

Required fields are shown with yellow backgrounds and asterisks.

Filing by The Nasdaq Stock Market LLC
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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

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

Description

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

A proposed rule change regarding ETFs as covered in Nasdaq Rule 5704

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

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 04/14/2020 EVP and Chief Legal Counsel

By John Zecca

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Nasdaq Rule 5704 to remove the listing requirement that following twelve months after listing a series of Exchange Traded Fund Shares (the “Fund”) on Nasdaq that the Fund has at least 50 beneficial holders and to amend the requirement that Nasdaq will establish a minimum number of shares of the Fund to be outstanding at the time of initial listing with a requirement that the Fund must have at least one creation unit outstanding on an initial and continued listing basis.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on April 13, 2020. No other action is necessary for the filing of the rule change.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange proposes to amend Nasdaq Rule 5704 to remove the listing requirement that following twelve months after listing a series of an Exchange Traded Fund Shares on Nasdaq that the Fund has at least 50 beneficial holders and to amend the requirement that Nasdaq will establish a minimum number of shares of the Fund to be outstanding at the time of initial listing with a requirement that the Fund must have at least one creation unit outstanding on an initial and continued listing basis.³

Nasdaq believes that the requirement that a series of Exchange Traded Fund Shares listed pursuant to Nasdaq Rule 5704 must have at least 50 beneficial shareholders is no longer necessary. The Exchange believes that the conditions of Rule 6c-11⁴ ("Rule 6c-11") under the Investment Company Act of 1940, as amended,⁵ coupled with the existing creation and redemption process, serve to mitigate the risks of manipulation and the lack of liquidity that the shareholder requirement was intended to address.⁶ Nasdaq

³ The term creation unit would have the same meaning as defined in Rule 6c-11 (i.e., a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount if any.)

⁴ A series of Exchange Traded Fund Shares listed pursuant to Nasdaq Rule 5704 is required to be eligible to operate pursuant to Rule 6c-11. See Nasdaq Rule 5704(b).

⁵ See Release No. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) ("ETF Adopting Release").

⁶ Staff believes that the shareholder requirement is meant to deter possible manipulation in the trading of common stock and common stock equivalents. However, as discussed herein, the pricing, trading and valuation of Exchange Traded Fund Shares is fundamentally different from that of common stock and

believes that requiring at least one creation unit to be outstanding at all times coupled with the enhanced disclosure requirements of Rule 6c-11 will facilitate an effective arbitrage mechanism that provides investors with sufficient transparency into the holdings of the underlying portfolio and ensures that the trading price in the secondary market remains in line with the value per share of the portfolio.

For example, the portion of Rule 6c-11 requiring additional disclosure if the premium or discount is in excess of 2% for more than seven consecutive days, as well as the related website disclosure and discussion requirements,⁷ provides additional transparency to investors in the event that the trading value and the underlying portfolio deviate for an extended period of time, which could indicate an inefficient arbitrage mechanism.⁸ The arbitrage mechanism relies on the fact that shares of the Fund can be created and redeemed and that shares of the Fund are able to flow into the market when the price of the Fund is lower than the net asset value per share of the portfolio. The resulting buying and selling of the shares of the Fund, as well as the underlying portfolio components, generally causes the market price and the net asset value per share to align.

Therefore, the symbiotic relationship between the liquidity of the Fund and the functioning of the arbitrage mechanism helps to ensure that the trading price in the secondary market is at fair value. This renders the need for a shareholder requirement

their equivalents. Common stock liquidity is dependent, in part, on a sufficient number of outstanding shares in the market as well as a wide distribution of such shares across market participants. This distribution and related liquidity decreases the risk of manipulation of the price of the common stock.

⁷ See 17 CFR 270.6c-11(c)(1)(vi).

⁸ The Exchange notes that the Commission discussed the importance of an effective and efficient arbitrage mechanism in the Rule 6c-11 Release. See ETF Adopting Release at pp. 14-16.

that supports fair and orderly trading as duplicative and unnecessary. In addition, the proper functioning of the arbitrage mechanism is reliant on the presence of authorized participants (“APs”) that are eligible to facilitate creations and redemptions with the Fund. The Exchange notes that the SEC did not adopt a minimum number of APs as part of Rule 6c-11 because Funds already have enough APs so that a need for such a requirement to ensure a sufficient number of APs was unwarranted.⁹ Finally, Nasdaq’s surveillance program and its ability to halt trading in the Fund, provides for additional investor protections by further mitigating any abnormal trading that would affect the Fund’s price.¹⁰

In order for fund redemptions to be executed in support of the arbitrage mechanism, Nasdaq believes it is appropriate that in lieu of the shareholder requirement that the Fund has at least one creation unit outstanding on an initial and continued listing basis. The existence of the creation and redemption process, as well as at least one creation unit, ensures that market participants are able to redeem shares and, thereby, allow the arbitrage mechanism to function properly.¹¹ Of the over 350 funds currently

⁹ “Additionally, based upon Form N-CEN data through September 5, 2019, we found that out of 1672 funds reviewed that could rely on rule 6c-11, only 30 (approximately 1.8% of the funds reviewed) reported having fewer than 2 APs. We therefore do not believe that it is appropriate at this time to prescribe a minimum number of APs that an ETF may use.” See ETF Adopting Release at p. 54.

¹⁰ See Nasdaq Rule 4120(a)(10).

¹¹ In the case of a fund with only one creation unit outstanding, in order for a redemption to take place the AP would need to hold all of the shares necessary to make up the single creation unit (and therefore all of the shares currently issued). If that is the case, then there would be no secondary market volume (and no retail investors) that could possibly cause the secondary market price and net asset value to deviate and, therefore, the arbitrage mechanism is not needed.

listed on Nasdaq that would be eligible to be listed under Nasdaq Rule 5704, only one has a single creation unit outstanding. The remaining funds have, on average, approximately 289 creation units outstanding.¹²

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹³ in general and Section 6(b)(5) of the Act¹⁴ 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 the proposed rule change to amend Nasdaq Rule 5704 to remove the 50 beneficial holder requirement and to amend the shares outstanding listing requirement, as discussed above, will 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. Reliance on the conditions of Rule 6c-11, coupled with the existing creation and redemption process, as well as the presence of at least one creation unit, serves to work together to mitigate the risks of manipulation and the lack of liquidity that the shareholder requirement was intended to address. By further aligning the listing requirements with the operational relationship between investors, market participants and ETF issuers, the

¹² Nasdaq internal data as of March 31, 2020.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

proposal facilitates greater transparency for investors and issuers resulting in a more efficient market and increased investor protections.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange believes that the proposed rule change will maintain the integrity of Nasdaq Rule 5704 on an initial and continued listing basis to the benefit of investors and the marketplace.

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

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

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)

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2020-017)

April __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Nasdaq Rule 5704

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 April 14, 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 amend Nasdaq Rule 5704 to remove the listing requirement that following twelve months after listing a series of Exchange Traded Fund Shares (the “Fund”) on Nasdaq that the Fund has at least 50 beneficial holders and to amend the requirement that Nasdaq will establish a minimum number of shares of the Fund to be outstanding at the time of initial listing with a requirement that the Fund must have at least one creation unit outstanding on an initial and continued listing basis.

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 <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend Nasdaq Rule 5704 to remove the listing requirement that following twelve months after listing a series of an Exchange Traded Fund Shares on Nasdaq that the Fund has at least 50 beneficial holders and to amend the requirement that Nasdaq will establish a minimum number of shares of the Fund to be outstanding at the time of initial listing with a requirement that the Fund must have at least one creation unit outstanding on an initial and continued listing basis.³

Nasdaq believes that the requirement that a series of Exchange Traded Fund Shares listed pursuant to Nasdaq Rule 5704 must have at least 50 beneficial shareholders

³ The term creation unit would have the same meaning as defined in Rule 6c-11 (i.e., a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount if any.)

is no longer necessary. The Exchange believes that the conditions of Rule 6c-11⁴ (“Rule 6c-11”) under the Investment Company Act of 1940, as amended,⁵ coupled with the existing creation and redemption process, serve to mitigate the risks of manipulation and the lack of liquidity that the shareholder requirement was intended to address.⁶ Nasdaq believes that requiring at least one creation unit to be outstanding at all times coupled with the enhanced disclosure requirements of Rule 6c-11 will facilitate an effective arbitrage mechanism that provides investors with sufficient transparency into the holdings of the underlying portfolio and ensures that the trading price in the secondary market remains in line with the value per share of the portfolio.

For example, the portion of Rule 6c-11 requiring additional disclosure if the premium or discount is in excess of 2% for more than seven consecutive days, as well as the related website disclosure and discussion requirements,⁷ provides additional transparency to investors in the event that the trading value and the underlying portfolio deviate for an extended period of time, which could indicate an inefficient arbitrage

⁴ A series of Exchange Traded Fund Shares listed pursuant to Nasdaq Rule 5704 is required to be eligible to operate pursuant to Rule 6c-11. See Nasdaq Rule 5704(b).

⁵ See Release No. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (“ETF Adopting Release”).

⁶ Staff believes that the shareholder requirement is meant to deter possible manipulation in the trading of common stock and common stock equivalents. However, as discussed herein, the pricing, trading and valuation of Exchange Traded Fund Shares is fundamentally different from that of common stock and their equivalents. Common stock liquidity is dependent, in part, on a sufficient number of outstanding shares in the market as well as a wide distribution of such shares across market participants. This distribution and related liquidity decreases the risk of manipulation of the price of the common stock.

⁷ See 17 CFR 270.6c-11(c)(1)(vi).

mechanism.⁸ The arbitrage mechanism relies on the fact that shares of the Fund can be created and redeemed and that shares of the Fund are able to flow into the market when the price of the Fund is lower than the net asset value per share of the portfolio. The resulting buying and selling of the shares of the Fund, as well as the underlying portfolio components, generally causes the market price and the net asset value per share to align.

Therefore, the symbiotic relationship between the liquidity of the Fund and the functioning of the arbitrage mechanism helps to ensure that the trading price in the secondary market is at fair value. This renders the need for a shareholder requirement that supports fair and orderly trading as duplicative and unnecessary. In addition, the proper functioning of the arbitrage mechanism is reliant on the presence of authorized participants (“APs”) that are eligible to facilitate creations and redemptions with the Fund. The Exchange notes that the SEC did not adopt a minimum number of APs as part of Rule 6c-11 because Funds already have enough APs so that a need for such a requirement to ensure a sufficient number of APs was unwarranted.⁹ Finally, Nasdaq’s surveillance program and its ability to halt trading in the Fund, provides for additional investor protections by further mitigating any abnormal trading that would affect the Fund’s price.¹⁰

⁸ The Exchange notes that the Commission discussed the importance of an effective and efficient arbitrage mechanism in the Rule 6c-11 Release. See ETF Adopting Release at pp. 14-16.

⁹ “Additionally, based upon Form N-CEN data through September 5, 2019, we found that out of 1672 funds reviewed that could rely on rule 6c-11, only 30 (approximately 1.8% of the funds reviewed) reported having fewer than 2 APs. We therefore do not believe that it is appropriate at this time to prescribe a minimum number of APs that an ETF may use.” See ETF Adopting Release at p. 54.

¹⁰ See Nasdaq Rule 4120(a)(10).

In order for fund redemptions to be executed in support of the arbitrage mechanism, Nasdaq believes it is appropriate that in lieu of the shareholder requirement that the Fund has at least one creation unit outstanding on an initial and continued listing basis. The existence of the creation and redemption process, as well as at least one creation unit, ensures that market participants are able to redeem shares and, thereby, allow the arbitrage mechanism to function properly.¹¹ Of the over 350 funds currently listed on Nasdaq that would be eligible to be listed under Nasdaq Rule 5704, only one has a single creation unit outstanding. The remaining funds have, on average, approximately 289 creation units outstanding.¹²

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹³ in general and Section 6(b)(5) of the Act¹⁴ 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.

¹¹ In the case of a fund with only one creation unit outstanding, in order for a redemption to take place the AP would need to hold all of the shares necessary to make up the single creation unit (and therefore all of the shares currently issued). If that is the case, then there would be no secondary market volume (and no retail investors) that could possibly cause the secondary market price and net asset value to deviate and, therefore, the arbitrage mechanism is not needed.

¹² Nasdaq internal data as of March 31, 2020.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change to amend Nasdaq Rule 5704 to remove the 50 beneficial holder requirement and to amend the shares outstanding listing requirement, as discussed above, will 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. Reliance on the conditions of Rule 6c-11, coupled with the existing creation and redemption process, as well as the presence of at least one creation unit, serves to work together to mitigate the risks of manipulation and the lack of liquidity that the shareholder requirement was intended to address. By further aligning the listing requirements with the operational relationship between investors, market participants and ETF issuers, the proposal facilitates greater transparency for investors and issuers resulting in a more efficient market and increased investor protections.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 purpose of the Act. The Exchange believes that the proposed rule change will maintain the integrity of Nasdaq Rule 5704 on an initial and continued listing basis to the benefit of investors and the marketplace

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2020-017 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-2020-017. 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-2020-017 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market LLC Rules

* * * * *

5704. Exchange Traded Fund Shares

(a) No Change.

(b) Nasdaq may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 5704 on an initial and continued listing basis.

(1) Initial and Continued Listing. Each series of Exchange Traded Fund Shares must also satisfy the follow criteria on an initial and continued listing [(except for paragraph (A) below)] basis:

(A) [Initial]Shares Outstanding. For each series of Exchange Traded Fund Shares, [Nasdaq will establish]a minimum of one creation unit[number] of Exchange Traded Fund Shares is required to be outstanding[at the time of commencement of trading on Nasdaq].

(B) – (D) No Change.

(2) Suspension of trading and removal. Nasdaq will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Exchange Traded Fund Shares under any of the following circumstances:

(A) No Change.

(B) [if, following the initial twelve month period after commencement of trading on Nasdaq of a series of Exchange Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange Traded Fund Shares;

(C)]if any of the other requirements set forth in this Rule 5704 are not continuously maintained; or

(C[D]) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

(c) – (f) No Change.

* * * * *