

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="31"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2019"/> - * <input type="text" value="095"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by
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		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	<input type="checkbox"/> 19b-4(f)(6)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposed rule change to modify the Exchange all-inclusive annual listing fees.

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 * Last Name *

Title *

E-mail *

Telephone * Fax

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

By

(Name *)

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

Add Remove View

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

Add Remove View

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) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to modify the Exchange’s all-inclusive annual listing fees for exchange traded products under Nasdaq Rule 5940(b). While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 2, 2020. Therefore, any exchange traded product that lists on Nasdaq before January 2, 2020 will be subject to the rule as in effect before this amendment.³

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

(b) Not applicable.

(c) Not applicable.

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 (the “Board”) on September 25, 2019. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq will maintain in its online rule book, until January 2, 2020, a link to the text of the rule as in effect before this amendment.

Questions and comments on the proposed rule change may be directed to:

Jonathan F. Cayne
Principal Associate General Counsel
Nasdaq, Inc.
301 978 8493

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

a. Purpose

The purpose of the proposed rule change is to modify the Exchange's all-inclusive annual listing fees ("All-Inclusive Annual Listing Fee") for exchange traded products ("ETPs") under Nasdaq Rule 5940(b).⁴ As stated in Nasdaq Rule 5940(b)(1), the issuer of a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable listed on The Nasdaq Global Market pays to Nasdaq an All-Inclusive Annual Listing Fee, calculated on total shares outstanding ("TSO")⁵ and as set forth in Nasdaq Rule 5940(b)(1).⁶ The proposed rule changes are designed to incentivize issuers to list new products, transfer existing products to the Exchange, and retain listings

⁴ See Nasdaq Rule 5940(b).

⁵ In addition, proposed Nasdaq Rule 5940(b)(3) would calculate TSO as "the aggregate number of shares, issued by one or more Companies with the same sponsor, of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable, listed on The Nasdaq Global Market as shown in the Company's most recent periodic report required to be filed with the Company's appropriate regulatory authority or in more recent information held by Nasdaq. For purposes of this rule, "sponsor" is defined as an investment adviser (or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended) to one or more Companies."

⁶ See Nasdaq Rule 5940(b)(1).

on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors. In addition, and as described below, the proposed fee changes will also allow for increased investment by the Exchange into its ETP business and allow for enhancements that will benefit issuers of Nasdaq-listed ETPs and their investors.

The fees in the current All-Inclusive Annual Listing Fee schedule have remained unchanged for more than 17 years since they were first adopted back in 2002.⁷ The ETP world has evolved greatly since 2002 when ETPs in the U.S. numbered approximately 130 with total net assets of \$102 billion. Compare this to 2018 when the number of ETPs in the U.S. had grown to over 2,300 with \$3.37 trillion in total net assets.⁸

Under the current All-Inclusive Annual Listing Fees schedule, included below, there are 17 pricing tiers. The tiers begin with the lowest pricing tier of \$6,500 for TSOs of up to 1 million to the top pricing tier of \$14,500 for TSOs over 16 million.

As detailed in the charts below, the proposed new fee schedule reduces the number of pricing tiers from 17 to 10. The 10 new proposed pricing tiers begin with the lowest pricing tier of up to 1 million TSO to the top pricing tier for over 250 million TSO. The proposed All-Inclusive Annual Listing Fees range from \$6,000 to \$50,000. In

⁷ See Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002) (SR-NASD-2002-45).

⁸ See M. Sznuguera. Number of ETPs in the U.S. 2000-2018 (Mar. 15, 2019) (Graph); Total net assets of ETFs in the U.S. 2002-2018 (May 10, 2019) (Graph). Retrieved from Statista database.

each case, the All-Inclusive Annual Listing Fee will be based on a sponsor's⁹ aggregate TSO.

As a result of the Exchange simplifying the pricing tiers for its All-Inclusive Annual Fee for ETPs by reducing their number from 17 to 10, some sponsors may pay more while others may pay the same or less. Specifically, the Exchange will charge an All-Inclusive Annual Listing Fee for ETPs with the fewest total shares outstanding (sponsors with up to 1 million TSO) of \$500 less.¹⁰ Sponsors in the next proposed pricing tier of 1+ to 5 million shares TSO will pay from \$1,000 less to \$500 more. Sponsors in the next proposed pricing tier of 5+ to 10 million shares TSO will pay from \$1,000 less to \$1,000 more. Put another way, sponsors with a TSO up to the current TSO tier of 10 million will see a minimal change to their All-Inclusive Annual Listing Fees ranging from \$1,000 less to \$1,000 more. Sponsors in the remaining proposed pricing tiers will pay more than in the current pricing schedule.

The current All-Inclusive Annual Fee for ETPs listed on The Nasdaq Global Market are as follows:

⁹ As proposed, the term “sponsor” is defined as an investment adviser (or investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended) to one or more Companies.

¹⁰ The All-Inclusive Annual Listing Fee would drop from \$6,500 to \$6,000.

Exchange Traded Products	Up to 1 million shares	\$6,500
	1+ to 2 million shares	\$7,000
	2+ to 3 million shares	\$7,500
	3+ to 4 million shares	\$8,000
	4+ to 5 million shares	\$8,500
	5+ to 6 million shares	\$9,000
	6+ to 7 million shares	\$9,500
	7+ to 8 million shares	\$10,000
	8+ to 9 million shares	\$10,500
	9+ to 10 million shares	\$11,000
	10+ to 11 million shares	\$11,500
	11+ to 12 million shares	\$12,000
	12+ to 13 million shares	\$12,500
	13+ to 14 million shares	\$13,000
	14+ to 15 million shares	\$13,500
	15+ to 16 million shares	\$14,000
Over 16 million shares	\$14,500	

The proposed All-Inclusive Annual Fee for ETPs listed on The Nasdaq Global Market are as follows and effective January 2, 2020:

Exchange Traded Products	Up to 1 million shares	\$6,000
	1+ to 5 million shares	\$7,500
	5+ to 10 million shares	\$10,000
	10+ to 25 million shares	\$15,000
	25+ to 50 million shares	\$20,000
	50+ to 75 million shares	\$25,000
	75+ to 100 million shares	\$30,000
	100+ to 150 million shares	\$35,000
	150+ to 250 million shares	\$40,000
	250+ million shares	\$50,000

As described below, Nasdaq believes that the aforementioned proposed fee changes better reflect the value provided by the Exchange to issuers of ETPs.

Nasdaq also proposes a change to Nasdaq Rule 5940(b)(3) as to how the Exchange calculates “total shares outstanding” by aggregating the number of shares of all Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable, issued by one or more Companies¹¹ with the same sponsor, listed on The Nasdaq Global Market, and to ensure that the All-Inclusive Annual Listing Fees

¹¹ Nasdaq Rule 5005(a)(6) defines “Company” as “the issuer of a security listed or applying to list on Nasdaq. For purposes of the Nasdaq Rule 5000 Series, the term “Company” includes an issuer that is not incorporated, such as, for example, a limited partnership.”

under Nasdaq Rule 5940(b)(1) are calculated correctly.¹² Additionally, Nasdaq proposes to amend Nasdaq Rule 5940(b)(3) to define the term “sponsor” for the purposes of assessing the fees in Nasdaq Rule 5940(b)(1).¹³ Nasdaq believes the term “sponsor” is a frequently used term throughout the investment community to refer to the entity that oversees the issuers of ETPs and that the inclusion in the proposed rule language clarifies Nasdaq’s method for calculating the All-Inclusive Annual Fee.

Nasdaq proposes to amend Nasdaq Rule 5940(b)(5) to clarify the application of the rule for market participants. Nasdaq also proposes to remove references to fees that are no longer applicable because they were superseded by new fee rates specified in the rule text.

Implementation Date

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 2, 2020.¹⁴

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and

¹² This change will not result in any impact on sponsors because it reflects the Exchange’s current practice.

¹³ See supra note 9.

¹⁴ Nasdaq will maintain in its online rule book, until January 2, 2020, a link to the text of the rule as in effect before this amendment.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the proposed rule change is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because the All-Inclusive Annual Fee for ETPs, as amended, provides sponsors with a fair and economical way to list multiple ETPs without incurring significant additional cost. Overall, Nasdaq believes that the proposed rule change is a reasonable attempt to attract new issuers and sponsors, retain existing listings on the Exchange, and is reasonable and necessary to support the enhanced services provided by the Exchange to issuers of ETPs and as discussed below.

As discussed above, sponsors with an aggregate TSO up to the current TSO tier of 10 million will see a minimal change to their All-Inclusive Annual Listing Fees ranging from \$1,000 less to \$1,000 more, while sponsors in the remaining proposed pricing tiers will pay more than in the current pricing schedule. Nasdaq believes charging a lower or slightly modified All-Inclusive Annual Fee for sponsors with smaller aggregate TSOs will serve to continue to encourage sponsors of smaller and new to market ETPs to list on the Exchange. Although there will be some fluctuation as to the amount sponsors will pay within the proposed lower TSO pricing tiers as compared with what sponsors currently pay under the lower TSO pricing tiers (generally, a relatively small amount more or a small amount less), as previously stated, this is to some extent a result of reducing the current 17 pricing tiers down to 10 pricing tiers. The Exchange also believes that the reduction in the overall number of pricing tiers will serve to simplify, lessen confusion and increase the ease of use of the All-Inclusive Annual Fee schedule.

The Exchange also believes that it is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to increase the All-Inclusive Annual Listing Fee for the other sponsors, as noted above and as set forth in the chart above, because of the increased value provided by the Exchange to issuers of ETPs since the Exchange first established the current rates over 17 years ago when the number of ETPs and the total net assets of exchange traded funds was much smaller.¹⁷ Nasdaq also believes it is not unfairly discriminatory to charge a higher All-Inclusive Annual Listing Fee for sponsors with a higher TSO because these proposed fees will be provided on an equal basis to all sponsors within the same TSO pricing tier. Additionally, the Exchange believes it is reasonable, fair and equitable, and not unfairly discriminatory for sponsors with larger TSOs to pay more since the Exchange expends more resources on these sponsors.

The Exchange notes that its general costs have increased, including due to price inflation. In addition, the Exchange continues to improve the value it provides to issuers of Nasdaq-listed ETPs through enhanced services. These improvements include the continued development and enhancement of Nasdaq's online tools, including the Nasdaq Listing Center and Reference Library, to the benefit of issuers of Nasdaq-listed ETPs and prospective investors. In addition, the proposed increase will help Nasdaq continue to invest in these initiatives and its regulatory programs. The proposed fee change will also allow for increased investment by the Exchange into its ETP business, including operational support, reporting resources and trading market enhancements, which will benefit issuers of Nasdaq-listed ETPs and their investors.

¹⁷ See supra note 8.

Nasdaq notes that it operates in a highly competitive market in which issuers can readily switch exchanges for their ETPs if they deem its All-Inclusive Annual Listing Fees excessive. In such an environment, Nasdaq must continually review its fees to assure that they remain competitive. As stated above, Nasdaq believes its All-Inclusive Annual Fee for ETPs, as amended, is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges since, in totality, it results in issuer fees that are very competitive with its competition in this space. Nasdaq notes that changes to its issuer fees can have a direct effect on the ability of the Exchange to compete for new listings and retain existing listings and serves to constrain such fees.

The Exchange also believes that the proposed change to Nasdaq Rule 5940(b)(3) as to the term “total shares outstanding” by aggregating the number of shares of all Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable, issued by one or more Companies with the same sponsor, listed on The Nasdaq Global Market, to ensure that the calculation of the All-Inclusive Annual Listing Fees under Nasdaq Rule 5940(b)(1) reflects the Exchange’s current practice,¹⁸ is consistent with Section 6(b)(5) of the Act 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 because it will increase the transparency of the assessment of the All-Inclusive Annual Listing Fees.

In addition, the Exchange believes that the proposed change to Nasdaq Rule 5940(b)(3) as to the term “sponsor” to define it as an investment adviser (or investment

¹⁸ See supra note 12.

advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended) to one or more Companies, is consistent with Section 6(b)(5) of the Act 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 because it increases the clarity of the rule.

Additionally, Nasdaq believes the proposed change to Nasdaq Rule 5940(b)(5) is consistent with Section 6(b)(5) of the Act 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 because it clarifies the application of the rule for market participants.

The proposed removal of rule text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

4. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing ETPs is competitive and sponsors may freely choose alternative venues. The proposal is a competitive proposal designed to implement pricing that better reflects the value, revenue and expenses associated with listing ETPs on the Exchange. Nasdaq notes that changes to its issuer fees can have a direct effect on the ability of the Exchange to compete for new listings and retain existing listings and serves to constrain such fees. For these reasons, Nasdaq does not believe that the proposed rule change will result in any undue burden on competition for listing ETPs.

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

Not applicable.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

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

Not applicable.

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

Not applicable.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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 Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2019-095)

January __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Rule Change to Modify the Exchange’s All-Inclusive Annual Listing Fees for Exchange Traded Products

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on December 23, 2019, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to modify the Exchange’s all-inclusive annual listing fees for exchange traded products under Nasdaq Rule 5940(b). While changes proposed herein are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 2, 2020. Therefore, any exchange traded product that lists on Nasdaq before January 2, 2020 will be subject to the rule as in effect before this amendment.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Nasdaq will maintain in its online rule book, until January 2, 2020, a link to the text of the rule as in effect before this amendment.

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to modify the Exchange's all-inclusive annual listing fees ("All-Inclusive Annual Listing Fee") for exchange traded products ("ETPs") under Nasdaq Rule 5940(b).⁴ As stated in Nasdaq Rule 5940(b)(1), the issuer of a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable listed on The Nasdaq Global Market pays to Nasdaq an All-Inclusive Annual Listing Fee, calculated on total shares outstanding ("TSO")⁵ and as set

⁴ See Nasdaq Rule 5940(b).

⁵ In addition, proposed Nasdaq Rule 5940(b)(3) would calculate TSO as "the aggregate number of shares, issued by one or more Companies with the same sponsor, of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable, listed on The Nasdaq Global Market as shown in the Company's most recent periodic report required to be filed with the

forth in Nasdaq Rule 5940(b)(1).⁶ The proposed rule changes are designed to incentivize issuers to list new products, transfer existing products to the Exchange, and retain listings on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors. In addition, and as described below, the proposed fee changes will also allow for increased investment by the Exchange into its ETP business and allow for enhancements that will benefit issuers of Nasdaq-listed ETPs and their investors.

The fees in the current All-Inclusive Annual Listing Fee schedule have remained unchanged for more than 17 years since they were first adopted back in 2002.⁷ The ETP world has evolved greatly since 2002 when ETPs in the U.S. numbered approximately 130 with total net assets of \$102 billion. Compare this to 2018 when the number of ETPs in the U.S. had grown to over 2,300 with \$3.37 trillion in total net assets.⁸

Under the current All-Inclusive Annual Listing Fees schedule, included below, there are 17 pricing tiers. The tiers begin with the lowest pricing tier of \$6,500 for TSOs of up to 1 million to the top pricing tier of \$14,500 for TSOs over 16 million.

Company's appropriate regulatory authority or in more recent information held by Nasdaq. For purposes of this rule, "sponsor" is defined as an investment adviser (or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended) to one or more Companies."

⁶ See Nasdaq Rule 5940(b)(1).

⁷ See Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002) (SR-NASD-2002-45).

⁸ See M. Sznuguera. Number of ETPs in the U.S. 2000-2018 (Mar. 15, 2019) (Graph); Total net assets of ETFs in the U.S. 2002-2018 (May 10, 2019) (Graph). Retrieved from Statista database.

As detailed in the charts below, the proposed new fee schedule reduces the number of pricing tiers from 17 to 10. The 10 new proposed pricing tiers begin with the lowest pricing tier of up to 1 million TSO to the top pricing tier for over 250 million TSO. The proposed All-Inclusive Annual Listing Fees range from \$6,000 to \$50,000. In each case, the All-Inclusive Annual Listing Fee will be based on a sponsor's⁹ aggregate TSO.

As a result of the Exchange simplifying the pricing tiers for its All-Inclusive Annual Fee for ETPs by reducing their number from 17 to 10, some sponsors may pay more while others may pay the same or less. Specifically, the Exchange will charge an All-Inclusive Annual Listing Fee for ETPs with the fewest total shares outstanding (sponsors with up to 1 million TSO) of \$500 less.¹⁰ Sponsors in the next proposed pricing tier of 1+ to 5 million shares TSO will pay from \$1,000 less to \$500 more. Sponsors in the next proposed pricing tier of 5+ to 10 million shares TSO will pay from \$1,000 less to \$1,000 more. Put another way, sponsors with a TSO up to the current TSO tier of 10 million will see a minimal change to their All-Inclusive Annual Listing Fees ranging from \$1,000 less to \$1,000 more. Sponsors in the remaining proposed pricing tiers will pay more than in the current pricing schedule.

The current All-Inclusive Annual Fee for ETPs listed on The Nasdaq Global Market are as follows:

⁹ As proposed, the term “sponsor” is defined as an investment adviser (or investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended) to one or more Companies.

¹⁰ The All-Inclusive Annual Listing Fee would drop from \$6,500 to \$6,000.

Exchange Traded Products	Up to 1 million shares	\$6,500
	1+ to 2 million shares	\$7,000
	2+ to 3 million shares	\$7,500
	3+ to 4 million shares	\$8,000
	4+ to 5 million shares	\$8,500
	5+ to 6 million shares	\$9,000
	6+ to 7 million shares	\$9,500
	7+ to 8 million shares	\$10,000
	8+ to 9 million shares	\$10,500
	9+ to 10 million shares	\$11,000
	10+ to 11 million shares	\$11,500
	11+ to 12 million shares	\$12,000
	12+ to 13 million shares	\$12,500
	13+ to 14 million shares	\$13,000
	14+ to 15 million shares	\$13,500
	15+ to 16 million shares	\$14,000
Over 16 million shares	\$14,500	

The proposed All-Inclusive Annual Fee for ETPs listed on The Nasdaq Global Market are as follows and effective January 2, 2020:

Exchange Traded Products	Up to 1 million shares	\$6,000
	1+ to 5 million shares	\$7,500
	5+ to 10 million shares	\$10,000
	10+ to 25 million shares	\$15,000
	25+ to 50 million shares	\$20,000
	50+ to 75 million shares	\$25,000
	75+ to 100 million shares	\$30,000
	100+ to 150 million shares	\$35,000
	150+ to 250 million shares	\$40,000
	250+ million shares	\$50,000

As described below, Nasdaq believes that the aforementioned proposed fee changes better reflect the value provided by the Exchange to issuers of ETPs.

Nasdaq also proposes a change to Nasdaq Rule 5940(b)(3) as to how the Exchange calculates “total shares outstanding” by aggregating the number of shares of all Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable, issued by one or more Companies¹¹ with the same sponsor, listed on The Nasdaq Global Market, and to ensure that the All-Inclusive Annual Listing Fees

¹¹ Nasdaq Rule 5005(a)(6) defines “Company” as “the issuer of a security listed or applying to list on Nasdaq. For purposes of the Nasdaq Rule 5000 Series, the term “Company” includes an issuer that is not incorporated, such as, for example, a limited partnership.”

under Nasdaq Rule 5940(b)(1) are calculated correctly.¹² Additionally, Nasdaq proposes to amend Nasdaq Rule 5940(b)(3) to define the term “sponsor” for the purposes of assessing the fees in Nasdaq Rule 5940(b)(1).¹³ Nasdaq believes the term “sponsor” is a frequently used term throughout the investment community to refer to the entity that oversees the issuers of ETPs and that the inclusion in the proposed rule language clarifies Nasdaq’s method for calculating the All-Inclusive Annual Fee.

Nasdaq proposes to amend Nasdaq Rule 5940(b)(5) to clarify the application of the rule for market participants. Nasdaq also proposes to remove references to fees that are no longer applicable because they were superseded by new fee rates specified in the rule text.

Implementation Date

While these changes are effective upon filing, Nasdaq has designated the proposed amendments to be operative on January 2, 2020.¹⁴

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and

¹² This change will not result in any impact on sponsors because it reflects the Exchange’s current practice.

¹³ See supra note 9.

¹⁴ Nasdaq will maintain in its online rule book, until January 2, 2020, a link to the text of the rule as in effect before this amendment.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the proposed rule change is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because the All-Inclusive Annual Fee for ETPs, as amended, provides sponsors with a fair and economical way to list multiple ETPs without incurring significant additional cost. Overall, Nasdaq believes that the proposed rule change is a reasonable attempt to attract new issuers and sponsors, retain existing listings on the Exchange, and is reasonable and necessary to support the enhanced services provided by the Exchange to issuers of ETPs and as discussed below.

As discussed above, sponsors with an aggregate TSO up to the current TSO tier of 10 million will see a minimal change to their All-Inclusive Annual Listing Fees ranging from \$1,000 less to \$1,000 more, while sponsors in the remaining proposed pricing tiers will pay more than in the current pricing schedule. Nasdaq believes charging a lower or slightly modified All-Inclusive Annual Fee for sponsors with smaller aggregate TSOs will serve to continue to encourage sponsors of smaller and new to market ETPs to list on the Exchange. Although there will be some fluctuation as to the amount sponsors will pay within the proposed lower TSO pricing tiers as compared with what sponsors currently pay under the lower TSO pricing tiers (generally, a relatively small amount more or a small amount less), as previously stated, this is to some extent a result of reducing the current 17 pricing tiers down to 10 pricing tiers. The Exchange also believes that the reduction in the overall number of pricing tiers will serve to simplify, lessen confusion and increase the ease of use of the All-Inclusive Annual Fee schedule.

The Exchange also believes that it is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to increase the All-Inclusive Annual Listing Fee for the other sponsors, as noted above and as set forth in the chart above, because of the increased value provided by the Exchange to issuers of ETPs since the Exchange first established the current rates over 17 years ago when the number of ETPs and the total net assets of exchange traded funds was much smaller.¹⁷ Nasdaq also believes it is not unfairly discriminatory to charge a higher All-Inclusive Annual Listing Fee for sponsors with a higher TSO because these proposed fees will be provided on an equal basis to all sponsors within the same TSO pricing tier. Additionally, the Exchange believes it is reasonable, fair and equitable, and not unfairly discriminatory for sponsors with larger TSOs to pay more since the Exchange expends more resources on these sponsors.

The Exchange notes that its general costs have increased, including due to price inflation. In addition, the Exchange continues to improve the value it provides to issuers of Nasdaq-listed ETPs through enhanced services. These improvements include the continued development and enhancement of Nasdaq's online tools, including the Nasdaq Listing Center and Reference Library, to the benefit of issuers of Nasdaq-listed ETPs and prospective investors. In addition, the proposed increase will help Nasdaq continue to invest in these initiatives and its regulatory programs. The proposed fee change will also allow for increased investment by the Exchange into its ETP business, including operational support, reporting resources and trading market enhancements, which will benefit issuers of Nasdaq-listed ETPs and their investors.

¹⁷ See supra note 8.

Nasdaq notes that it operates in a highly competitive market in which issuers can readily switch exchanges for their ETPs if they deem its All-Inclusive Annual Listing Fees excessive. In such an environment, Nasdaq must continually review its fees to assure that they remain competitive. As stated above, Nasdaq believes its All-Inclusive Annual Fee for ETPs, as amended, is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges since, in totality, it results in issuer fees that are very competitive with its competition in this space. Nasdaq notes that changes to its issuer fees can have a direct effect on the ability of the Exchange to compete for new listings and retain existing listings and serves to constrain such fees.

The Exchange also believes that the proposed change to Nasdaq Rule 5940(b)(3) as to the term “total shares outstanding” by aggregating the number of shares of all Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable, issued by one or more Companies with the same sponsor, listed on The Nasdaq Global Market, to ensure that the calculation of the All-Inclusive Annual Listing Fees under Nasdaq Rule 5940(b)(1) reflects the Exchange’s current practice,¹⁸ is consistent with Section 6(b)(5) of the Act 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 because it will increase the transparency of the assessment of the All-Inclusive Annual Listing Fees.

In addition, the Exchange believes that the proposed change to Nasdaq Rule 5940(b)(3) as to the term “sponsor” to define it as an investment adviser (or investment

¹⁸ See supra note 12.

advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended) to one or more Companies, is consistent with Section 6(b)(5) of the Act 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 because it increases the clarity of the rule.

Additionally, Nasdaq believes the proposed change to Nasdaq Rule 5940(b)(5) is consistent with Section 6(b)(5) of the Act 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 because it clarifies the application of the rule for market participants.

The proposed removal of rule text relating to fees that are no longer applicable is ministerial in nature and has no substantive effect.

B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing ETPs is competitive and sponsors may freely choose alternative venues. The proposal is a competitive proposal designed to implement pricing that better reflects the value, revenue and expenses associated with listing ETPs on the Exchange. Nasdaq notes that changes to its issuer fees can have a direct effect on the ability of the Exchange to compete for new listings and retain existing listings and serves to constrain such fees. For these reasons, Nasdaq does not believe that the proposed rule change will result in any undue burden on competition for listing ETPs.

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

No written comments were either solicited or received.

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

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

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. Please include File Number SR-NASDAQ-2019-095 on the subject line.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2019-095. 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 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; 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-2019-095 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.²⁰

Jill M. Peterson
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The Nasdaq Stock Market Rules

* * * * *

5940. Exchange Traded Products

* * * * *

(a) No Change.

(b) All-Inclusive Annual Listing Fee

(1) The issuer of a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable listed on The Nasdaq Global Market shall pay to Nasdaq an All-Inclusive Annual Listing Fee applicable to the issuer of a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable, calculated on total shares outstanding according to the following schedule:

[Up to 1 million shares \$6,500

1+ to 2 million shares \$7,000

2+ to 3 million shares \$7,500

3+ to 4 million shares \$8,000

4+ to 5 million shares \$8,500

5+ to 6 million shares \$9,000

6+ to 7 million shares \$9,500

7+ to 8 million shares \$10,000

8+ to 9 million shares \$10,500

9+ to 10 million shares \$11,000

10+ to 11 million shares \$11,500

11+ to 12 million shares \$12,000

12+ to 13 million shares \$12,500

13+ to 14 million shares \$13,000

14+ to 15 million shares \$13,500

15+ to 16 million shares \$14,000

Over 16 million shares \$14,500]

Up to 1 million shares \$6,000

1+ to 5 million shares \$7,500

5+ to 10 million shares \$10,000

10+ to 25 million shares \$15,000

25+ to 50 million shares \$20,000

50+ to 75 million shares \$25,000

75+ to 100 million shares \$30,000

100+ to 150 million shares \$35,000

150+ to 250 million shares \$40,000

250+ million shares \$50,000

(2) No Change.

(3) For the purposes of Rule 5940(b)(1), [T]total shares outstanding means the aggregate number of shares, issued by one or more Companies with the same sponsor, [in all series]of Portfolio Depository Receipts,[or] Index Fund Shares, Managed Fund Shares or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable, [issued by the Company to be]listed on The Nasdaq Global Market as shown in the Company's most recent periodic report required to be filed with the Company's appropriate regulatory authority or in more recent information held by Nasdaq. For purposes of this rule, "sponsor" is defined as an investment adviser (or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended) to one or more Companies.

(4) No Change.

(5) Except as otherwise set forth in Rule 5940(b), t[T]he All-Inclusive Annual Listing Fee described in this section will be assessed as described in Rule 5910(b)(3).

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