SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation


PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, June 24, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, June 24, 2020 at 2:00 p.m., has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: June 24, 2020.
Vanessa A. Countryman, Secretary.

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations: The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Nasdaq Rule 5750 To List and Trade Proxy Portfolio Shares


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 June 11, 2020, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 adopt Nasdaq Rule 5750 to permit the listing and trading of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company.

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 Exchange proposes to add new Nasdaq Rule 5750 for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company.3

This proposed rule change to add new Nasdaq Rule 5750 is substantially similar to the recently approved rule change by Cboe BZX Exchange, Inc. ("Cboe BZX") to adopt rule 14.11(m).4

Proposed Rule 5750

Proposed Nasdaq Rule 5750(c)(1) provides that the term “Proxy Portfolio Share” means a security that: (i) Represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of specified Proxy Basket securities and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket securities and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Nasdaq Rule 5750(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Proxy Portfolio Shares that meet the criteria of Nasdaq Rule 5750. Proposed Nasdaq Rule 5750(b) provides that Nasdaq Rule 5750 is applicable only to Proxy Portfolio Shares and that, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Exchange’s Board shall be applicable to the trading on the Exchange of such securities. Proposed Nasdaq Rule 5750(b) provides further that Proxy Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Nasdaq Rule 5750(b)(1)–(3) provides that the Exchange will file differences between the applications, the Exchange believes that each would qualify as Proxy Portfolio Shares under proposed Nasdaq Rule 5750.

Proposed Nasdaq Rule 5750(c)(2) provides that the term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day.

Proposed Nasdaq Rule 5750(c)(3) provides that the term “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Nasdaq Rule 5750(c)(4) provides that the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Nasdaq Rule 5750(c)(5) provides that the term “Proxy Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 (the “1940 Act”) applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 5750, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weight of the holding in the portfolio.

Proposed Nasdaq Rule 5750(d)(1) provides the initial listing criteria for a series of Proxy Portfolio Shares, which includes: (a) Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: The net asset value, the Proxy Basket, and the Fund Portfolio; and (iii) all Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Nasdaq Rule 5750(d)(2) provides that each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) The Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Proxy Portfolio Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information (“SAI”).

Additionally, proposed Nasdaq Rule 5750(d)(2)(C) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Nasdaq Rule 5800 under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission; or the Commission Staff under the 1940 Act to the Investment Company with respect to the series of...
Proxy Portfolio Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Nasdaq Rule 5750(d)(2)(D) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time:

- The net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable; and (c) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.

Proposed Nasdaq Rule 5750(e) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Proxy Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Policy Discussion—Proposed Nasdaq Rule 5750

The purpose of the structure of Proxy Portfolio Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Proxy Portfolio Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Nasdaq Rule 5735), Proxy Portfolio Shares differ from Managed Fund Shares in one key way. A series of Proxy Portfolio Shares will disclose the Proxy Basket on a daily basis, which, as described above, is designed to closely track the performance of the holdings of the Investment Company, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.7

For the arbitrage mechanism for any ETF to function effectively, authorized participants, arbitrageurs, and other market participants (collectively, “Market Makers”) need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Proxy Basket is to be designed to closely track the daily performance of the Fund Portfolio.

Given the correlation between the Proxy Basket and the Fund Portfolio,8 the Exchange believes that the Proxy Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Proxy Portfolio Shares diverge. If shares began trading at a discount to the Proxy Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,9 redeem them in exchange for a redemption basket reflecting the Net Asset Value (“NAV”) per share of the Fund Portfolio. The purchases of shares could reduce the supply of shares in the market, and thus tend to drive up the shares’ market price closer to the fund’s NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a

Form N–PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s SAI, its Shareholder Reports, its Form N–CSR, filed twice a year, and Form N–PORT, Form N–CSR, and Form N–PORT may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

As provided in the Proxy Notices, funds and their respective advisors will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund’s crossing a threshold, the advisor will promptly call a meeting of the fund’s board of directors and will present the board or committee with recommendations for appropriate remedial measures. The advisor would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) If the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row, the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

Proxy Portfolio Shares will be purchased or redeemed only in large aggregations, or “creation units,” and the Proxy Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.
fund is trading at a premium to the Proxy Basket. Market Makers may sell shares short and take a long position in the Proxy Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Proxy Basket securities in an attempt to profit when shares are trading at a discount to the Proxy Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Proxy Basket and a quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund’s secondary market prices close to its NAV. Consistent with the Commission’s view, the Exchange believes that because the arbitrage mechanism for Proxy Portfolio Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day’s NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Basket compared to the fund holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material nonpublic information, the Exchange believes that proposed Nasdaq Rule 5750(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under Nasdaq Rule 5750(b)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Proxy Basket, or changes thereto.

The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Proxy Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Proxy Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Proxy Portfolio Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products. The Exchange will require the issuer of each series of Proxy Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rule 5800. In addition, the Exchange also has a general policy prohibiting the distribution of material, nonpublic information by its employees.

As noted in proposed Nasdaq Rule 5750(b)(4), the Investment Company’s investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each series of Proxy Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Proxy Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Proxy Portfolio Shares on the Exchange and the ability to monitor compliance with the initial and continued listing requirements as well.
as the ability to surveil for manipulation of the shares.

Trading Halts

As described above, proposed Nasdaq Rule 5750(d)(2)(D) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Proxy Basket, or the Fund with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.

Availability of Information

As noted above, Form N–PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s SAI, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov. The Exchange also notes that the Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material nonpublic information, which otherwise do not apply to issuers of Proxy Portfolio Shares.

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the Consolidated Tape Association (“CTA”) high-speed line.

Trading Rules

The Exchange deems Proxy Portfolio Shares to be equity securities, thus rendering trading in the shares subject to the Exchange’s existing rules governing the trading of equity securities.11 As provided in proposed Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01. The Exchange has appropriate rules to facilitate trading in Proxy Portfolio Shares during all trading sessions.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act 12 in general and Section 6(b)(5) of the Act 13 in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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.

The Exchange believes that proposed Nasdaq Rule 5750 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Proxy Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Nasdaq Rule 5750(d)(1) provides the initial listing criteria for a series of Proxy Portfolio Shares, which include the following: (A) Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: The net asset value, the Proxy Basket, and the Fund Portfolio.

Proposed Nasdaq Rule 5750(d)(2) provides that each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) The Proxy Basket will be disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Proxy Portfolio Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or SAI.

Additionally, proposed Nasdaq Rule 5750(d)(2)(C) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Nasdaq Rule 5800 under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Proxy Portfolio Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously maintained; and (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Nasdaq Rule 5750(d)(2)(D) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include: (I) The extent to which trading is not occurring
in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Nasdaq Rule 5750(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the shares (the Proxy Basket) as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Nasdaq Rule 5750(b)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Proxy Basket. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day’s NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Basket compared to the fund holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Proxy Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Proxy Portfolio Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products. Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rule 5800. In addition, the Exchange also has a general policy prohibiting the distribution of material, nonpublic information by its employees.

As noted in proposed Nasdaq Rule 5750(b)(4), the Investment Company’s investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Proxy Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Proxy Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

As noted above, Form N–PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s SAI, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov. The Exchange also notes that the Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material nonpublic information, which otherwise do not apply to issuers of Proxy Portfolio Shares. Information regarding market price and trading volume of the shares will be
At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments
- Use the Commission’s internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ–2020–032 on the subject line.

Paper Comments
- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.
- All submissions should refer to File Number SR–NASDAQ–2020–032.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments
- Use the Commission’s internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NASDQ–2020–032 on the subject line.

Paper Comments
- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.
- All submissions should refer to File Number SR–NASDAQ–2020–032.

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