

applies to Cboe Options. To the extent that this discount proves attractive to Floor Brokers on other options exchanges, or its results prove attractive to market participants on other exchanges, such Floor Brokers or market participants may elect to become Floor Brokers or market participants at the Exchange.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)<sup>10</sup> of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2021-021 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 No. SR-CBOE-2021-021. This file number should be included on the subject line if email is used. To help the

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2021-021, and should be submitted on or before May 11, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-91567; File No. SR-NASDAQ-2020-100]**

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify the Quorum Requirement**

April 14, 2021.

**I. Introduction**

On December 31, 2020, The Nasdaq Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the quorum requirement applicable to a non-U.S. company where such company's home country law is in direct conflict with Nasdaq's quorum requirement. The proposed rule change was published for comment in the **Federal Register** on January 15, 2021.<sup>3</sup> On February 25, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On April 8, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change.<sup>6</sup> The Commission received no comments on the proposed rule change. The Commission is publishing notice of the filing of Amendment No. 1 to solicit comment from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

**II. The Exchange's Description of the Proposal, as Modified by Amendment No. 1**

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.

<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. 90883 (January 11, 2021), 86 FR 4158 (January 15, 2021).

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

<sup>5</sup> See Securities Exchange Act Release No. 91212, 86 FR 12503 (March 3, 2021). The Commission designated April 15, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> In Amendment No. 1, the Exchange revised the rule language and made clarifying, conforming, and technical changes, as discussed in Section VI, *infra*. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2020-100/srnasdaq2020100-8652263-231434.pdf>.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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

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

1. Purpose

Nasdaq is filing this amendment to SR-NASDAQ-2020-100<sup>7</sup> in order to: (i) Make minor technical changes to improve the structure, clarity and readability of this proposal; (ii) specify that Nasdaq will (rather than may) accept any quorum requirement for a non-U.S. Company, that is not a foreign private issuer, if the company's home country law mandates such quorum for the shareholders' meeting and prohibits the company from establishing a higher quorum required by Nasdaq, and the company cannot obtain an exemption or waiver from that law; (iii) clarify that such acceptance of any quorum requirement is subject to Nasdaq's discretionary authority under Listing Rule 5101; and (iv) add a provision that a company relying on the exception from the Nasdaq quorum requirement must:

(a) Make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq on or through the company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the company's reliance on the exception;

(b) maintain the website disclosure for the period of time the company continues to rely on this exception from the quorum requirements; and

(c) update the website disclosure at least annually to indicate that the company is prohibited under its home country law from complying with Nasdaq's quorum requirements as of such date.

This amendment supersedes and replaces the Initial Proposal in its entirety.

Nasdaq is proposing to modify Listing Rules 5620(c) and 5615(a)(4)(E) to allow Nasdaq to accept a quorum less than 33 $\frac{1}{3}$ % of the outstanding shares of a company's common voting stock where the company is incorporated outside of the U.S. and such company's home country law prohibits the company from establishing a quorum that satisfies the such quorum rules.

Listing Rule 5620(c) establishes quorum requirements for an annual meeting of shareholders for Nasdaq companies listing common stock or

voting preferred stock, and their equivalents.<sup>8</sup> Under this rule, each company that is not a limited partnership must provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 $\frac{1}{3}$ % of the outstanding shares of the company's common voting stock.<sup>9</sup> Nasdaq notes that domestic listed companies are subject to quorum requirements under the laws of their states of incorporation.<sup>10</sup>

Nasdaq recently discovered that the laws of certain foreign jurisdictions are in direct conflict with the Nasdaq Quorum Requirement. In particular, Nasdaq was approached by a French company that took advantage of the foreign private issuer exception and relied on home country practices in lieu of the Nasdaq Quorum Requirement, but lost its foreign private issuer status and cannot comply with the Nasdaq Quorum Requirement due to certain French law requirements.<sup>11</sup> In that regard, Article L. 225-98 of the French Commercial code<sup>12</sup> provides that upon first notice, the ordinary shareholders' meeting shall have a quorum requirement of one-fifth (20%) of the shares entitled to vote. The Article further provides that by-laws of a French company whose shares are listed on a regulated market (which includes Euronext Paris) cannot provide for a higher quorum for shareholders'

<sup>8</sup> Listing Rule 5620(a).

<sup>9</sup> Listing Rule 5615(a)(4)(E) governing the quorum requirements for limited partnerships listed on Nasdaq similarly requires that in the event of a meeting of limited partners, the quorum for such meeting shall be not less than 33 $\frac{1}{3}$  percent of the limited partnership interests outstanding (together with the requirements of Listing Rule 5620(c), the "Nasdaq Quorum Requirement").

<sup>10</sup> For example, Delaware allows companies to establish their own quorum requirements in their certificates of incorporation or bylaws, provided that the quorum must be at least one-third of the shares entitled to vote on the matter. In the absence of a quorum provision in the company's certificate of incorporation or bylaws, Delaware requires a quorum of more than 50% of the shares entitled to vote on the matter. See 8 Del. Code Sec. 216.

<sup>11</sup> Ordinary shares of at least one Nasdaq listed company DBV Technologies S.A. (DBV), are listed on Euronext Paris which is a regulated market under French and EU regulations. Accordingly, as explained below, DBV cannot amend its bylaws to increase the quorum requirement to comply with the Nasdaq Quorum Requirement. Since its IPO in 2014, DBV qualified as a foreign private issuer and relied on home country practices in lieu of complying with the Nasdaq Quorum Requirement. See also footnote 15 below.

<sup>12</sup> "It can only validly deliberate upon first notice if the shareholders present or represented own at least one fifth of the shares entitled to vote." Available at <https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000038799445&cidTexte=LEGITEXT000005634379&dateTexte=20190721>.

meetings than that set forth above. As this rule constitutes a public order under French law, it is required to be followed and compliance is enforced by the French courts and by the French stock exchange authority, the Autorité des marchés financiers. According to article L. 225-121, any decision taken in violation of the aforementioned rules on quorum is deemed null and void. As such, a French company listed on a regulated market cannot comply with the Nasdaq Quorum Requirement.

Listing Rule 5615(a)(3) allows a foreign private issuer<sup>13</sup> to follow its home country practice in lieu of the requirements of the Rule 5600 Series, including the Nasdaq Quorum Requirement, subject to certain disclosure requirements and the requirement that an independent counsel in such company's home country certify to Nasdaq that the company's practices are not prohibited by the home country's laws.<sup>14</sup> Accordingly, a French foreign private issuer could rely on Listing Rule 5615(a)(3) to remain in compliance with the Nasdaq corporate governance requirements in the Rule 5600 Series.<sup>15</sup>

A non-U.S. company<sup>16</sup> that is not a foreign private issuer currently is required to comply with the Nasdaq Quorum Requirement without regard to the requirements of such company's home country laws. As described above, for some companies, including DBV, the company's home country law prohibits the company from establishing a higher quorum required by the Nasdaq Quorum Requirement.

Accordingly, Nasdaq proposes to modify the Nasdaq Quorum Requirement to allow Nasdaq to accept

<sup>13</sup> The term foreign private issuer means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and (ii) Any of the following: (A) The majority of the executive officers or directors are United States citizens or residents; (B) More than 50 percent of the assets of the issuer are located in the United States; or (C) The business of the issuer is administered principally in the United States. See Securities Act Rule 405 and Exchange Act Rule 3b-4.

<sup>14</sup> See Listing Rule 5615(a)(3)(B) and Listing Rule IM-5615-3.

<sup>15</sup> As of December 31, 2019, approximately 62% of DBV's outstanding ordinary shares were held by U.S. residents. See company's Form 20-F filed on March 20, 2020. As of June 30, 2020, DBV determined that it no longer qualified as a foreign private issuer and would be required to comply with SEC rules for domestic issuers as of January 1, 2021.

<sup>16</sup> For purposes of this rule, the term non-U.S. company refers to a company incorporated outside of the U.S. See also Listing Rules 5630 and IM-5640 that use this term.

<sup>7</sup> Securities Exchange Act Release No. 90883 (January 11, 2021), 86 FR 4158 (January 15, 2021) (the "Initial Proposal").

any quorum requirement for a non-U.S. company if such company's home country law mandates such quorum for the shareholders' meeting and prohibits the company from establishing the higher quorum required by the Nasdaq Quorum Requirement, and the company cannot obtain an exemption or waiver from that law.<sup>17</sup> This rule change is consistent with the approach the Exchange takes in Listing Rule IM-5640 that allows Nasdaq to accept any action or issuance relating to the voting rights structure of a non-U.S. company that is not prohibited by the company's home country law.<sup>18</sup> Nasdaq proposes to require that a company relying on this provision shall submit to Nasdaq a written statement from an independent counsel in such company's home country describing the home country law that conflicts with Nasdaq's quorum requirement. Nasdaq also proposes to require such counsel to certify that, as the result of the conflict with the home country law, the company is prohibited from complying with the Nasdaq Quorum Requirement, and the company cannot obtain an exemption or waiver from that law. Finally, to assure appropriate disclosure, Nasdaq proposes to require that any company relying on this exception from the Nasdaq Quorum Requirement must make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, as described above, on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the Company's reliance on the exception.

In addition, to help assure continuous transparency, Nasdaq proposes to require that such website disclosure is maintained for the period of time the company continues to rely on the exception from the quorum requirements. Finally, to help assure the

<sup>17</sup> Nasdaq notes that under Listing Rule 5101 Nasdaq has broad discretionary authority to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.

<sup>18</sup> The proposed modified Nasdaq Quorum Requirement will apply only in circumstances where the company's home country law specifically prohibits the company from establishing a higher quorum required by the Nasdaq Quorum Requirement, whereas Listing Rule IM-5640 allows Nasdaq to accept any voting rights structure of a non-U.S. company that is not prohibited by the company's home country law.

exception remains appropriate, Nasdaq proposes to require the company to update the website disclosure at least annually to indicate that the company continues to be prohibited under its home country law from complying with Nasdaq's quorum requirements as of the date of such update.

Nasdaq also proposes to modify Listing Rule 5615(a)(4)(E) governing the quorum requirements for limited partnerships listed on Nasdaq to also reflect this change to the Nasdaq Quorum Requirement.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>20</sup> in particular, in that it is designed 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.

Nasdaq believes that the proposed amendments to Listing Rules 5620(c) and 5615(a)(4)(E) are designed to protect investors and the public interest because the proposal would eliminate a conflict forcing a company to be in violation of the Nasdaq rule, with a result of delisting by following the law in its home jurisdiction. Nasdaq also believes that Nasdaq's long experience of listing foreign private issuers, including DBV, while allowing such companies to rely on home country practices in lieu of the Nasdaq Quorum Requirement provides evidence of an appropriate level of investor protection. In addition, this modification is consistent with the approach the Exchange takes in Listing Rule IM-5640 that allows Nasdaq to accept any action or issuance relating to the voting rights structure of a non-U.S. company that is not prohibited by the company's home country law. Nasdaq also believes the proposed amendments to Listing Rules 5620(c) and 5615(a)(4)(E) are designed to protect investors and the public interest because any company relying on the proposed exception from the Nasdaq Quorum Requirement will be required to make public disclosure on or through the Company's website and either by filing a Form 8-K, where required by SEC rules, or by issuing a press release explaining the company's reliance on the exception.

Nasdaq believes that the proposed requirement that such website disclosure is maintained for the period

of time the company continues to rely on the exception from the quorum requirements is designed to protect investors and the public interest because such website disclosure would help assure continuous transparency. Nasdaq also believes that the proposed requirement to update the website disclosure at least annually to indicate that the company continues to be prohibited under its home country law from complying with Nasdaq's quorum requirements as of the date of such update is designed to protect investors and the public interest because such disclosure would help Nasdaq assure that the exception remains appropriate.

## 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will address conflicting requirements of jurisdictions currently affecting only one company, as described above; and as such, these changes are neither intended to, nor expected to, impose 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 either solicited or received.

## III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 1, and finds that it is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>21</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>22</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, and are not designed to

<sup>21</sup> 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

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

The development and enforcement of meaningful corporate governance listing standards for a national securities exchange is of substantial importance to financial markets and the investing public, especially given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in assuring that exchange-listed companies observe good governance practices including safeguarding the interests of shareholders.<sup>23</sup>

As discussed above, current Nasdaq Listing Rule 5620(c) states that a company that is not a limited partnership must provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33⅓% of the outstanding shares of the company's common voting stock, and current Nasdaq Listing Rule 5615(a)(4)(E) states that the quorum requirements for a meeting of limited partners shall not be less than 33⅓% of the limited partnership interests outstanding. The Exchange proposes to modify the Nasdaq Quorum Requirement to allow Nasdaq to accept a quorum of less than 33⅓% of the outstanding shares of a company's common voting stock or limited partnership interests where the company is incorporated outside of the U.S. and such company's home country law prohibits the company from establishing a quorum that satisfies the Nasdaq Quorum Requirement and the company cannot obtain an exemption or waiver from that law.<sup>24</sup>

The Commission has carefully considered the proposal and finds that the proposed rule change is consistent

with the Act. The proposed rules would only allow the exception to the Nasdaq Quorum Requirement under limited circumstances where a non-U.S. company's home country law prohibits the company from establishing a quorum that satisfies the Nasdaq Quorum Requirement, and the company cannot obtain an exemption or waiver from that law.<sup>25</sup> The company would be required to obtain a written statement from an independent counsel in the company's home country describing the home country law that conflicts with the Nasdaq Quorum Requirement and certifying that the company is prohibited from complying with the Nasdaq Quorum Requirement and that the company cannot obtain an exemption or waiver from that law.<sup>26</sup> According to the Exchange, the proposed rule change would currently affect only one listed company.<sup>27</sup> The Exchange states that the proposal would eliminate the conflict between the Nasdaq Quorum Requirement and the company's home country laws, which currently would force a company that follows the law in its home jurisdiction to be in violation of the Nasdaq Quorum Requirement, and would result in delisting.<sup>28</sup>

In addition, the Exchange states that it has allowed issuers to rely on home country rules in other contexts. The Exchange notes that it allows foreign private issuers to rely on home country practices in lieu of the Nasdaq Quorum Requirement.<sup>29</sup> Further, the Exchange states that the Exchange takes a similar approach in Listing Rule IM-5640, which allows Nasdaq to accept any action or issuance relating to the voting rights structure of a non-U.S. company that is not prohibited by the company's home country law.<sup>30</sup>

The proposed rules require that any company relying on the proposed exception from the Nasdaq Quorum

Requirement make a public announcement on or through the company's website and by filing either a Form 8-K, where required by Commission rules, or by issuing a press release explaining the company's reliance on the exception.<sup>31</sup> Such website disclosure would be required to be maintained for the period of time the company continues to rely on the exception from the quorum requirements, and the company would be required to update the website disclosure at least annually to indicate that the company continues to be prohibited under its home country law from complying with Nasdaq's quorum requirements as of the date of such update. The Commission believes that such requirements will help to maintain transparency for investors and assist the Exchange in ensuring that the exception remains applicable to a company.<sup>32</sup>

For the reasons discussed above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act.

#### IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-100 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2020-100. 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

<sup>23</sup> See, e.g., Securities Exchange Act Release No. 76814 (Dec. 31, 2015), 81 FR 820 (Jan. 7, 2016) (NYSE-2015-02) (approving amendments to the NYSE Listed Company Manual to exempt early stage companies from having to obtain shareholder approval in certain circumstances). See also Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (approving equity compensation shareholder approval rules of both the NYSE and the National Association of Securities Dealers, Inc. n/k/a NASDAQ); and Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (In the Matter of the Application of BATS Exchange, Inc. for Registration as a National Securities Exchange) (order approving registration of BATS Exchange, Inc. noting that qualitative listing requirements are designed to ensure that companies trading on a national securities exchange will adequately protect the interest of public shareholders).

<sup>24</sup> See proposed Listing Rules 5620(c) and 5615(a)(4)(E).

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See Amendment No. 1, *supra* note 6 at 14. The Exchange states that the proposed changes currently would affect only one listed company, DBV, which has been listed on Nasdaq since 2014. See *supra* note 11. DBV previously qualified as a foreign private issuer, and therefore relied on home country practices in lieu of the Nasdaq Quorum Requirement. See *id.* As of June 30, 2020, DBV determined that it no longer qualified as a foreign private issuer and would be required to comply with the Commission rules for domestic issuers as of January 1, 2021. The Exchange states that the proposed rule change would allow DBV to continue to follow French law quorum requirements, as it has been doing, while remaining listed on Nasdaq. See *id.*

<sup>28</sup> See *supra* Section II.A.2.

<sup>29</sup> See *supra* Section II.A.2. See also *supra* note 11.

<sup>30</sup> See *supra* note 18 and accompanying text.

<sup>31</sup> See proposed Listing Rules 5620(c) and 5615(a)(4)(E).

<sup>32</sup> Additionally, a company would have to verify that there are no changes to home country law that would allow it to comply with the Nasdaq Quorum Requirement, or receive a waiver or exemption from home country law, at least annually when updating its website disclosure that the company is still relying on the exception.

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-NASDAQ-2020-100, and should be submitted on or before May 11, 2021.

#### VI. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. The Commission notes that Amendment No. 1 clarifies the proposed rule change. In particular, Amendment No. 1: (1) Clarified that the rule applies to a non-U.S. company that is not a Foreign Private Issuer; (2) stated that the alternative quorum requirement will be applicable only if the company cannot obtain an exemption or waiver from the company's home country law requirement; (3) stated that Nasdaq "will" accept an alternative quorum requirement if the company's home country law conflicts with the Nasdaq requirement and the other conditions of the rule are met (as described above); (4) stated that a company relying on the exception must: (i) Make a public announcement as promptly as possible but not more than four business days following the submission of the independent counsel's statement to Nasdaq, on or through the company's website and either by filing a Form 8-K, where required by SEC rules, or by

issuing a press release explaining the company's reliance on the exception, (ii) maintain the website disclosure for the period of time the company continues to rely on this exception from the quorum requirements, and (iii) update the website disclosure at least annually to indicate that the company is prohibited from complying with Nasdaq's quorum requirements as of such date; (5) clarified that the proposed rule change will address conflicting requirements of jurisdictions currently affecting only one company; and (6) stated that the Exchange's acceptance of any quorum requirement is subject to Nasdaq's discretionary authority under Listing Rule 5101. In addition, the Exchange made other clarifying, conforming, and technical changes.<sup>33</sup> The changes in Amendment No. 1 should help to provide greater transparency in the Exchange's rules by requiring companies to provide public disclosure regarding reliance on the exception. In addition, Amendment No. 1 provides greater clarity to the proposal and provides greater transparency about the application of the rule changes being adopted herein. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> that the proposed rule change (SR-NASDAQ-2020-100), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**J. Matthew DeLesDernier**,

*Assistant Secretary*.

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<sup>33</sup> See *supra* note 6.

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> *Id.*

<sup>36</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91550; File No. SR-NYSECHX-2021-06]

### Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

April 14, 2021.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 2, 2021, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 2021. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), 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 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to extend the current pilot

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.