

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 * <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"/>
Pilot <input type="checkbox"/>			Rule		
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 *).
 A proposed rule change to adopt Nasdaq Rule 5750 to permit the listing and trading of Proxy Portfolio Shares

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 06/11/2020 EVP and Chief Legal Counsel
 By John Zecca john.zecca@nasdaq.com
 (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

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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 adopt Nasdaq Rule 5750 to permit the listing and trading of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company.

(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:

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 proposes to add new Nasdaq Rule 5750 for the purpose of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company.³ This proposed rule change to add new Nasdaq Rule 5750 is substantially similar to the recently approved rule change by Cboe BZX Exchange, Inc. (“Cboe BZX”) to adopt rule 14.11(m).⁴

³ The basis of this proposal are several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 and subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812-14364), issued on December 10, 2019 (the “Application,” “Notice,” and “Order,” respectively, and, collectively, the “Exemptive Order”). See Investment Company Act Release Nos. 33683 and 33712. The Order specifically notes that “granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.” The Exchange notes that it also referred to the application for exemptive relief orders (collectively, with the Application, the “Proxy Applications”) and notices thereof (collectively, with the Notice, the “Proxy Notices”) for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812-14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812-14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812-14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812-15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Proxy Portfolio Shares under proposed Nasdaq Rule 5750.

⁴ See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF).

Proposed Rule 5750

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

Proposed Nasdaq Rule 5750(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Proxy Portfolio Shares that meet the criteria of Nasdaq Rule 5750.

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

Proposed Nasdaq Rule 5750(b)(1) – (3) provides that the Exchange will file

separate proposals under Section 19(b) of the Act before the listing and trading of a series of Proxy Portfolio Shares; that transactions in Proxy Portfolio Shares will occur throughout the Exchange's trading hours.; and the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares is \$0.01.

Proposed Nasdaq Rule 5750(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA, the daily Fund Portfolio of each series of Proxy Portfolio Shares.

Proposed Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Proxy Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio and/or the Proxy Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto.

Proposed Nasdaq Rule 5750(b)(6) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic

information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto. 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 and/or changes to such Fund Portfolio or Proxy Basket.

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

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

Proposed Nasdaq Rule 5750(c)(4) provides that the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable

financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

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

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

objective, which shall be adhered to under Normal Market Conditions.

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

Additionally, proposed Nasdaq Rule 5750(d)(2)(C) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Nasdaq Rule 5800 under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission Staff under the 1940 Act to the Investment Company with respect to the series of Proxy Portfolio Shares; (d) if any of the

requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

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

Proposed Nasdaq Rule 5750(e) provides that neither the Exchange, the Reporting

Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Proxy Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Policy Discussion – Proposed Nasdaq Rule 5750

The purpose of the structure of Proxy Portfolio Shares is to provide investors with the traditional benefits of ETFs⁵ while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the

⁵ For purposes of this filing, the term ETF will include only Exchange Traded Fund Shares as defined in Nasdaq Rule 5704, Portfolio Depositary Receipts as defined in Nasdaq Rule 5705(a), Index Fund Shares as defined in Nasdaq Rule 5705(b), and Managed Fund Shares as defined in Nasdaq Rule 5735, along with the equivalent products defined in the rules of other national securities exchanges.

performance of a fund. While each series of Proxy Portfolio Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Nasdaq Rule 5735), Proxy Portfolio Shares differ from Managed Fund Shares in one key way.⁶ A series of Proxy Portfolio Shares will disclose the Proxy Basket on a daily basis, which, as described above, is designed to *closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.⁷

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

⁶ The Exchange notes that there is an additional difference between proposed Nasdaq Rule 5750 and Nasdaq Rule 5735: proposed Nasdaq Rule 5750 would require a rule filing under Section 19(b) prior to listing any product on the Exchange, meaning that no series of Proxy Portfolio Shares could be listed on the Exchange pursuant to Rule 19b-4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Nasdaq Rule 5735.

⁷ Proposed Nasdaq Rule 5750(d)(2)(C) will, however, require each series of Proxy Portfolio Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

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

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

⁸ As provided in the Proxy Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund’s crossing a threshold, the adviser will promptly call a meeting of the fund’s board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) if the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

⁹ Proxy Portfolio Shares will be purchased or redeemed only in large aggregations, or “creation units,” and the Proxy Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Proxy Basket securities in an attempt to profit when shares are trading at a discount to the Proxy Basket.

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

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Proxy Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.¹⁰ Consistent with the Commission's view, the Exchange believes that because the arbitrage mechanism for Proxy Portfolio Shares will be sufficient to keep secondary market prices in line with NAV.

¹⁰ See Investment Company Act Release No. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit

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

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material nonpublic information, the Exchange believes that proposed Nasdaq Rule 5750(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and

from the opportunity to invest in active strategies through a vehicle that offers the

practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under Nasdaq Rule 5750(b)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Proxy Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Proxy Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Proxy Portfolio Shares on the Exchange during all trading sessions

traditional benefits of ETFs. See Id., at 64145.

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

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

Trading Halts

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

Availability of Information

As noted above, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's SAI, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. The Exchange also notes that the Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material nonpublic

information, which otherwise do not apply to issuers of Proxy Portfolio Shares.

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

Trading Rules

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

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹² in general and Section 6(b)(5) of the Act¹³ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

¹¹ With respect to trading in Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its members for compliance with such requirements.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

Proposed Nasdaq Rule 5750(d)(2) provides that each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) the Proxy Basket will be disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Proxy

Portfolio Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or SAI.

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

Proposed Nasdaq Rule 5750(d)(2)(D) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares

inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable

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

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

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the shares (the Proxy Basket) as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to firewalls and information protection will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Proxy Basket. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the

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

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

5800. In addition, the Exchange also has a general policy prohibiting the distribution of material, nonpublic information by its employees.

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

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

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the CTA high-speed line. The Exchange deems Proxy Portfolio Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

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 notes that the proposed rule change, rather will facilitate the listing and trading of new types of actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, 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)

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 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, because it will lead to more consistent listing standards across exchanges and thereby enhance competition.

The Exchange notes that the proposed changes would result in rules that are substantially similar to recently approved Cboe BZX Rule 14.11(m).¹⁴ Specifically, the Exchange proposes to adopt Nasdaq Rule 5750 to permit the listing and trading of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company, and is substantially similar to the Tracking Fund Shares recently approved for Cboe BZX.¹⁵ The Exchange believes this proposed change

¹⁴ See supra note 4.

¹⁵ Id.

does not significantly affect the protection of investors or the public interest because it is consistent with a recent SEC approved rule and will serve to enhance competition.

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 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.

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.

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

This proposed rule change is based on recently approved Cboe BZX Rule 14.11(m).¹⁶

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.

¹⁶ See supra note 4.

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2020-032)

June __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Nasdaq Rule 5750

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 11, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“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 adopt Nasdaq Rule 5750 to permit the listing and trading of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 add new Nasdaq Rule 5750 for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Proxy Portfolio Shares, which are securities issued by an actively managed open-end management investment company.³ This proposed rule change to add new Nasdaq Rule

³ The basis of this proposal are several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 and subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812-14364), issued on December 10, 2019 (the "Application," "Notice," and "Order," respectively, and, collectively, the "Exemptive Order"). See Investment Company Act Release Nos. 33683 and 33712. The Order specifically notes that "granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act." The Exchange notes that it also referred to the application for exemptive relief orders (collectively, with the Application, the "Proxy Applications") and notices thereof (collectively, with the Notice, the "Proxy Notices") for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812-14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File

5750 is substantially similar to the recently approved rule change by Cboe BZX Exchange, Inc. (“Cboe BZX”) to adopt rule 14.11(m).⁴

Proposed Rule 5750

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

No. 812-14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812-14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812-15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Proxy Portfolio Shares under proposed Nasdaq Rule 5750.

⁴ See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF).

Proposed Nasdaq Rule 5750(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Proxy Portfolio Shares that meet the criteria of Nasdaq Rule 5750.

Proposed Nasdaq Rule 5750(b) provides that Nasdaq Rule 5750 is applicable only to Proxy Portfolio Shares and that, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Exchange's Board shall be applicable to the trading on the Exchange of such securities. Proposed Nasdaq Rule 5750(b) provides further that Proxy Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Nasdaq Rule 5750(b)(1) – (3) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Proxy Portfolio Shares; that transactions in Proxy Portfolio Shares will occur throughout the Exchange's trading hours.; and the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares is \$0.01.

Proposed Nasdaq Rule 5750(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA, the daily Fund Portfolio of each series of Proxy Portfolio Shares.

Proposed Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire

wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Proxy Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio and/or the Proxy Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto.

Proposed Nasdaq Rule 5750(b)(6) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto. 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 and/or changes to such Fund Portfolio or Proxy Basket.

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

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

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

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

identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weight of the holding in the portfolio.

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

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

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

Proposed Nasdaq Rule 5750(d)(2)(D) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance

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

Proposed Nasdaq Rule 5750(e) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Proxy Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the

Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Policy Discussion – Proposed Nasdaq Rule 5750

The purpose of the structure of Proxy Portfolio Shares is to provide investors with the traditional benefits of ETFs⁵ while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Proxy Portfolio Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Nasdaq Rule 5735), Proxy Portfolio Shares differ from Managed Fund Shares in one key way.⁶ A series of Proxy Portfolio Shares will disclose the Proxy Basket on a daily basis, which, as described above, is designed to *closely track* the performance of the holdings of the

⁵ For purposes of this filing, the term ETF will include only Exchange Traded Fund Shares as defined in Nasdaq Rule 5704, Portfolio Depositary Receipts as defined in Nasdaq Rule 5705(a), Index Fund Shares as defined in Nasdaq Rule 5705(b), and Managed Fund Shares as defined in Nasdaq Rule 5735, along with the equivalent products defined in the rules of other national securities exchanges.

⁶ The Exchange notes that there is an additional difference between proposed Nasdaq Rule 5750 and Nasdaq Rule 5735: proposed Nasdaq Rule 5750 would require a rule filing under Section 19(b) prior to listing any product on the Exchange, meaning that no series of Proxy Portfolio Shares could be listed on the Exchange pursuant to Rule 19b-4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Nasdaq Rule 5735.

Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.⁷

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

Given the correlation between the Proxy Basket and the Fund Portfolio,⁸ the Exchange believes that the Proxy Basket would serve as a pricing signal to identify

⁷ Proposed Nasdaq Rule 5750(d)(2)(C) will, however, require each series of Proxy Portfolio Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

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

⁸ As provided in the Proxy Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund’s crossing a threshold, the adviser will promptly call a meeting of the fund’s board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) if the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on

arbitrage opportunities when its value and the secondary market price of the shares of a series of Proxy Portfolio Shares diverge. If shares began trading at a discount to the Proxy Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,⁹ redeem them in exchange for a redemption basket reflecting the Net Asset Value (“NAV”) per share of the Fund Portfolio. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares’ market price closer to the fund’s NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Proxy Basket, Market Makers may sell shares short and take a long position in the Proxy Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Proxy Basket securities in an attempt to profit when shares are trading at a discount to the Proxy Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF’s complete holdings but

one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

⁹ Proxy Portfolio Shares will be purchased or redeemed only in large aggregations, or “creation units,” and the Proxy Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Proxy Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.¹⁰ Consistent with the Commission's view, the Exchange believes that because the arbitrage mechanism for Proxy Portfolio Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least

¹⁰ See Investment Company Act Release No. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. See *Id.*, at 64145.

60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Basket compared to the fund holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

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

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

Surveillance

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

Exchange will commence delisting procedures under Nasdaq Rule 5800. In addition, the Exchange also has a general policy prohibiting the distribution of material, nonpublic information by its employees.

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

Trading Halts

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

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

Availability of Information

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

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

Trading Rules

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

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹² in general and Section 6(b)(5) of the Act¹³ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Nasdaq Rule 5750 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Proxy Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Nasdaq Rule 5750(d)(1) provides the initial listing criteria for a series of Proxy Portfolio Shares, which include the

¹¹ With respect to trading in Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its members for compliance with such requirements.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

following: (A) each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) for each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio.

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

Additionally, proposed Nasdaq Rule 5750(d)(2)(C) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Nasdaq Rule 5800 under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50

beneficial holders of the series of Proxy Portfolio Shares; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Proxy Portfolio Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

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

as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Nasdaq Rule 5750(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Nasdaq Rule 5750(b)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Proxy Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the

composition and/or changes to such Fund Portfolio or Proxy Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Proxy Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the shares (the Proxy Basket) as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to firewalls and information protection will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Proxy Basket. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Proxy Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Proxy Portfolio Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative

information updated on a daily basis, including, on a per share basis for each fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Basket compared to the fund holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

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

As noted in proposed Nasdaq Rule 5750(b)(4), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Proxy Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio

of any series of Proxy Portfolio Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

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

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the CTA high-speed line. The Exchange deems Proxy Portfolio Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's

existing rules governing the trading of equity securities. As provided in proposed Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

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 notes that the proposed rule change, rather will facilitate the listing and trading of new types of actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, 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

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:

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-2020-032 on the subject line.

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.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2020-032. 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-2020-032 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

* * * * *

5750. Proxy Portfolio Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Proxy Portfolio Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Proxy Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Proxy Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

(1) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Proxy Portfolio Shares.

(2) Transactions in Proxy Portfolio Shares will occur throughout the Exchange’s trading hours.

(3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Proxy Portfolio Shares is \$0.01.

(4) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company’s investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Proxy Portfolio Shares.

(5) If the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Proxy Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio and/or the Proxy Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio

and/or the Proxy Basket or changes thereto.

(6) Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto. 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 and/or changes to such Fund Portfolio or Proxy Basket.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) Proxy Portfolio Share. The term “Proxy Portfolio Share” 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.

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

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

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

(5) Proxy Basket. 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. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 5750, to the extent applicable:

- (A) Ticker symbol;
- (B) CUSIP or other identifier;
- (C) Description of holding;
- (D) Quantity of each security or other asset held; and
- (E) Percentage weight of the holding in the portfolio.

(d) Initial and Continued Listing. Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:

(1) Initial Listing. Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:

- (A) For each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
- (B) The Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio.
- (C) All Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

(2) Continued Listing. Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

- (A) Proxy Basket. The Proxy Basket will be publicly disseminated at least

once daily and will be made available to all market participants at the same time.

(B) Fund Portfolio. The Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time.

(C) Suspension of trading or removal. The Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Rule 5800 under any of the following circumstances:

(i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares;

(ii) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time;

(iii) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission staff under the 1940 Act to the Investment Company with respect to the series of Proxy Portfolio Shares;

(iv) if any of the requirements set forth in this rule are not continuously maintained;

(v) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or

(vi) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(D) Trading Halt.

(i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Proxy Portfolio Shares inadvisable. These may include:
a. the extent to which trading is not occurring in the securities

and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or b. whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

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

(E) Termination. Upon termination of an Investment Company, the Exchange requires that Proxy Portfolio Shares issued in connection with such entity be removed from listing on the Exchange.

(F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

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

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