CFR, which would be charged with acting in an advisory capacity to the NYSE Arca Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act.⁴²

The Exchange also proposes to amend NYSE Arca Rule 3.3(a)(2)(B) and NYSE Arca Equities Rule 3.3(a)(1)(A) to permit the CFR to appoint a CFR Appeals Panel, consisting of at least three and no more than five individuals.⁴³ The CFR would either appoint a CFR Appeals Panel to conduct reviews of disciplinary proceedings or elect to conduct review proceedings on its own.⁴⁴ According to the Exchange, a CFR Appeals Panel appointed to hear an equities matter

would be composed of at least one Public Director and one member or individual associated with an equities member organization, and an appeals panel appointed to hear an options matter would be composed of at least one Public Director and one member or individual associated with an options member organization.⁴⁵ The Commission finds that the Exchange's proposal with respect to the proposed composition and the role of a CFR Appeals Panel is consistent with Sections 6(b)(3) and 6(b)(7) of the Act.⁴⁶

Finally, the Commission finds that it is consistent with Section 6(b)(5) of the Act for the Exchange to make various technical and conforming revisions to its Rules.⁴⁷

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2016-11), as modified by the amendment thereto, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁸

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77895; File No. SR-NASDAQ-2016-071]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the First Trust CEF Income Opportunity ETF and the First Trust Municipal CEF Income Opportunity ETF of First Trust Exchange-Traded Fund VIII

May 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 10, 2016, 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 and II below, which Items have been

prepared by Nasdaq. On May 20, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

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

Nasdaq proposes to list and trade the shares of the following under Nasdaq Rule 5735 ("Managed Fund Shares");³ First Trust CEF Income Opportunity ETF (the "CEF Income Opportunity Fund") and First Trust Municipal CEF Income Opportunity ETF (the "Municipal CEF Income Opportunity Fund"). The CEF Income Opportunity Fund and the Municipal CEF Income Opportunity Fund are each a "Fund" and collectively, the "Funds." Each Fund is a series of First Trust Exchange-Traded Fund VIII (the "Trust"). The shares of each Fund are collectively referred to herein as the "Shares."

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq's principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

³ The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). There are already multiple actively managed funds listed on the Exchange; see, e.g., Securities Exchange Act Release Nos. 72506 (July 1, 2014), 79 FR 38631 (July 8, 2014) (SR-NASDAQ-2014-050) (order approving listing and trading of First Trust Strategic Income ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR-NASDAQ-2013-036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

³⁷ See *id.*

³⁸ See *id.* at 21616.

³⁹ 15 U.S.C. 78f(b)(1).

⁴⁰ 15 U.S.C. 78f(b)(3).

⁴¹ See Notice, *supra* note 5, at 21616.

⁴² 15 U.S.C. 78f(b)(3).

⁴³ See Notice, *supra* note 5, at 21617.

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ 15 U.S.C. 78f(b)(3) and 15 U.S.C. 78f(b)(7).

⁴⁷ 15 U.S.C. 78f(b)(5).

⁴⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.