previously inadvertently excluded. The provisions regarding off-exchange trading by a Member acting as agent apply equally to all Members, and each national securities exchange is required to include the provision of Rule 19c–1 under the Act in its rules.

G. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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) of the Act and Rule 19b–4(f)(6) thereunder.11

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days after the date of the filing. The Exchange has asked the Commission to waive the 30-day operative delay for this filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days after the date of the 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 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 change 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);

- Send an email to rule-comments@sec.gov. Please include File Number SR–CboeEDGA–2021–021 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–CboeEDGA–2021–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2021–021, and should be submitted on or before November 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.16

J. Matthew DeLosDernier,
Assistant Secretary

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II. Description

The Exchange proposes to amend Nasdaq Rule 5750, which permits the listing and trading of series of Proxy Portfolio Shares. Nasdaq Rule 5750 currently provides that Proxy Portfolio Shares be issued and redeemed in a specified aggregate minimum number in return for the Proxy Basket and/or cash. The Exchange proposes to amend the definition of “Proxy Portfolio Share” in Nasdaq Rule 5750(c)(1) to permit creations and redemptions of shares in return for a Custom Basket in addition to the Proxy Basket, to the extent permitted by a fund’s exemptive relief. Further, the Exchange proposes to define the term “Custom Basket” as a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Proxy Portfolio Shares. The Exchange also proposes to amend the definition of “Reporting Authority” in Nasdaq Rule 5750(c)(3) to include Custom Baskets among the types of information for which the Reporting Authority designated for a particular series of Proxy Portfolio Shares will be the official source for calculating and reporting such information.

The Exchange proposes to amend Nasdaq Rule 5750(d) to incorporate specific initial and continued listing criteria relating to Custom Baskets. Specifically, the Exchange proposes to add a new initial listing requirement to stipulate that the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the issuer and any person acting on behalf of the issuer of each series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Exchange Act (“Regulation FD”), including with respect to changes to the Proxy Basket, the Proxy Basket, and/or the Custom Basket as applicable. In addition, any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio, the Proxy Basket, and/or the Custom Basket has access to nonpublic information regarding the Fund Portfolio and Proxy Basket, and must subject to procedures designed to prevent the use and dissemination of material nonpublic information concerning the applicable Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto. Proposed Nasdaq Rule 5750(b)(6) would require that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, or the Custom Basket has access to nonpublic information regarding material nonpublic information concerning the applicable Fund Portfolio, the Proxy Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity 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 of and/or changes to the Fund Portfolio, the Proxy Basket, or the Custom Basket.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission notes that it has considered the

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5 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 1940 Act applicable to a series of Proxy Portfolio Shares. See Nasdaq Rule 5750(c)(5). The term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the investment company registered under the 1940 Act (“Investment Company”) that will form the basis for the Investment Company’s calculation of net asset value (“NAV”) at the end of the business day. See Nasdaq Rule 5750(b)(2).

6 See Nasdaq Rule 5750(c)(6).

7 See Nasdaq Rule 5750(c)(3) (defining “Proxy Portfolio Share”).

8 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 1940 Act applicable to a series of Proxy Portfolio Shares. See Nasdaq Rule 5750(c)(5). The term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the investment company registered under the 1940 Act (“Investment Company”) that will form the basis for the Investment Company’s calculation of net asset value (“NAV”) at the end of the business day. See Nasdaq Rule 5750(b)(2).

9 See Nasdaq Rule 5750(c)(6).

10 The term “Proxy Basket and Custom Basket” is defined in Nasdaq Rule 5750(c)(1) (defining “Proxy Portfolio Share” as a security that: (A) Represents an interest in an 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 or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined NAV; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined NAV; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter).

11 See Nasdaq Rule 5750(c)(3) (defining “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular

12 “Regular market session” means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m. See Nasdaq Rule 4120(b)(4)(D).

13 See Nasdaq Rule 5750(d)(2)(A)(ii). Nasdaq Rule 5750(d)(2)(A) currently provides that the Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time. This current requirement would be designated as Nasdaq Rule 5750(d)(2)(B)(i) and (ii). The Exchange also proposes to amend the title of Nasdaq Rule 5750(d)(2)(A) to “Proxy Basket and Custom Basket.” See proposed Nasdaq Rule 5750(d)(2)(A).

14 In approving this proposed rule change, the Commission notes that it has considered the
Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,15 which requires, among other things, that the Exchange’s rules 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 previously filed a proposed rule change to adopt Nasdaq Rule 5750 to permit the listing and trading of Proxy Portfolio Shares.16 As discussed above, under the current rule, a series of Proxy Portfolio Shares must create or redeem shares in return for the Proxy Basket and/or cash. The Exchange is now proposing to amend Nasdaq Rule 5750 to allow a series of Proxy Portfolio Shares to create or redeem shares in return for a Custom Basket, which is a portfolio of securities that is different from the Proxy Basket, to the extent permitted by an issuer’s exemptive relief under the 1940 Act and stated that it believed that the issuer and any person acting on behalf of the series of Proxy Portfolio Shares, the Exchange will be required to obtain a representation from the issuer of each series of Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation FD, including with respect to any Custom Basket.21 These measures help to mitigate concerns that certain information regarding the funds will be available only to select market participants and thereby helps to prevent fraud and manipulation.

The Commission notes that, as set forth in the definition of “Custom Basket,” a series of Proxy Portfolio Shares may only utilize Custom Baskets to the extent consistent with the exemptive relief issued pursuant to the 1940 Act applicable to such series.22 The Commission further notes that all series of Proxy Portfolio Shares will continue to be subject to the existing rules and procedures that govern the listing and trading of Proxy Portfolio Shares and the trading of equity securities on the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act23 that the proposed rule change (SR–NASDAQ–2021–065), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.24

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving the Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

October 8, 2021.

I. Introduction


22 17 CFR 240.19b–4 thereunder 2 to amend NSCC’s.


24 See supra note 15.

1 See supra Section II, describing proposed Nasdaq Rules 5750(b)(5) and (6).

2 See supra note 16.

16 See supra Section II, describing proposed Nasdaq Rules 5750(b)(5) and (6).

15 See supra note 16.


13 See supra note 15.

