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 email to rule-comments@ sec.gov. Please include File Number SR–NASDAQ–2017–128 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–2017–128. 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 Number SR–NASDAQ–2017–128 and should be submitted on or before January 30, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.95

Eduardo A. Aleman,  
Assistant Secretary.

[FR Doc. 2018–00161 Filed 1–8–18; 8:45 am]

BILLING CODE 8011–01–P

SEcurities and EXCHANGE COMMISSION

[Investment Company Act Release No. 32960; File No. 812–14821]

Guggenheim Credit Income Fund, et al.; Notice of Application


AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the “Act”) and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (“BDC”) and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: Guggenheim Credit Income Fund (the “Fund”) (f/k/a Carety Credit Income Fund); Guggenheim Partners Investment Management, LLC (“Guggenheim”); Guggenheim Funds Distributors, LLC, Guggenheim Funds Investment Advisors, LLC, Security Investors, LLC (collectively, together with Guggenheim, the “Existing Guggenheim Advisers”); Guggenheim European Credit Fund, Guggenheim Private Debt Fund Note Issuer, LLC, Guggenheim Private Debt Fund, LLC, Guggenheim Private Debt Fund, Ltd., Guggenheim Private Debt Master Fund, LLC, Guggenheim Private Debt Fund Note Issuer 2.0, LLC, Guggenheim Private Debt Fund 2.0, LLC, Guggenheim Private Debt Fund 2.0, Ltd., Guggenheim Private Debt Master Fund 2.0, LLC, Guggenheim Private Debt MFLTB 2.0, LLC, NZC Guggenheim Fund LLC, NZC Guggenheim Fund Limited, NZC Guggenheim Master Fund Limited, NZCG Funding Ltd., NZCG Funding 2 Limited, South Dock Funding Limited, NZC Guggenheim Note Issuer I, L.P., NZC Guggenheim Funding LLC, Guggenheim U.S. Loan Fund, Guggenheim U.S. Loan Fund II, Guggenheim U.S. Loan Fund III, Guggenheim Opportunistic U.S. Loan and Bond Fund IV, GFI Fund, and GHY Fund (collectively, the “Existing Affiliated Investors”).

FILING DATES: The application was filed on September 22, 2017, and amended on November 22, 2017.

HEARING OR NOTIFICATION OF HEARING:

An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 29, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: Guggenheim and the Fund: 330 Madison Avenue, New York, NY 10017; the Existing Guggenheim Advisers and the Existing Affiliated Investors: 100 Wilshire Boulevard, 5th Floor, Santa Monica, CA 90401.


SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an applicant using the Company name box, at http:// www.sec.gov/search/search.htm or by calling (202) 551–8090.

Applicants’ Representations

1. The Fund is a Delaware statutory trust organized as a closed-end management investment company that has elected to be regulated as a BDC under the Act.1 The Fund serves as the

master fund in a master-feeder structure with three feeder funds and makes investments with the proceeds it receives from the sale of shares of the feeder funds. The Fund’s Objectives and Strategies are to provide shareholders with current income, capital preservation and, to a lesser extent, long-term capital appreciation. The Fund invests primarily in large, privately-negotiated loans to private middle market U.S. companies and in opportunities that are originated by various intermediaries where the Fund is able to play a differentiated role gaining outsized allocation, influencing structure, pricing, and fees compared to the broader market (this could include more broadly syndicated assets such as bank loans and corporate bonds). The Fund has a five member Board, of which three members are Independent Trustees.

2. Guggenheim is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940 (the “Advisers Act”). Guggenheim serves as the investment adviser to the Fund. Guggenheim also provides administrative services to the Fund under an administrative services agreement. Guggenheim is part of the investment management business of Guggenheim Partners LLC, a privately held, global financial services firm.

3. Each Existing Affiliated Investor is a privately-offered fund that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. An Existing Guggenheim Adviser serves as the investment adviser to each Existing Affiliated Investor. Each Existing Guggenheim Adviser is either controlled by Guggenheim or under common control with Guggenheim and is registered as an investment adviser under the Advisers Act.

4. Applicants seek to supersede the Prior Order to permit one or more Affiliated Investors to participate in the same investment opportunities through a proposed co-investment program (the “Co-Investment Program”) where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and the rules under the Act. For purposes of the application, “Co-Investment Transaction” means any transaction in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary, as defined below) participated together with one or more other Regulated Entities and/or one or more Affiliated Investors in reliance on the requested Order or the Prior Order.

5. Applicants state that a Regulated Entity may, from time to time, form a Wholly-Owned Investment Subsidiary. Commission on June 28, 2016 (the “Prior Order”) that was granted pursuant to Sections 57(a)(4) and 57(i) and Rule 17d–1, with the result that no person will control the Prior Order if the Order is granted, Carey Credit Income Fund, et al. Investment Company Act Release Nos. 32138 (June 2, 2016) (notice) and 32164 (June 28, 2016) (order). All existing entities that currently intend to rely on the Order have been named as applicants. Any other existing or future entity that relies on the Order in the future will comply with the terms and conditions of the application.

6. Applicants seek to supersede the Prior Order to permit one or more Affiliated Investors to participate in the same investment opportunities through a proposed co-investment program (the “Co-Investment Program”) where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and the rules under the Act. For purposes of the application, “Co-Investment Transaction” means any transaction in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary, as defined below) participated together with one or more other Regulated Entities and/or one or more Affiliated Investors in reliance on the requested Order or the Prior Order. Potential Co-Investment Transaction means any investment opportunity in which a Regulated Entity (or its Wholly-Owned Investment Subsidiary) could not participate together with one or more Affiliated Investors and/or one or more other Regulated Entities without obtaining and relying on the Order.

7. Applicants state that a Regulated Entity may, from time to time, form a Wholly-Owned Investment Subsidiary. Commission on June 28, 2016 (the “Prior Order”) that was granted pursuant to Sections 57(a)(4) and 57(i) and Rule 17d–1, with the result that no person will control the Prior Order if the Order is granted, Carey Credit Income Fund, et al. Investment Company Act Release Nos. 32138 (June 2, 2016) (notice) and 32164 (June 28, 2016) (order). All existing entities that currently intend to rely on the Order have been named as applicants. Any other existing or future entity that relies on the Order in the future will comply with the terms and conditions of the application.
evaluate the investment opportunity as to its appropriateness for such
Regulated Entity taking into consideration the Regulated Entity’s
Objectives and Strategies.

7. Applicants state that Guggenheim
serves as the Fund’s investment adviser
and administrator and either it or
another Guggenheim Adviser will serve
in the same capacity to any Future
Regulated Entity. Applicants represent
that a Guggenheim Adviser will identify
and recommend investments for each
Regulated Entity and will have the
authority to approve or reject all
investments proposed for the Regulated Entity.

8. Applicants state that each
Guggenheim Adviser has (or will have,
in the case of future advisers) an
investment committee through which it
will carry out its obligation under
condition 1 to make a determination as
to the appropriateness of a Potential Co-
Investment Transaction for each
Regulated Entity. Applicants represent
that each Guggenheim Adviser, as a
registered investment adviser, has (or
will have, in the case of future advisers)
developed a robust allocation process
that is designed to allocate investment
opportunities fairly and equitably
among its clients over time. Applicants
state that, in the case of a Potential Co-
Investment Transaction, the applicable
Guggenheim Adviser would apply its
allocation policies and procedures in
determining the proposed allocation for
the Regulated Entity consistent with the
requirements of condition 2(a).

9. Applicants state that, once the
applicable Guggenheim Adviser’s
investment committee approves a
transaction, the Guggenheim Adviser
would present the Potential Co-
Investment Transaction and proposed
allocation to the Regulated Entity’s
Board for its approval in accordance
with the conditions to the application.

10. If the applicable Guggenheim
Adviser to a Regulated Entity
determines that a Potential Co-
Investment Transaction is appropriate
for the Regulated Entity, and one or
more other Regulated Entities and/or
one or more Affiliated Investors may
also participate, the Guggenheim
Adviser will present the investment
opportunity to the Eligible Trustees10 of
the Regulated Entity prior to the actual
investment by the Regulated Entity. As
to any Regulated Entity, a Co-
Investment Transaction will be
consummated only upon approval by a
required majority of the Eligible

10 “Eligible Trustees” means the trustees or
directors of a Regulated Entity that are eligible to
vote under section 57(o) of the Act.

Trustees of such Regulated Entity
within the meaning of section 57(o) of
the Act (“Required Majority”).11

11. With respect to the pro rata
dispositions and follow-on Investments
provided in conditions 7 and 8, a
Regulated Entity may participate in a
pro rata disposition or follow-on
investment without obtaining prior
approval of the Required Majority if,
among other things: (i) The proposed
participation of each Regulated Entity
and Affiliated Investor in such
disposition is proportionate to its
outstanding investments in the issuer
immediately preceding the disposition
or follow-on investment, as the case
may be; and (ii) each Regulated Entity’s
Board has approved that Regulated
Entity’s participation in pro rata
dispositions and follow-on investments
as being in the best interests of the
Regulated Entity. If the Board does not
so approve, any such disposition or
follow-on investment will be submitted
to the Regulated Entity’s Eligible
Trustees. The Board of any Regulated
Entity may at any time suspend, suspend
or qualify its approval of pro rata
dispositions and follow-on investments
with the result that all dispositions and/
or follow-on investments must be
submitted to the Eligible Trustees.

12. No Independent Trustee of a
Regulated Entity will have a financial
interest in any Co-Investment
Transaction.

13. Under condition 15, if a
Guggenheim Adviser or its principals,
or any person controlling, controlled by,
or under common control with the
Guggenheim Adviser or its principals,
and any Affiliated Investors
(collectively, the “Holders”) own in
the aggregate more than 25% of the
outstanding voting securities of a
Regulated Entity (“Shares”), then the
Holders will vote such Shares as
directed by an independent third party
when voting on matters specified in the
condition. Applicants believe that this
condition will ensure that the
Independent Trustees will act
independently in evaluating the Co-
Investment Program, because the ability
of the Guggenheim Adviser or its
principals to influence the Independent
Trustees by a suggestion, explicit or
implied, that the Independent Trustees

11 In the case of a Regulated Entity that is a
registered closed-end fund, the trustees or
directors that make up the Required Majority
will be determined as if the Regulated Entity were a BDC
subject to section 57(o). As defined in section 57(o),
“required majority” means “both a majority of a
business development company’s directors or
general partners who have no financial interest in
such transaction, plan, or arrangement and a
majority of such directors or general partners who
are not interested persons of such company.”

12 Applicants represent that the Independent Trustees shall evaluate
and approve any such independent third party, taking into account its
qualifications, reputation for independence, cost to the shareholders,
and other factors that they deem
relevant.

 Applicants’ Legal Analysis

1. Section 17(d) of the Act and rule
17d–1 under the Act prohibit
participation by a registered investment
company and an affiliated person in any
“joint enterprise or other joint
arrangement or profit-sharing plan,” as
defined in the rule, without prior
approval by the Commission by order
upon application. Section 17(d) of the
Act and rule 17d–1 under the Act are
applicable to Regulated Entities that are
registered closed-end investment
companies. Similarly, with regard to
BDCs, section 57(a)(4) of the Act makes it
unlawful for any person who is
related to a BDC in a manner described
in section 57(b), acting as principal,
knowingly to effect any transaction in
which the BDC (or a company
controlled by such BDC) is a joint or a
joint and several participant with that
person in contravention of rules as
prescribed by the Commission. Because
the Commission has not adopted any
rules expressly under section 57(a)(4),
section 57(i) provides that the rules
under section 17(d) applicable to
registered closed-end investment
companies (e.g., rule 17d–1) are, in the
interim, deemed to apply to transactions
subject to section 57(a). Rule 17d–1, as
made applicable to BDCs by section
57(i), prohibits any person who is
related to a BDC in a manner described
in section 57(b), as modified by rule
57b–1, from acting as principal, from
participating in, or effecting any
transaction in connection with, any
joint enterprise or other joint
arrangement or profit-sharing plan in
which the BDC (or a company
controlled by such BDC) is a participant,
unless an application regarding the joint
enterprise, arrangement, or profit-
sharing plan has been filed with the
Commission and has been granted by an
order entered prior to the submission of
the plan or any modification thereof, to
security holders for approval, or prior to
its adoption or modification if not so
submitted.

2. In passing upon applications under
rule 17d–1, the Commission considers
whether the company’s participation in
the joint transaction is consistent with
the provisions, policies, and purposes
of the Act and the extent to which such
participation is on a basis different from
or less advantageous than that of other participants.

3. Applicants submit that each Regulated Entity may be deemed to be an "affiliated person" of each other Regulated Entity within the meaning of section 2(a)(3) of the Act. Applicants state that the Regulated Entities, by virtue of each having a Guggenheim Adviser, may be deemed to be under common control, and thus affiliated persons of each other under section 2(a)(3)(C) of the Act. Section 17(d) and section 57(b) apply to any investment adviser to a closed-end fund or a BDC, respectively. Thus, a Guggenheim Adviser and any Affiliated Investors that it advises could be deemed to be persons related to Regulated Entities in a manner described by sections 17(d) and 57(b) and therefore prohibited by sections 17(d) and 57(a)(4) and rule 17d–1 from participating in the Co-Investment Program. Applicants further submit that, because the Guggenheim Advisers are "affiliated persons" of other Guggenheim Advisers, Affiliated Investors advised by any of them could be deemed to be persons related to Regulated Entities (or a company controlled by a Regulated Entity) in a manner described by sections 17(d) and 57(b) and also prohibited from participating in the Co-Investment Program.

4. Applicants state that they expect that that co-investment in portfolio companies by a Regulated Entity, one or more other Regulated Entities and/or one or more Affiliated Investors will increase favorable investment opportunities for each Regulated Entity.

5. Applicants submit that the fact that the Required Majority will approve each Co-Investment Transaction before investment (except for certain dispositions or follow-on investments, as described in the conditions), and other protective conditions set forth in the application, will ensure that each Regulated Entity will be treated fairly. Applicants state that each Regulated Entity’s participation in the Co-Investment Transactions will be consistent with the provisions, policies and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants. Applicants further state that the terms and conditions proposed herein will ensure that all such transactions are reasonable and fair to each Regulated Entity and the Affiliated Investors and do not involve overreaching by any person concerned, including Guggenheim.

Applicants’ Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time a Guggenheim Adviser considers a Potential Co-Investment Transaction for an Affiliated Investor or another Regulated Entity that falls within a Regulated Entity’s then-current Objectives and Strategies, the Guggenheim Adviser to the Regulated Entity will make an independent determination of the appropriateness of the investment for the Regulated Entity in light of the Regulated Entity’s then-current circumstances.

2. a. If the Guggenheim Adviser to a Regulated Entity deems participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Entity, the Guggenheim Adviser will then determine an appropriate level of investment for such Regulated Entity.

b. If the aggregate amount recommended by the Guggenheim Adviser to a Regulated Entity to be invested by the Regulated Entity in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Entities and Affiliated Investors, collectively, in the same transaction, exceeds the amount of the investment opportunity, the amount of the investment opportunity will be allocated among the Regulated Entities and such Affiliated Investors, pro rata based on each participant’s Available Capital 12 for investment in the asset class being allocated, up to the amount proposed to be invested by each. The Advisers to each participating Regulated Entity will provide the Eligible Trustees of each participating Regulated Entity with information concerning each participating party’s Available Capital to assist the Eligible Trustees with their review of the Regulated Entity’s investments for compliance with these allocation procedures.

c. After making the determinations required in conditions 1 and 2(a) above, the Advisers to the Regulated Entity will distribute written information concerning the Potential Co-Investment Transaction, including the amount proposed to be invested by each Regulated Entity and any Affiliated Investor, to the Eligible Trustees of each participating Regulated Entity for their consideration. A Regulated Entity will co-invest with one or more other Regulated Entities and/or an Affiliated Investor only if, prior to the Regulated Entities’ and the Affiliated Investors’ participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Entity and its shareholders and do not involve overreaching in respect of the Regulated Entity or its shareholders on the part of any person concerned;

(ii) The Potential Co-Investment Transaction is consistent with:

(a) The interests of the Regulated Entity’s shareholders; and

(b) the Regulated Entity’s then-current Objectives and Strategies;

(iii) the investment by any other Regulated Entity or an Affiliated Investor would not disadvantage the Regulated Entity, and participation by the Regulated Entity would not be on a basis different from or less advantageous than that of any other Regulated Entity or Affiliated Investor; provided, that if another Regulated Entity or Affiliated Investor, but not the Regulated Entity itself, gains the right to nominate a director for election to a portfolio company’s board of directors or the right to have a board observer, or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit a Required Majority from reaching the conclusions required by this condition 2(c)(iii), if:

(a) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any; and

(b) the Guggenheim Adviser to the Regulated Entity agree to, and do, provide periodic reports to the Regulated Entity’s Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(c) any fees or other compensation that any other Regulated Entity or any Affiliated Investor or any affiliated person of any other Regulated Entity or an Affiliated Investor directed in connection with the right of one or more Regulated Entities or Affiliated Investors

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12 “Available Capital” means (a) for each Regulated Entity, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set from time to time by the Board of the applicable Regulated Entity or imposed by applicable laws, rules, regulations or interpretations and (b) for each Affiliated Investor, the amount of capital available for investment determined based on the amount of cash on hand, existing commitments and reserves, if any, the targeted leverage level, targeted asset mix and other investment policies and restrictions set by the Affiliated Investor’s directors, general partners or adviser or imposed by applicable laws, rules, regulations or interpretations.
to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Investors (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Entity in accordance with the amount of each party’s investment; and

(iv) the proposed investment by the Regulated Entity will not benefit the Guggenheim Adviser, any other Regulated Entity or the Affiliated Investors or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted under sections 17(e) and 57(k) of the Act, as applicable, (C) in the case of fees or other compensation described in condition 2(c)(iii)(c), or (D) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction.

3. Each Regulated Entity will have the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Guggenheim Adviser will present to the Board of each Regulated Entity, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Entities or any of the Affiliated Investors during the preceding quarter that fell within the Regulated Entity’s then-current Objectives and Strategies that were not made available to the Regulated Entity, and an explanation of why the investment opportunities were not offered to the Regulated Entity. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Entity and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for follow-on investments made in accordance with condition 8, a Regulated Entity will not invest in reliance on the Order in any issuer in which another Regulated Entity or an Affiliated Investor or any affiliated person of another Regulated Entity or an Affiliated Investor is an existing investor.

6. A Regulated Entity will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Entity and Affiliated Investor. The grant to one or more Regulated Entities or Affiliated Investors, but not the Regulated Entity itself, of the right to nominate a director for election to a portfolio company’s board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(a), (b) and (c) are met.

7. a. If any Regulated Entity or Affiliated Investor elects to sell, exchange or otherwise dispose of an interest in a security that was acquired by one or more Regulated Entities and/or Affiliated Investors in a Co-Investment Transaction, the Guggenheim Adviser will:

(i) Notify each Regulated Entity that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Entity in the disposition.

b. Each Regulated Entity will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Investors and any other Regulated Entity.

c. A Regulated Entity may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the follow-on investment; and (ii) the Regulated Entity’s Board has approved as being in the best interests of such Regulated Entity the ability to participate in follow-on investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Guggenheim Adviser will provide its written recommendation as to such Regulated Entity’s participation to the Eligible Trustees, and the Regulated Entity will participate in such follow-on investment solely to the extent that the Required Majority determines that it is in such Regulated Entity’s best interests.

d. If, with respect to any follow-on investment:

(i) The amount of a follow-on investment is not based on the Regulated Entities’ and the Affiliated Investors’ outstanding investments immediately preceding the follow-on investment; and

(ii) the aggregate amount recommended by the Guggenheim Adviser to be invested by the Regulated Entity in the follow-on investment, together with the amount proposed to be invested by the other participating Regulated Entities and the Affiliated Investors in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each participant’s Available Capital for investment in the asset class being allocated, up to the amount proposed to be invested by each.

8. a. If any Regulated Entity or Affiliated Investor desires to make a “follow-on investment” (i.e., an additional investment in the same entity, including through the exercise of warrants or other rights to purchase securities of the issuer) in a portfolio company whose securities were acquired by the Regulated Entity and the Affiliated Investor in a Co-Investment Transaction, the Advisers will:

(i) Notify each Regulated Entity of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed follow-on investment, by each Regulated Entity.

b. A Regulated Entity may participate in such follow-on investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Investor in such investment is proportionate to its outstanding investments in the issuer immediately preceding the follow-on investment; and (ii) the Regulated Entity’s Board has approved as being in the best interests of such Regulated Entity the ability to participate in follow-on investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Guggenheim Adviser will provide its written recommendation as to such Regulated Entity’s participation to the Eligible Trustees, and the Regulated Entity will participate in such follow-on investment solely to the extent that the Required Majority determines that it is in such Regulated Entity’s best interests.

d. The acquisition of follow-on investments as permitted by this
condition will be considered a Co-Investment Transaction for all purposes and be subject to the other conditions set forth in the application.

9. The Independent Trustees of each Regulated Entity will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Entities or Affiliated Investors that a Regulated Entity considered but declined to participate in, so that the Independent Trustees may determine whether all investments made during the preceding quarter, including those investments which the Regulated Entity considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Trustees will consider at least annually the continued appropriateness for such Regulated Entity of participating in new and existing Co-Investment Transactions.

10. Each Regulated Entity will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Entities were a BDC and each of the investments permitted under these conditions were approved by a Required Majority under section 57(f).

11. No Independent Trustee of a Regulated Entity will also be a trustee, director, general partner, managing member or principal, or otherwise an "affiliated person" (as defined in the Act) of any Affiliated Investor.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) shall, to the extent not payable by the Guggenheim Advisers under their respective advisory agreements with the Regulated Entities and the Affiliated Investors, be shared by the Regulated Entities and the Affiliated Investors in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding brokers' fees contemplated by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Entities and Affiliated Investors on a pro rata basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is held by a Guggenheim Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Guggenheim Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Entities and Affiliated Investors based on the amount they invest in the Co-Investment Transaction. None of the other Regulated Entities, Affiliated Investors, the Guggenheim Advisers nor any affiliated person of the Regulated Entities or the Affiliated Investors will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Entities and the Affiliated Investors, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(c) and (b) in the case of the Guggenheim Advisers, investment advisory fees paid in accordance with the Regulated Entities' and the Affiliated Investors' investment advisory agreements).

14. If the Holders own in the aggregate more than 25 percent of the shares of a Regulated Entity, then the Holders will vote such shares as directed by an independent third party when voting on (1) the election of directors or trustees; (2) the removal of one or more directors or trustees; or (3) any matters requiring approval by the vote of a majority of the outstanding voting securities, as defined in section 2(a)(42) of the Act.

15. Each Regulated Entity's chief compliance officer, as defined in Rule 38a–1(a)(4), will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Regulated Entity's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34–82440; File No. S7–24–89]

Joint Industry Plan; Notice of Filing and Immediate Effectiveness of the Forty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis


Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),1 and Rule 608 thereunder,2 notice is hereby given that on December 14, 2017, the Participants3 in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("NASDAQ/UTP Plan" or "Plan") filed with the Securities and Exchange Commission ("Commission") a proposal to amend the NASDAQ/UTP Plan.4 The amendment is the 41st Amendment to the NASDAQ/UTP Plan ("Amendment").5

The Amendment proposes to modify the text of the fee schedule of the Plan to adopt a "Multiple Instance, Single User" ("MISU") Program that aligns with the MISU Program used by the CTA and CQ Plans. As explained in greater detail below, the Participants state that the Amendment moves towards harmonizing the fees under the Plan with the fees under the CTA and

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3 The Participants are: Choe BYX Exchange, Inc.; Choe BZX Exchange, Inc.; Choe EDGX Exchange, Inc.; Choe EDGX Exchange, Inc.; Choe Exchange, Inc.; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors Exchange LLC; Nasdaq BX, Inc.; Nasdaq ISIE, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE American LLC; and NYSE National, Inc. (collectively, the "Participants").
4 The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).
5 See Letter from Emily Kasparov to Brent J. Fields, Secretary, Commission, dated December 13, 2017 ("Transmittal Letter").