

promoting easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks.

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 Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to relocate the equity and general rules are non-substantive. This rule change is intended to bring greater clarity to the Exchange's Rules and to promote easy comparisons among the various Nasdaq affiliated exchanges' Rulebooks. Renumbering, re-lettering, deleting reserved rules and amending cross-references will bring greater transparency to the Exchange's Rules.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to immediately

relocate its rules and continue to file other rules that are affected by this relocation in a timely manner. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.¹⁷

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 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. Please include File Number SR-Phlx-2021-04 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-Phlx-2021-04. 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

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-Phlx-2021-04 and should be submitted on or before March 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91066; File No. SR-FINRA-2020-038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1, to FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) That Would Require Members To File Retail Communications Concerning Private Placement Offerings That Are Subject to Those Rules' Filing Requirements

February 4, 2021.

I. Introduction

On October 28, 2020, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FINRA-2020-038 ("Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

¹⁸ 17 CFR 200.30-3(a)(12).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

(“Exchange Act”)¹ and Rule 19b-4² thereunder to amend FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placements of Securities) to require members to file retail communications concerning private placement offerings that are subject to those rules’ filing requirements.³ The Proposed Rule Change was published for public comment in the **Federal Register** on November 6, 2020.⁴ On December 11, 2020, FINRA consented to an extension of the time period in which the Commission must approve the Proposed Rule Change, disapprove the Proposed Rule Change, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change to February 4, 2021.⁵ On January 12, 2021, FINRA filed an amendment to modify the Proposed Rule Change (“Amendment No. 1”).⁶ The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁷ to solicit comments on Amendment No. 1 from interested persons and to institute proceedings to determine whether to approve or disapprove the Proposed Rule Change, as modified by Amendment No.1 (“Amended Proposed Rule Change”).

II. Description of the Amended Proposed Rule Change

For certain private placements of unregistered securities issued by a FINRA member or a control entity⁸ (“member private offerings”), FINRA Rule 5122 requires the member or control entity to provide prospective investors⁹ with a private placement memorandum (“PPM”), term sheet or other offering document that discloses the intended use of the offering proceeds, the offering expenses and the amount of selling compensation that

will be paid to the member and its associated persons. Among other things, the current rule also requires a member to file the PPM, term sheet or other offering document with the FINRA Corporate Financing Department at or prior to the first time the document is provided to any prospective investor, as well as any amendments to such documents within 10 days of being provided to any investor or prospective investor.¹⁰ Similarly, for certain private placements¹¹ of unregistered securities issued by a non-member, FINRA Rule 5123 requires members or control persons to file with FINRA any PPM, term sheet or other offering document,¹² including any material amended versions thereof, used in connection with an offering within 15 calendar days of the date of first sale.

FINRA proposes amendments to Rules 5122 and 5123 to require members or control persons to file private placement retail communications¹³ with FINRA, in addition to the currently required PPMs, term sheets, and other offering documents. Specifically, the Amended Proposed Rule Change would require members or control persons to file with the FINRA Corporate Financing Department at, or prior to, the first time the document is provided to any prospective investor, any retail communication that “promotes or recommends” a private placement, rather than any retail communication

that “concerns” a private placement, as originally proposed.¹⁴

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR-FINRA-2020-038 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Amended Proposed Rule Change should be approved or disapproved.¹⁵ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Amended Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the Amended Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹⁶ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the Amended Proposed Rule Change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Amended Proposed Rule Change. Specifically, the Commission is requesting comment on whether the Amended Proposed Rule Change adequately addresses commenters’ concerns regarding the scope of the proposed filing requirement in light of the regulatory goals of improving the quality of broker-dealer private placement communications and strengthening FINRA’s ability to monitor for potential violations of its rules governing members’ communications with the public. In particular, the Commission invites the written views of interested persons concerning whether the Amended Proposed Rule Change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or

¹⁰ See Notice at 71120.

¹¹ See *supra* note 9.

¹² Rules 5122 and 5123 do not enumerate the types of information that might be considered “other offering documents.” However, FINRA has stated previously that an example of “other offering document” is “[a]ny other type of document that sets forth the terms of the offering.” See “Frequently Asked Questions (FAQ) About Private Placements,” Question #10, available on www.finra.org. The terms of an offering include facts such as the amount of proceeds that the issuer intends to raise, the type of security, descriptions or illustrations of the intended use of proceeds, and explanations of tax benefits or other information that would be relevant to an investor when deciding whether to make an investment. See Notice at 71121.

¹³ Rule 2210(a)(5) defines a “retail communication” as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. See *Regulatory Notice 20-21* (July 2020) (stating that a member firm that assists in the preparation of a private placement memorandum or other offering document should expect that it will be considered a communication with the public by that member firm for purposes of Rule 2210 (Communications with the Public)); see also letter from Joseph P. Savage, Vice President and Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated January 12, 2021, available at <https://www.sec.gov/comments/sr-finra-2020-038/srfinra2020038-8233135-227749.pdf>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See *infra* note 4.

⁴ See Exchange Act Release No. 90302 (Nov. 2, 2020), 85 FR 71120 (Nov. 6, 2020) (File No. SR-FINRA-2020-038) (“Notice”).

⁵ See letter from Joseph Savage, Vice President, Office of General Counsel Regulatory Policy, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated December 11, 2020.

⁶ Amendment No. 1 is available at <https://www.finra.org/sites/default/files/2021-01/SR-FINRA-2020-038-Amendment1.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ A “control entity” means any entity that controls or is under common control with a member, or that is controlled by a member or its associated persons. See FINRA Rule 5122(a)(2)-(3); see also Notice at note 3.

⁹ Because of the types of private placements exempt from the application of Rule 5122, FINRA believes that the rule applies predominately to private placements sold to retail investors. See Notice at 71121.

¹⁴ Specifically, Amendment No. 1 would limit the filing requirement of the Proposed Rule Change to those retail communications that “promote or recommend” a private placement, rather than any retail communication that “concerns” a private placement, as originally proposed.

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ *Id.*

disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the Amended Proposed Rule Change should be approved or disapproved by February 24, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 8, 2021.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-FINRA-2020-038 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-FINRA-2020-038. 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 Amended Proposed Rule Change that are filed with the Commission, and all written communications relating to the Amended 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 such filing also will be available for

¹⁷ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

inspection and copying at the principal office of FINRA.

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-FINRA-2020-038 and should be submitted on or before February 24, 2021. If comments are received, any rebuttal comments should be submitted on or before March 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91062; File No. SR-NASDAQ-2021-005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ALPS Active REIT ETF of ALPS ETF Trust To List and Trade Shares of the Fund Under Nasdaq Rule 5750

February 4, 2021.

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 January 25, 2021, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes a rule change relating to the ALPS Active REIT ETF (the “Fund”) of ALPS ETF Trust (the “Trust”), to list and trade shares of the Fund under Nasdaq Rule 5750 (“Proxy Portfolio Shares”). The shares of the

¹⁸ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Fund are collectively referred to herein as the “Shares.”

(b) Not applicable. [sic]

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

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

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

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

1. Purpose

The Commission has approved the listing and trading of Proxy Portfolio Shares under Nasdaq Rule 5750, which governs the listing and trading of Proxy Portfolio Shares on the Exchange.³

The Fund is an actively-managed exchange-traded fund (“ETF”). The Shares are offered by the Trust, which was established as a Delaware statutory trust on September 13, 2007.⁴ The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the “1940 Act”), has filed a registration statement on Form N-1A (“Registration Statement”) relating to the Fund with the Commission.⁵ The Fund is a series of the Trust. ALPS Advisors, Inc. (“Adviser”) is the investment adviser to the Fund. ALPS Portfolio Solutions Distributor, Inc. is the principal underwriter and distributor of the Fund's Shares. ALPS Fund Services, Inc. acts as the administrator and provides fund

³ The Commission approved Nasdaq Rule 5750 in Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032).

⁴ The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 34181 (Jan. 21, 2021) (“Exemptive Order”).

⁵ The Registration Statement is available on the Commission's website at https://www.sec.gov/Archives/edgar/data/1414040/000139834420019856/fp0058104_485apos.htm.