

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 078	Amendment No. (req. for Amendments *)
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Filing by The Nasdaq Stock Market LLC
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)(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	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 provide an exemption from certain governance requirements, as well as to include Proxy Portfolio Shares listed on the Exchange pursuant to Nasdaq Rule 5750 to the list of products covered under Nasdaq Rule 4120 Limit Up-Limit Down Plan and Trading Halts

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 * Jonathan	Last Name * Cayne
Title * Principal Associate General Counsel	
E-mail * jonathan.cayne@nasdaq.com	
Telephone * (301) 978-8493	Fax <input type="text"/>

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 11/19/2020	EVP and Chief Legal Officer
By John Zecca	<input style="width: 100%;" type="text"/>
(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 EFFS 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 *

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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 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) 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 provide an exemption from certain governance requirements, as well as to include Proxy Portfolio Shares (listed on the Exchange pursuant to Nasdaq Rule 5750) to the list of products covered under Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts).

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 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.

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

Ben Haskell
Director, ETP Compliance
Nasdaq, Inc.
301 978 8092

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Jonathan 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 Exchange recently adopted Nasdaq Rule 5750, which relates to the listing and trading of Proxy Portfolio Shares³ on the Exchange.⁴ Nasdaq proposes to amend the definition of “Derivative Securities” under Nasdaq Rule 5615(a)(6)(B) as well as certain portions of Nasdaq Rule 4120 to include and apply to a series of Proxy Portfolio Shares listed on the Exchange pursuant to Nasdaq Rule 5750.

Nasdaq notes that the proposed rule change, as discussed below, results from the Exchange proposing to make conforming changes to its corporate governance requirements in order to accommodate the listing of Proxy Portfolio Shares. This will

³ The term “Proxy Portfolio Shares” means “a security that: (A) 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; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.”

⁴ See Securities and Exchange Act Release No. 34-89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032) (the “Rule Proposal”). The Rule Proposal was effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder and became operative 30 calendar days following the filing date of June 11, 2020.

subject Proxy Portfolio Shares to the same corporate governance requirements as other exchange-traded products listed on the Exchange.

Currently, Nasdaq Rule 5615(a)(5) provides management investment companies exemptions to certain corporate governance requirements.⁵ Nasdaq Rule 5615(a)(5) also provides that management investment companies that are Derivative Securities (as defined in Nasdaq Rule 5615(a)(6)(B))⁶ are also exempt from the additional requirements of Nasdaq Rule 5600 as outlined in Nasdaq Rule 5615(a)(6)(A). In addition to the exemptions found in Nasdaq Rule 5615(a)(5), Nasdaq Rule 5615(a)(6)(A) also includes exemptions from the audit committee requirements in Nasdaq Rule 5605(c), except for the applicable requirements of SEC Rule 10A-3.⁷

Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares are all considered Derivative Securities and, therefore, exempt from the audit committee

⁵ See Nasdaq Rule 5605(b) (Independent Directors); Nasdaq Rule 5605(d) (Compensation Committee); Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations); and Nasdaq Rule 5610 (Codes of Conduct).

⁶ Nasdaq Rule 5615(a)(6)(B) states: “For the purposes of this Rule 5600 Series only, the term “Derivative Securities” is defined as the following: Exchange Traded Fund Shares (Rule 5704), Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Equity Index-Linked Securities (Rule 5710(k)(i)), Commodity-Linked Securities (Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (5710(k)(iii)), Futures-Linked Securities (5710(k)(iv)), Multifactor Index-Linked Securities (5710(k)(v)), Index-Linked Exchangeable Notes (Rule 5711(a)), Equity Gold Shares (Rule 5711(b)), Trust Certificates (Rule 5711(c)), Commodity-Based Trust Shares (Rule 5711(d)), Currency Trust Shares (Rule 5711(e)), Commodity Index Trust Shares (Rule 5711(f)), Commodity Futures Trust Shares (Rule 5711(g)), Partnership Units (Rule 5711(h)), Managed Trust Securities (Rule 5711(j)), SEEDS (Rule 5715), Trust Issued Receipts (Rule 5720), Managed Fund Shares (Rule 5735), and NextShares (Rule 5745). Derivative Securities are subject to certain exemptions to the Rule 5600 Series as described in Rule 5615(a)(6).”

⁷ 17 CFR 240.10A-3.

requirements set forth in Nasdaq Rule 5605(c). They are exempted from such requirements because they are otherwise subject to the accounting and auditing requirements of the Investment Company Act of 1940 (the “1940 Act”), including Section 32(a).⁸

Proxy Portfolio Shares are also subject to the accounting and auditing requirements under the 1940 Act and are so similarly situated as Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares, that the Exchange believes Proxy Portfolio Shares should be subject to, and exempt from, the same corporate governance requirements associated with listing on the Exchange. Thus, Nasdaq is proposing to make a change to amend Nasdaq Rule 5615(a)(6)(B) to add Proxy Portfolio Shares to the definition of Derivative Securities. Nasdaq Rule 5615(a)(5) allows management investment companies that are considered Derivative Securities to be subject to the exemptions from the audit committee requirements in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) included in Nasdaq Rule 5615(a)(6)(A).

Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares are all considered Derivative Securities and, therefore, exempt from the annual meeting requirements set forth in Nasdaq Rule 5620(a). They are exempted from such requirements because they are securities issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis, and require dissemination of a relevant portfolio value at regular intervals. These requirements provide important investor protections and ensure that the net asset value and the market price remain closely tied to one another while maintaining

⁸ 15 U.S.C 80a-31.

a liquid market for the security. These protections, along with the disclosure documents regularly received by investors, allow shareholders of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares to value their holdings on an ongoing basis and lessen the need for shareholders to directly deal with management at an annual meeting.⁹

Thus, Nasdaq is proposing to amend Nasdaq Rule 5615(a)(6)(B) to add Proxy Portfolio Shares to the definition of Derivative Securities. Nasdaq Rule 5615(a)(5) allows management investment companies that are considered Derivative Securities to be subject to the exemptions in Nasdaq Rule 5615(a)(6)(A), which includes the exemption from the annual meeting requirements in Nasdaq Rule 5620(a). The Exchange notes that the proposed changes would result in rules that are substantially similar to that of NYSE Arca, Inc.¹⁰

Nasdaq is also proposing to amend Nasdaq Rule 4120(a)(9) to include Proxy Portfolio Shares in the list of securities that Nasdaq will have discretion to halt trading in if “(A) trading in underlying securities comprising the index or portfolio applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index or portfolio, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.” Nasdaq believes change this is appropriate because it will subject Proxy Portfolio Shares to the same halt requirements as other Nasdaq listed securities that derive value from an index or portfolio of underlying securities.

⁹ See Securities and Exchange Act Release No. 34-86072 (June 10, 2019), 84 FR 27816 (June 14, 2020) (SR-NASDAQ-2019-039).

¹⁰ See Securities and Exchange Act Release No. 34- 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR- NYSEArca-2019-95).

Additionally, Nasdaq is proposing to amend Nasdaq Rule 4120(a)(10) to specify that Nasdaq will halt trading in a series of Proxy Portfolio Shares if the net asset value, Proxy Basket, or Fund Portfolio are not being disseminated to market participants at the same time. Nasdaq believes this change is appropriate because it will subject Proxy Portfolio Shares to the same halt requirements as other Nasdaq listed securities that are required to publish similar values on a regular basis.

Nasdaq is also proposing to add Proxy Portfolio Shares to the definition of “Derivative Securities Products” as found in Nasdaq Rule 4120(b)(4)(A). Nasdaq believes change this is appropriate because it will specify the Proxy Portfolio Shares are subject to the requirements of Nasdaq Rule 4120(a)(10).

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is consistent with the Section 6(b)(5) requirements that the rules of an exchange be 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 the proposed change to amend Nasdaq Rule 5615(a)(6)(B) to include Proxy Portfolio Shares in the definition of Derivative Securities (along with Index Fund Shares, Managed Fund Shares and Exchange Traded Fund

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

Shares, among others), and thereby exempting Proxy Portfolio Shares from the audit committee requirements in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) and the annual meeting requirements in Nasdaq Rule 5620(a), is consistent with the Act because it is meant only to subject Proxy Portfolio Shares to the same corporate governance requirements currently applicable to the very similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares. The Exchange believes that this will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange further believes that the proposed changes to Nasdaq Rule 4120(a)(9), Nasdaq Rule 4120(a)(10), and Nasdaq Rule 4120(b)(4)(A) are consistent with the Act because it is meant only to subject Proxy Portfolio Shares to the same halt requirements currently applicable to the very similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares. Nasdaq believes that this too will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change would promote both intermarket and intramarket competition by providing Proxy Portfolio Shares the same exemptions as management investment companies

from certain corporate governance requirements¹³ the audit committee requirements set forth in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) and the annual meeting requirements of Nasdaq Rule 5620(a). This is consistent with the exemptions provided to Index Fund Shares, Managed Fund Shares, and Exchange Traded Fund Shares.

Additionally, the Exchange believes that the proposed changes to Nasdaq Rule 4120(a)(9), Nasdaq Rule 4120(a)(10), and Nasdaq Rule 4120(b)(4)(A) will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because these only serve to subject Proxy Portfolio Shares to the same halt requirements currently applicable to the similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares.

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)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the

¹³ Supra note 5.

Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that this proposal does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition and will serve to enhance competition because it will promote both intermarket and intramarket competition by providing Proxy Portfolio Shares the same exemptions as management investment companies from certain corporate governance requirements, audit committee requirements, and annual meeting requirements, which is consistent with the exemptions provided to Index Fund Shares, Managed Fund Shares, and Exchange Traded Fund Shares. Overall, this will lead to consistent listing standards that are substantially similar to the rules of NYSE Arca, Inc.,¹⁴ and subject Proxy Portfolio Shares to the same Exchange halt rules as certain other Derivative Securities products.

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 change should be approved or disapproved.

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

¹⁴ Supra note 10.

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 proposal to amend Nasdaq Rule 5615(a)(6)(B) is substantially similar to SR-NYSEArca-2019-95.¹⁵

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

Not applicable.

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.

¹⁵

Id.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. _____ ; File No. SR-NASDAQ-2020-078)

November __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide an Exemption from Certain Governance Requirements, as Well as to Include Proxy Portfolio Shares (listed on the Exchange Pursuant to Nasdaq Rule 5750) to the List of Products Covered Under Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts)

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 November 19, 2020, 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 provide an exemption from certain governance requirements, as well as to include Proxy Portfolio Shares (listed on the Exchange pursuant to Nasdaq Rule 5750) to the list of products covered under Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

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

1. Purpose

The Exchange recently adopted Nasdaq Rule 5750, which relates to the listing and trading of Proxy Portfolio Shares³ on the Exchange.⁴ Nasdaq proposes to amend the

³ The term "Proxy Portfolio Shares" means "a security that: (A) 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; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter."

⁴ See Securities and Exchange Act Release No. 34-89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032) (the "Rule Proposal"). The Rule Proposal was effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act

definition of “Derivative Securities” under Nasdaq Rule 5615(a)(6)(B) as well as certain portions of Nasdaq Rule 4120 to include and apply to a series of Proxy Portfolio Shares listed on the Exchange pursuant to Nasdaq Rule 5750.

Nasdaq notes that the proposed rule change, as discussed below, results from the Exchange proposing to make conforming changes to its corporate governance requirements in order to accommodate the listing of Proxy Portfolio Shares. This will subject Proxy Portfolio Shares to the same corporate governance requirements as other exchange-traded products listed on the Exchange.

Currently, Nasdaq Rule 5615(a)(5) provides management investment companies exemptions to certain corporate governance requirements.⁵ Nasdaq Rule 5615(a)(5) also provides that management investment companies that are Derivative Securities (as defined in Nasdaq Rule 5615(a)(6)(B))⁶ are also exempt from the additional requirements

and Rule 19b-4(f)(6) thereunder and became operative 30 calendar days following the filing date of June 11, 2020.

⁵ See Nasdaq Rule 5605(b) (Independent Directors); Nasdaq Rule 5605(d) (Compensation Committee); Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations); and Nasdaq Rule 5610 (Codes of Conduct).

⁶ Nasdaq Rule 5615(a)(6)(B) states: “For the purposes of this Rule 5600 Series only, the term “Derivative Securities” is defined as the following: Exchange Traded Fund Shares (Rule 5704), Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Equity Index-Linked Securities (Rule 5710(k)(i)), Commodity-Linked Securities (Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (5710(k)(iii)), Futures-Linked Securities (5710(k)(iv)), Multifactor Index-Linked Securities (5710(k)(v)), Index-Linked Exchangeable Notes (Rule 5711(a)), Equity Gold Shares (Rule 5711(b)), Trust Certificates (Rule 5711(c)), Commodity-Based Trust Shares (Rule 5711(d)), Currency Trust Shares (Rule 5711(e)), Commodity Index Trust Shares (Rule 5711(f)), Commodity Futures Trust Shares (Rule 5711(g)), Partnership Units (Rule 5711(h)), Managed Trust Securities (Rule 5711(j)), SEEDS (Rule 5715), Trust Issued Receipts (Rule 5720), Managed Fund Shares (Rule 5735), and NextShares (Rule 5745). Derivative Securities are subject to certain exemptions to the Rule 5600 Series as described in Rule 5615(a)(6).”

of Nasdaq Rule 5600 as outlined in Nasdaq Rule 5615(a)(6)(A). In addition to the exemptions found in Nasdaq Rule 5615(a)(5), Nasdaq Rule 5615(a)(6)(A) also includes exemptions from the audit committee requirements in Nasdaq Rule 5605(c), except for the applicable requirements of SEC Rule 10A-3.⁷

Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares are all considered Derivative Securities and, therefore, exempt from the audit committee requirements set forth in Nasdaq Rule 5605(c). They are exempted from such requirements because they are otherwise subject to the accounting and auditing requirements of the Investment Company Act of 1940 (the “1940 Act”), including Section 32(a).⁸

Proxy Portfolio Shares are also subject to the accounting and auditing requirements under the 1940 Act and are so similarly situated as Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares, that the Exchange believes Proxy Portfolio Shares should be subject to, and exempt from, the same corporate governance requirements associated with listing on the Exchange. Thus, Nasdaq is proposing to make a change to amend Nasdaq Rule 5615(a)(6)(B) to add Proxy Portfolio Shares to the definition of Derivative Securities. Nasdaq Rule 5615(a)(5) allows management investment companies that are considered Derivative Securities to be subject to the exemptions from the audit committee requirements in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) included in Nasdaq Rule 5615(a)(6)(A).

Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares are

⁷ 17 CFR 240.10A-3.

⁸ 15 U.S.C 80a-31.

all considered Derivative Securities and, therefore, exempt from the annual meeting requirements set forth in Nasdaq Rule 5620(a). They are exempted from such requirements because they are securities issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis, and require dissemination of a relevant portfolio value at regular intervals. These requirements provide important investor protections and ensure that the net asset value and the market price remain closely tied to one another while maintaining a liquid market for the security. These protections, along with the disclosure documents regularly received by investors, allow shareholders of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares to value their holdings on an ongoing basis and lessen the need for shareholders to directly deal with management at an annual meeting.⁹

Thus, Nasdaq is proposing to amend Nasdaq Rule 5615(a)(6)(B) to add Proxy Portfolio Shares to the definition of Derivative Securities. Nasdaq Rule 5615(a)(5) allows management investment companies that are considered Derivative Securities to be subject to the exemptions in Nasdaq Rule 5615(a)(6)(A), which includes the exemption from the annual meeting requirements in Nasdaq Rule 5620(a). The Exchange notes that the proposed changes would result in rules that are substantially similar to that of NYSE Arca, Inc.¹⁰

Nasdaq is also proposing to amend Nasdaq Rule 4120(a)(9) to include Proxy Portfolio Shares in the list of securities that Nasdaq will have discretion to halt trading in

⁹ See Securities and Exchange Act Release No. 34-86072 (June 10, 2019), 84 FR 27816 (June 14, 2020) (SR-NASDAQ-2019-039).

¹⁰ See Securities and Exchange Act Release No. 34- 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR- NYSEArca-2019-95).

if “(A) trading in underlying securities comprising the index or portfolio applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index or portfolio, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.” Nasdaq believes change this is appropriate because it will subject Proxy Portfolio Shares to the same halt requirements as other Nasdaq listed securities that derive value from an index or portfolio of underlying securities.

Additionally, Nasdaq is proposing to amend Nasdaq Rule 4120(a)(10) to specify that Nasdaq will halt trading in a series of Proxy Portfolio Shares if the net asset value, Proxy Basket, or Fund Portfolio are not being disseminated to market participants at the same time. Nasdaq believes this change is appropriate because it will subject Proxy Portfolio Shares to the same halt requirements as other Nasdaq listed securities that are required to publish similar values on a regular basis.

Nasdaq is also proposing to add Proxy Portfolio Shares to the definition of “Derivative Securities Products” as found in Nasdaq Rule 4120(b)(4)(A). Nasdaq believes change this is appropriate because it will specify the Proxy Portfolio Shares are subject to the requirements of Nasdaq Rule 4120(a)(10).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is consistent with the Section 6(b)(5) requirements that the rules of an exchange

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

be 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 the proposed change to amend Nasdaq Rule 5615(a)(6)(B) to include Proxy Portfolio Shares in the definition of Derivative Securities (along with Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares, among others), and thereby exempting Proxy Portfolio Shares from the audit committee requirements in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) and the annual meeting requirements in Nasdaq Rule 5620(a), is consistent with the Act because it is meant only to subject Proxy Portfolio Shares to the same corporate governance requirements currently applicable to the very similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares. The Exchange believes that this will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange further believes that the proposed changes to Nasdaq Rule 4120(a)(9), Nasdaq Rule 4120(a)(10), and Nasdaq Rule 4120(b)(4)(A) are consistent with the Act because it is meant only to subject Proxy Portfolio Shares to the same halt requirements currently applicable to the very similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares. Nasdaq believes that this too will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

general, protect investors and the public interest.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change would promote both intermarket and intramarket competition by providing Proxy Portfolio Shares the same exemptions as management investment companies from certain corporate governance requirements¹³ the audit committee requirements set forth in Nasdaq Rule 5605(c) (except for the applicable requirements of SEC Rule 10A-3) and the annual meeting requirements of Nasdaq Rule 5620(a). This is consistent with the exemptions provided to Index Fund Shares, Managed Fund Shares, and Exchange Traded Fund Shares.

Additionally, the Exchange believes that the proposed changes to Nasdaq Rule 4120(a)(9), Nasdaq Rule 4120(a)(10), and Nasdaq Rule 4120(b)(4)(A) will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because these only serve to subject Proxy Portfolio Shares to the same halt requirements currently applicable to the similar product structures of Index Fund Shares, Managed Fund Shares and Exchange Traded Fund Shares.

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.

¹³

Supra note 5.

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)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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:

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 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.

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-2020-078 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-2020-078. 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-2020-078 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

4120. Limit Up-Limit Down Plan and Trading Halts**(a) Authority to Initiate Trading Halts or Pauses**

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq, pursuant to the procedures set forth in paragraph (c):

(1) – (8) No Change.

(9) may halt trading in a series of Portfolio Depository Receipts, Index Fund Shares (as defined in Rule 5705), Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Managed Trust Securities (as defined in Rule 5711(a) - (h) and (j), respectively), or NextShares (as defined in Rule 5745) listed on Nasdaq if the Intraday Indicative Value (as defined in Rule 5705), for Portfolio Depository Receipts or Index Fund Shares, for derivative securities as defined in Rule 5711(a), (b), and (d) - (h), Rule 5711(j) for Managed Trust Securities, or Rule 5745 for NextShares) or the index value applicable to that series is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. Nasdaq may also exercise discretion to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, Exchange Traded Fund Shares (as defined in Rule 5704), Managed Fund Shares, Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units (as defined in Rule 5711(i)), Managed Trust Securities, Currency Warrants (as defined in Rule 5711(k)), [or] NextShares, or Proxy Portfolio Shares (as defined in Rule 5750) based on a consideration of the following factors: (A) trading in underlying securities comprising the index or portfolio applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index or portfolio, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

(10) shall halt trading in Derivative Securities Products (as defined in Rule 4120(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares under Rule 5735, a Disclosed Portfolio, [and] in the case of NextShares under Rule 5745, a Composition File, and in the case of Proxy Portfolio Shares, a Proxy Basket,

or the Fund Portfolio) is disseminated if Nasdaq becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, [or] in the case of NextShares, the Composition File, or in the case of Proxy Portfolio Shares, the Proxy Basket, or the Fund Portfolio) is not being disseminated to all market participants at the same time.

Nasdaq will maintain the trading halt until such time as Nasdaq becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, or in the case of NextShares, the Composition File, or in the case of Proxy Portfolio Shares, the Proxy Basket, or the Fund Portfolio as applicable) is available to all market participants or, in the case of Derivative Securities Products traded on Nasdaq pursuant to unlisted trading privileges, until such time trading resumes in the listing market.

(11) – (13) No Change.

(b) Trading Halts for Trading of Certain Derivative Securities Products on Nasdaq Pursuant to Unlisted Trading Privileges

(1) – (3) No Change.

(4) Definitions. For purposes of this Rule:

(A) Derivative Securities Product means a series of Exchange Traded Fund Shares, Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, NextShares, [or] Trust Issued Receipts, or Proxy Portfolio Shares (as defined in Rules 5704, 5705, 5735, 5745, [and]5720, and 5750 respectively), a series of Commodity-Related Securities (as defined in Rule 4630), securities representing interests in unit investment trusts or investment companies, Index- Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, or Currency Warrants (as defined in Rule 5711(a) - (k)), or any other UTP Derivative Security (as defined in Rule 5740).

(B) – (E) No Change.

(c) No Change.

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5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

(a) Exemptions to the Corporate Governance Requirements

(1) – (5) No Change.

(6) Issuers of Non- Voting Preferred Securities, Debt Securities and Derivative Securities

(A) No Change.

(B) For the purposes of this Rule 5600 Series only, the term "Derivative Securities" is defined as the following: Exchange Traded Fund Shares (Rule 5704), Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Equity Index-Linked Securities (Rule 5710(k)(i)), Commodity-Linked Securities (Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (5710(k)(iii)), Futures-Linked Securities (5710(k)(iv)), Multifactor Index-Linked Securities (5710(k)(v)), Index-Linked Exchangeable Notes (Rule 5711(a)), Equity Gold Shares (Rule 5711(b)), Trust Certificates (Rule 5711(c)), Commodity-Based Trust Shares (Rule 5711(d)), Currency Trust Shares (Rule 5711(e)), Commodity Index Trust Shares (Rule 5711(f)), Commodity Futures Trust Shares (Rule 5711(g)), Partnership Units (Rule 5711(h)), Managed Trust Securities (Rule 5711(j)), SEEDS (Rule 5715), Trust Issued Receipts (Rule 5720), Managed Fund Shares (Rule 5735), [and] NextShares (Rule 5745), and Proxy Portfolio Shares (Rule 5750). Derivative Securities are subject to certain exemptions to the Rule 5600 Series as described in Rule 5615(a)(6).

(b) – (c) No Change.

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