

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2013 - * 094	Amendment No. (req. for Amendments *)
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Filing by NASDAQ Stock Market  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input checked="" type="checkbox"/> Section 806(e)(2) <input checked="" type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input checked="" type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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**Description**

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

Conforming Rule 5705 in Respect of Index Fund Securities.

**Contact Information**

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

First Name \* Jurij      Last Name \* Trypupenko

Title \* Associate General Counsel

E-mail \* jurij.trypupenko@nasdaqomx.com

Telephone \* (301) 978-8132      Fax (301) 978-8472

**Signature**

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

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

(Title \*)

Date 06/27/2013      Executive Vice President and General Counsel

By Edward S. Knight     

(Name \*)

Edward S Knight,

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

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

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

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend Rule 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares) regarding the definition of Derivative Securities Products, weight of component stocks of an index or portfolio, averaging minimum notional value traded per month, and minimum number of component stocks. The Exchange is making these changes to conform its rules with those of another market.

The Exchange requests that the Commission waive the 30-day operative delay period.

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

(b) Not applicable.

(c) Not applicable.

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

<sup>2</sup> 17 CFR 240.19b-4.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on July 10, 2012. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Jurij Trypupenko, Associate General Counsel, NASDAQ OMX, at (301) 978-8132.

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

a. Purpose

The purpose of this proposed rule change is to amend Rule 5705(b)(3) and (b)(4) regarding the definition of Derivative Securities Products, weight of component stocks of an index or portfolio,<sup>3</sup> averaging minimum notional value traded per month, and minimum number of component stocks.

The Exchange is making the proposed changes to conform its Rule 5705(b) with the rule of another market, namely NYSE Arca (“Arca”).

The proposed changes are all based on, and virtually identical to, equivalent provisions in Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A) and Commentary .02(a)(5) (the “Arca rule”).<sup>4</sup>

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<sup>3</sup> “Index or portfolio” is discussed in Rule 5705(b)(3)(A)(i).

<sup>4</sup> While in all instances the rule changes proposed by the Exchange are done to conform Exchange Rule 5705(b) with Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A), and in all instances are based on Arca rule language, the rule changes

By way of background, the Exchange has ETF listing provisions in Rule 5705 for different types of ETFs, including domestic and international Portfolio Depository Receipts (“PDRs”)<sup>5</sup> in subsection (a) and Index Fund Shares (“IFSs”)<sup>6</sup> in subsection (b).

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proposed by the Exchange are tailored to work within the existing structure of Exchange Rule 5705(b).

<sup>5</sup> The term “Portfolio Depository Receipt” means a security: (i) that is based on a unit investment trust (“Trust”) which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts; (ii) that is issued by the Trust in a specified aggregate minimum number in return for a “Portfolio Deposit” consisting of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above; (iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof then comprising the “Portfolio Deposit”; and (iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the securities index or portfolio of securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus. Rule 5705(a)(1)(A).

<sup>6</sup> The term “Index Fund Share” means a security: (i) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index or combination thereof; (ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above, with a value equal to the next determined net asset value; and (iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof, with a value equal to the next determined net asset value. Rule 5705(b)(1)(A).

Subsection (a) and (b) include listing provisions pursuant to Rule 19b-4(e) under the Act<sup>7</sup> indicating that the component stocks of (i) an index or portfolio of US Component Stocks<sup>8</sup> underlying a series of PDRs or IFSs shall meet five criteria;<sup>9</sup> and (ii) regarding global indexes or portfolios,<sup>10</sup> underlying a series of PDRs or IFSs shall meet five criteria.<sup>11</sup> Rule 5705(a) and (b) are like the Arca rule, except that Rule 5705 (b) lacks certain language regarding listing IFSs. This proposal simply adds language to subsections (b)(3) and (b)(4) of Rule 5705 to make it similar to the Arca rule.

#### The Proposed Rule Changes

First, the Exchange proposes to exclude “Derivative Securities Products” from Rule 5705(b)(3)(A)(i) a., b., and c. for U.S. Indexes or portfolios, and from Rule 5705(b)(3)(A)(ii) a., b., and c. for international or global indexes or portfolios.

“Derivative Securities Products” include the following types of products: ETFs consisting

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<sup>7</sup> 17 CFR 240.19b-4(e).

<sup>8</sup> The term "U.S. Component Stock" means an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act. Rule 5705(b)(1)(D).

<sup>9</sup> Rule 5705(a)(3)(A)(i) a. through e. and (b)(3)(A)(i) a. through e.

<sup>10</sup> The components of a global (aka international) index or portfolio consists of either only Non-U.S. Component Stocks or both U.S. Component Stocks and Non-U.S. Component Stocks. The term "Non-U.S. Component Stock" means an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). Rule 5705(a)(1)(D) and (b)(1)(E).

<sup>11</sup> Rule 5705(a)(3)(A)(ii) a. through e and (b)(3)(A)(ii) a. through e.

of PDRs and IFSs (Rule 5705); Trust Issued Receipts (Rule 5720); Managed Fund Shares (Rule 5735); and Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Shares, (Rule 5711).<sup>12</sup> Arca's definition of Derivative Securities Products<sup>13</sup> includes one product (Paired Trust Shares) that is not included in the Exchange's definition of Derivative Securities Products. As such, the Exchange and Arca definitions of Derivative Securities Products as proposed are therefore similar. In addition, the Exchange proposes in Rule 5705(b) to exclude Derivative Securities Products in exactly the same places, and in same manner, as the equivalent sections of the Arca rule.

Second, the Exchange proposes to modify Rule 5705 (b)(3)(A)(i)(b) and 5705 (b)(3)(A)(ii)(b) to indicate the appropriate value or weight of the index and the averaged minimum notional value traded per month. Specifically, these proposed sections would indicate that component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the weight of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000 shares or minimum notional volume traded per month of \$25,000,000, averaged

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<sup>12</sup> Definitions of or discussions regarding the noted products can be found in the specified Exchange rules.

<sup>13</sup> Arca states in Equities Rule 5.2(j)(3), Commentary .01(a)(A) that Derivative Securities Products include Units (known as ETFs on the Exchange) and securities defined in Section 2 of Arca Equity Rule 8.

over the last six months.<sup>14</sup> The proposed changes would make Rule 5705 (b)(3)(A)(i)(b) and 5705 (b)(3)(A)(ii)(b) exactly like the equivalent sections of the Arca rule. The proposed changes allow setting the weight of the index or portfolio at 70% and averaging trading volume over six months, as allowed by the Arca rule.

Third, the Exchange proposes to modify Rule 5705 (b)(3)(A)(i)(d) and 5705 (b)(3)(A)(ii)(d) to indicate how many component stocks an index or portfolio must have at a minimum. Specifically, the proposed sections would indicate that the index or portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if either one or more series of IFSs or PDRs constitute, at least in part, components underlying a series of IFSs, or one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio.<sup>15</sup> This change would indicate that the Exchange, like Arca, does not require a set minimum number of component stocks if, for example, IFSs or PDRs (which must each meet specified Exchange listing standards in their own right) underlie a series of IFSs. Again, the proposed changes would make Rule 5705 (b)(3)(A)(i)(d) and 5705 (b)(3)(A)(ii)(d) exactly like the equivalent sections of the Arca rule.

Fourth, the Exchange proposes to modify Rule 5705 (b)(3)(A)(i)(c) and 5705 (b)(3)(A)(ii)(c) to clarify that, to the extent applicable, the five most heavily weighted component stocks would not exceed a given weight. Specifically, these proposed

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<sup>14</sup> Rule 5705 (b)(3)(A)(ii)(b), which deals with global (international) indexes or portfolios is, however, written in terms of worldwide monthly trading volume and global notional volume.

<sup>15</sup> Rule 5705 (b)(3)(A)(ii)(d), however, which deals with global (international) indexes or portfolios, requires a minimum of 20 component stocks.



sections would, like the Arca rule, indicate that, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 65% of the weight of the index or portfolio.<sup>16</sup>

Fifth, the Exchange proposes to modify Rule 5705(b)(4)(A)(v) to insert “one consisting entirely of” into the existing rule text. The proposed rule text would state that an underlying index or portfolio (excluding one consisting entirely of exempted securities) must include securities from a minimum of 13 non-affiliated issuers. As with all other proposed rule changes, this is done to conform Rule 5705(b)(4)(A)(v) to the Arca rule.

All of the rule changes proposed are done solely to align Exchange Rule 5705 and the Arca rule. The Exchange believes that by conforming the rules, and allowing listing opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for listing and trading Index Fund Shares on equivalent terms, and thereby promote competition.<sup>17</sup>

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> in particular,

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<sup>16</sup> Rule 5705 (b)(3)(A)(ii)(c), however, which deals with global (international) indexes or portfolios, is written in terms of 60% of the weight of the index or portfolio.

<sup>17</sup> No other changes are made or intended by this filing and existing listing and trading rules continue to be applicable to Index Fund Shares.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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. For the reasons noted in the filing, the Exchange proposes to amend Rule 5705 regarding the definition of Derivative Securities Products, weight of component stocks of an index or portfolio, averaging minimum notional value traded per month, and minimum number of component stocks. The proposed changes do nothing more than match Exchange rules with what is currently available on other exchanges. The Exchange believes that by conforming its rules and allowing listing opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for listing and trading Index Fund Shares products and thereby promote broader competition among exchanges.

4. 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. To the contrary, where the current variance in the rules of the exchanges limits competition, the proposal will allow listing equivalent products on the Exchange, thereby promoting increased competition for listings among markets.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for

Commission action.

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

The Exchange asserts that the 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 after its filing date, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests waiver of the operative delay so that it may have rules that are similar to those of other exchanges. This would, from a

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

competitive perspective, enable the Exchange to offer Index Fund Shares products to traders and investors, particularly as the strategies and components of these products continue to evolve and offer access to a broader range of asset classes. With the increased choices, market participants could diversify their listing strategies while avoiding the risk of concentration on only one exchange, which would be beneficial to the protection of investors and in the public interest.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

The proposed rule changes would make Rule 5705(b), as amended, substantially similar to Arca Equities Rule 5.2(j)(3), Commentary .01(a) and Commentary .02(a) (with changes as noted above).<sup>22</sup>

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

Not applicable.

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<sup>22</sup> See, e.g., Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008)(SR-NYSEArca-2008-29)(order approving).

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

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Proposed rule text.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2013-094)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness Regarding Conforming Rule 5705 in Respect of Index Fund Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 27, 2013, 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, II, and III, below, which Items have been prepared by NASDAQ. 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

NASDAQ is filing with the Commission a proposal to amend Rule 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares) regarding the definition of Derivative Securities Products, weight of component stocks of an index or portfolio, averaging minimum notional value traded per month, and minimum number of component stocks. The Exchange is making these changes to conform its rules with those of another market.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

The text of the proposed rule change is available from NASDAQ's website at <http://nasdaq.cchwallstreet.com>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change 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. NASDAQ 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 purpose of this proposed rule change is to amend Rule 5705(b)(3) and (b)(4) regarding the definition of Derivative Securities Products, weight of component stocks of an index or portfolio,<sup>3</sup> averaging minimum notional value traded per month, and minimum number of component stocks.

The Exchange is making the proposed changes to conform its Rule 5705(b) with the rule of another market, namely NYSE Arca ("Arca"). The proposed changes are all

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<sup>3</sup> "Index or portfolio" is discussed in Rule 5705(b)(3)(A)(i).

based on, and virtually identical to, equivalent provisions in Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A) and Commentary .02(a)(5) (the “Arca rule”).<sup>4</sup>

By way of background, the Exchange has ETF listing provisions in Rule 5705 for different types of ETFs, including domestic and international Portfolio Depository Receipts (“PDRs”)<sup>5</sup> in subsection (a) and Index Fund Shares (“IFSs”)<sup>6</sup> in subsection (b).

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<sup>4</sup> While in all instances the rule changes proposed by the Exchange are done to conform Exchange Rule 5705(b) with Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A), and in all instances are based on Arca rule language, the rule changes proposed by the Exchange are tailored to work within the existing structure of Exchange Rule 5705(b).

<sup>5</sup> The term “Portfolio Depository Receipt” means a security: (i) that is based on a unit investment trust (“Trust”) which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts; (ii) that is issued by the Trust in a specified aggregate minimum number in return for a “Portfolio Deposit” consisting of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above; (iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof then comprising the “Portfolio Deposit”; and (iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the securities index or portfolio of securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus. Rule 5705(a)(1)(A).

<sup>6</sup> The term “Index Fund Share” means a security: (i) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index or combination thereof; (ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above, with a value equal to the next determined net asset value; and (iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company



Subsection (a) and (b) include listing provisions pursuant to Rule 19b-4(e) under the Act<sup>7</sup> indicating that the component stocks of (i) an index or portfolio of US Component Stocks<sup>8</sup> underlying a series of PDRs or IFSs shall meet five criteria;<sup>9</sup> and (ii) regarding global indexes or portfolios,<sup>10</sup> underlying a series of PDRs or IFSs shall meet five criteria.<sup>11</sup> Rule 5705(a) and (b) are like the Arca rule, except that Rule 5705 (b) lacks certain language regarding listing IFSs. This proposal simply adds language to subsections (b)(3) and (b)(4) of Rule 5705 to make it similar to the Arca rule.

#### The Proposed Rule Changes

First, the Exchange proposes to exclude “Derivative Securities Products” from Rule 5705(b)(3)(A)(i) a., b., and c. for U.S. Indexes or portfolios, and from Rule

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which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof, with a value equal to the next determined net asset value. Rule 5705(b)(1)(A).

<sup>7</sup> 17 CFR 240.19b-4(e).

<sup>8</sup> The term "U.S. Component Stock" means an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act. Rule 5705(b)(1)(D).

<sup>9</sup> Rule 5705(a)(3)(A)(i) a. through e. and (b)(3)(A)(i) a. through e.

<sup>10</sup> The components of a global (aka international) index or portfolio consists of either only Non-U.S. Component Stocks or both U.S. Component Stocks and Non-U.S. Component Stocks. The term "Non-U.S. Component Stock" means an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). Rule 5705(a)(1)(D) and (b)(1)(E).

<sup>11</sup> Rule 5705(a)(3)(A)(ii) a. through e and (b)(3)(A)(ii) a. through e.

5705(b)(3)(A)(ii) a., b., and c. for international or global indexes or portfolios.

“Derivative Securities Products” include the following types of products: ETFs consisting of PDRs and IFSs (Rule 5705); Trust Issued Receipts (Rule 5720); Managed Fund Shares (Rule 5735); and Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Shares, (Rule 5711).<sup>12</sup> Arca’s definition of Derivative Securities Products<sup>13</sup> includes one product (Paired Trust Shares) that is not included in the Exchange’s definition of Derivative Securities Products. As such, the Exchange and Arca definitions of Derivative Securities Products as proposed are therefore similar. In addition, the Exchange proposes in Rule 5705(b) to exclude Derivative Securities Products in exactly the same places, and in same manner, as the equivalent sections of the Arca rule.

Second, the Exchange proposes to modify Rule 5705 (b)(3)(A)(i)(b) and 5705 (b)(3)(A)(ii)(b) to indicate the appropriate value or weight of the index and the averaged minimum notional value traded per month. Specifically, these proposed sections would indicate that component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the weight of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000 shares or minimum notional volume traded per month of \$25,000,000, averaged

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<sup>12</sup> Definitions of or discussions regarding the noted products can be found in the specified Exchange rules.

<sup>13</sup> Arca states in Equities Rule 5.2(j)(3), Commentary .01(a)(A) that Derivative Securities Products include Units (known as ETFs on the Exchange) and securities defined in Section 2 of Arca Equity Rule 8.

over the last six months.<sup>14</sup> The proposed changes would make Rule 5705 (b)(3)(A)(i)(b) and 5705 (b)(3)(A)(ii)(b) exactly like the equivalent sections of the Arca rule. The proposed changes allow setting the weight of the index or portfolio at 70% and averaging trading volume over six months, as allowed by the Arca rule.

Third, the Exchange proposes to modify Rule 5705 (b)(3)(A)(i)(d) and 5705 (b)(3)(A)(ii)(d) to indicate how many component stocks an index or portfolio must have at a minimum. Specifically, the proposed sections would indicate that the index or portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if either one or more series of IFSs or PDRs constitute, at least in part, components underlying a series of IFSs, or one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio.<sup>15</sup> This change would indicate that the Exchange, like Arca, does not require a set minimum number of component stocks if, for example, IFSs or PDRs (which must each meet specified Exchange listing standards in their own right) underlie a series of IFSs. Again, the proposed changes would make Rule 5705 (b)(3)(A)(i)(d) and 5705 (b)(3)(A)(ii)(d) exactly like the equivalent sections of the Arca rule.

Fourth, the Exchange proposes to modify Rule 5705 (b)(3)(A)(i)(c) and 5705 (b)(3)(A)(ii)(c) to clarify that, to the extent applicable, the five most heavily weighted component stocks would not exceed a given weight. Specifically, these proposed

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<sup>14</sup> Rule 5705 (b)(3)(A)(ii)(b), which deals with global (international) indexes or portfolios is, however, written in terms of worldwide monthly trading volume and global notional volume.

<sup>15</sup> Rule 5705 (b)(3)(A)(ii)(d), however, which deals with global (international) indexes or portfolios, requires a minimum of 20 component stocks.

sections would, like the Arca rule, indicate that, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 65% of the weight of the index or portfolio.<sup>16</sup>

Fifth, the Exchange proposes to modify Rule 5705(b)(4)(A)(v) to insert “one consisting entirely of” into the existing rule text. The proposed rule text would state that an underlying index or portfolio (excluding one consisting entirely of exempted securities) must include securities from a minimum of 13 non-affiliated issuers. As with all other proposed rule changes, this is done to conform Rule 5705(b)(4)(A)(v) to the Arca rule.

All of the rule changes proposed are done solely to align Exchange Rule 5705 and the Arca rule. The Exchange believes that by conforming the rules, and allowing listing opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for listing and trading Index Fund Shares on equivalent terms, and thereby promote competition.<sup>17</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove

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<sup>16</sup> Rule 5705 (b)(3)(A)(ii)(c), however, which deals with global (international) indexes or portfolios, is written in terms of 60% of the weight of the index or portfolio.

<sup>17</sup> No other changes are made or intended by this filing and existing listing and trading rules continue to be applicable to Index Fund Shares.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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. For the reasons noted in the filing, the Exchange proposes to amend Rule 5705 regarding the definition of Derivative Securities Products, weight of component stocks of an index or portfolio, averaging minimum notional value traded per month, and minimum number of component stocks. The proposed changes do nothing more than match Exchange rules with what is currently available on other exchanges. The Exchange believes that by conforming its rules and allowing listing opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for listing and trading Index Fund Shares products and thereby promote broader competition among exchanges.

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. To the contrary, where the current variance in the rules of the exchanges limits competition, the proposal will allow listing equivalent products on the Exchange, thereby promoting increased competition for listings among markets.

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

Written comments were neither solicited nor 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)<sup>20</sup> of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>21</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-094 on the subject line.

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2013-094. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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 inspection and copying in the Commission's Public Reference Room. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2013-094 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

Proposed new text is underlined. Deleted text is [bracketed].

**NASDAQ Stock Market  
Equity Rules**

\* \* \* \* \*

**5705. Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares****(a) Portfolio Depository Receipts**

No Change.

**(b) Index Fund Shares**

**(1) – (2)** No Change.

**(3) Equity.** Nasdaq may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied:

**(A) Eligibility Criteria for Index Components.**

**(i) U.S. Index or Portfolio.** Upon the initial listing of a series of Index Fund Shares pursuant to 19b-4(e) under the Act, the component stocks of an index or portfolio of U.S. Component Stocks underlying a series of Index Fund Shares shall meet the following criteria:

**a.** Component stocks (excluding “Derivative Securities Products” as defined in this subsection a.) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum market value of at least \$75 million;

“Derivative Securities Products” include the following: Exchange Traded Funds consisting of Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Trust Issued Receipts (Rule 5720); Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Shares, (Rule 5711); and Managed Fund Shares (Rule 5735).

**b.** Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least [90]70% of the weight of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum monthly trading volume [during each of the last six months ]of [at least ]250,000 shares or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;

**c.** The most heavily weighted component stock (excluding Derivative Securities Products) shall not exceed 30% of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 65% of the weight of the index or portfolio;

**d.** The index or portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if either one or more series of Index Fund Shares or Portfolio Depositary Receipts constitute, at least in part, components underlying a series of Index Fund Shares, or one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio; and

**e.** All securities in the index or portfolio shall be U.S. Component Stocks listed on Nasdaq (including The Nasdaq Capital Market) or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

**(ii)** International or global index or portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Index Fund Shares that consist of either only Non-U.S. Component Stocks or both U.S. Component Stocks and Non-U.S. Component Stocks shall meet the following criteria:

**a.** Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum market value of at least \$100 million;

**b.** Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least [90]70% of the weight of the index or portfolio (excluding Derivative Securities Products) each shall have a minimum worldwide monthly trading volume [during each of the last six months ]of at least 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;

**c.** The most heavily weighted component stock (excluding Derivative Securities Products) shall not exceed 25% of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 60% of the weight of the index or portfolio;

**d.** The index or portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if either one or more series of Index Fund Shares or Portfolio Depository Receipts constitute, at least in part, components underlying a series of Index Fund Shares, or one or more series of Derivative Securities Products account for 100% of the weight of the index or portfolio; and

**e.** Each U.S. Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

**(iii)** No Change.

**(B) – (F)** No Change.

**(4) Fixed Income.** Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof. Nasdaq may approve a series of Index Fund Shares based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Act provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and the rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

**(A) Eligibility Criteria for Index Components.** Upon the initial listing of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, each component of an index or portfolio that underlies a series of Index Fund Shares shall meet the following criteria:

**(i) - (iv)** No Change.

**(v)** An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and

(vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

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