

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 42	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 005 Amendment No. (req. for Amendments *)
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Filing by The Nasdaq Stock Market LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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 relating to the ALPS Active REIT ETF of ALPS ETF Trust

**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 01/25/2021  
 By John Zecca (Name \*)  
 EVP and Chief Legal Counsel  
 john.zecca@nasdaq.com

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 Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change relating to the ALPS Active REIT ETF (the “Fund”) of ALPS ETF Trust (the “Trust”), to list and trade shares of the Fund under Nasdaq Rule 5750 (“Proxy Portfolio Shares”). The shares of the Fund are collectively referred to herein as the “Shares.”

(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 of the Exchange (the “Board”) on November 5, 2020. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

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

Jonathan F. Cayne  
Principal Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8493

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

a. Purpose

The Commission has approved the listing and trading of Proxy Portfolio Shares under Nasdaq Rule 5750, which governs the listing and trading of Proxy Portfolio Shares on the Exchange.<sup>3</sup>

The Fund is an actively-managed exchange-traded fund (“ETF”). The Shares are offered by the Trust, which was established as a Delaware statutory trust on September 13, 2007.<sup>4</sup> The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the “1940 Act”), has filed a registration statement on Form N-1A (“Registration Statement”) relating to the Fund with the Commission.<sup>5</sup> The Fund is a series of the Trust. ALPS Advisors, Inc. (“Adviser”) is the investment adviser to the Fund. ALPS Portfolio Solutions Distributor, Inc. is the principal underwriter and distributor of the Fund’s Shares. ALPS Fund Services, Inc. acts as the administrator and provides fund accounting services to the Fund. State Street Bank and Trust Company acts as the custodian and transfer agent to the Fund.

Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the investment

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<sup>3</sup> The Commission approved Nasdaq Rule 5750 in Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032).

<sup>4</sup> The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 34181 (Jan. 21, 2021) (“Exemptive Order”).

<sup>5</sup> The Registration Statement is available on the Commission’s website at [https://www.sec.gov/Archives/edgar/data/1414040/000139834420019856/fp0058104\\_485apos.htm](https://www.sec.gov/Archives/edgar/data/1414040/000139834420019856/fp0058104_485apos.htm).

company issuing Proxy Portfolio Shares<sup>6</sup> 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 and/or changes to the Fund Portfolio<sup>7</sup> and/or the Proxy Basket.<sup>8</sup> In addition, Nasdaq Rule 5750(b)(5) further requires that any person related to the investment adviser or

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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 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.

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 Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund Portfolio or the Proxy Basket or changes thereto.<sup>9</sup>

In addition, any person or entity, including a custodian, Reporting Authority,<sup>10</sup> 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

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<sup>9</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>10</sup> 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.

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.

In the event (a) the Adviser or any sub-adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund’s Portfolio and/or the Proxy Basket and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s Portfolio and/or the Proxy Basket.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

#### The Fund’s Principal Investment Strategies

The investment objective of the Fund will be to seek total return through dividends and capital appreciation. Under normal market conditions,<sup>11</sup> the Fund will

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<sup>11</sup> The term “normal market conditions” as used herein, is defined in Nasdaq Rule 5750(c)(4). On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may

seek to achieve its investment objective by investing at least 80% of its net assets in exchange-traded equity securities of real estate investment trusts.

Under the terms of the Exemptive Order,<sup>12</sup> the Fund's investments are limited to the following: ETFs, exchange-traded notes, exchange listed common stocks (excluding "penny stocks" as defined in Rule 3a51-1 under the Act), exchange-traded preferred stocks, exchange-traded American Depositary Receipts (ADRs), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, and exchange-traded currency trusts, in each case that are traded on a U.S. securities exchange contemporaneously with the Fund Shares; exchange-traded futures that trade contemporaneously with the Fund Shares that are U.S. listed futures contracts where the future contract's reference asset is an asset that the Fund could invest in directly, or in the case of an index future, is based on an index of a type of asset that the Fund could invest in directly; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Fund Shares; and cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Order and the holdings will be consistent with all requirements in the Exemptive Order. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing

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adopt a defensive strategy when the Adviser or any sub-adviser believes securities in which such Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

<sup>12</sup> See supra note 4.



agreement.

### 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 on 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 the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Adviser will upon request make available to the Exchange and/or Financial Industry Regulatory Authority ("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

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Proxy Portfolio Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Proxy Portfolio Shares also will be subject to Rule 5750(d)(2)(D), which sets forth circumstances under which a series of Proxy Portfolio Shares may be halted.

#### Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares traded on the Exchange is

\$0.01.

#### Availability of Information

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 Statement of Additional Information, 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 for 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](http://www.sec.gov). The Exchange also notes that the Exemptive Order provides that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise does 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.

#### Proxy Basket for the Proposed Fund

For the Fund, the Proxy Basket will consist of all of the Fund's portfolio holdings but will be weighted differently, subject to a minimum weightings overlap of 90% with the Fund's Portfolio at the beginning of each business day. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges

on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that the Fund's net asset value ("NAV") will form the basis for creations and redemptions for the Fund and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares.<sup>13</sup> The Adviser expects that the Shares of the Fund will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as the Fund's Proxy Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Proxy Basket is not the same as the Fund's NAV, the creation and redemption baskets will consist of the securities included in the Proxy Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Proxy Basket, as further described below.

The Proxy Basket will be constructed utilizing a proprietary algorithmic process that will be applied to the Fund Portfolio on a daily basis. The Proxy Basket will be publicly available on the Fund website before the commencement of trading in Fund Shares on each business day. The Proxy Basket will contain all of the names of the securities in the Fund Portfolio, and only the securities that are in the Fund Portfolio (and also could contain cash to represent the Fund Portfolio's holdings of cash). The Proxy Basket will have a minimum overlap of 90% with the Fund Portfolio at the beginning of each business day, with the precise percentage of aggregate overlap in weightings from 90% to 100% to be randomly generated each day.

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<sup>13</sup> See Nasdaq Rule 5735.

In addition to the disclosure of the Proxy Basket, the Fund will also publish the “Guardrail Amount” on its website on each business day before the commencement of trading in Shares on the Exchange. The Guardrail Amount is the maximum deviation between the weightings of the specific securities and cash positions in the Proxy Basket from the weightings of those specific securities and cash positions in the Fund Portfolio. The Guardrail Amount is intended to ensure that no individual security in the Proxy Basket will be overweighted or underweighted by more than the publicly disclosed percentage when compared to the actual weighting of each security within the Fund Portfolio as of the beginning of each business day. The Adviser expects the performance of the Proxy Basket and the Fund Portfolio to be closely aligned in light of the construction of the Proxy Basket, and does not expect the “Tracking Error” to exceed 1%. “Tracking Error” is defined to mean the standard deviation over the past three months of the daily difference, in percentage terms, between the Proxy Basket per Share NAV and that of the Fund at the end of the business day.

The Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. As described above, the Exchange notes that the concept of the Proxy Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Fund from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of the Fund.

#### Additional Information

The Exchange represents that the Shares of the Fund will continue to comply with

all other proposed requirements applicable to Proxy Portfolio Shares, including the dissemination of key information such as the Proxy Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares.

Price information for the exchange-listed instruments held by the Fund, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. Moreover, U.S.-listed equity securities held by the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>14</sup> Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Fund may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading

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<sup>14</sup> For a list of the current members of ISG, see [www.isgportal.com](http://www.isgportal.com). The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets (as applicable) such as the Fund Portfolio and Proxy Basket, or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per share of the Fund will be calculated daily and will be made available to all market participants at the same time.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares 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. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

b. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the particular instruments that may be included in the Fund Portfolio and Proxy Basket do not raise any concerns related to the Proxy Basket being able to closely track the NAV of the Fund because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, the Fund's Proxy Basket is designed to reliably and consistently correlate to the performance of the Fund.

The Adviser anticipates that the returns between the Fund and its respective Proxy Basket will have a consistent relationship and that the deviation in the returns between the Fund and its Proxy Basket will be sufficiently small such that the Proxy Basket will provide authorized participants, arbitrageurs and other market participants (collectively, "Market Makers") with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Fund will allow Market Makers to understand the relationship between the performance of the Fund and its Proxy Basket. Market Makers will be able to estimate the value of and hedge positions in the Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market



making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

The Exchange notes that a significant amount of information about the Fund and its Fund Portfolio is 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. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. 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 the 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 any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. On each business day, before the commencement of

trading of Shares, the Fund will publish on its website the Proxy Basket and the Guardrail Amount for that day.

The Exchange represents that the Shares of the Fund will continue to comply with all other proposed requirements applicable to Proxy Portfolio Shares, including the dissemination of key information such as the Proxy Basket, disclosure of the Fund Portfolio quarterly, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares and the orders approving such rules. Moreover, U.S.-listed equity securities held by the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>15</sup>

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares 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. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of

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<sup>15</sup> Id.

trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per share of the Fund will be calculated daily and will be made available to all market participants at the same time.

FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

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 purposes of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new type of actively-managed exchange-traded product, thus enhancing 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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>16</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>17</sup> The Exchange asserts that the 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 after its filing date, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

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.

The Exchange believes that its rule change proposal is appropriate for filing on an immediately effective basis under Rule 19b-4(f)(6). The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest because the proposal contains no new issues that the Commission has not previously contemplated and does not impose any significant burden on competition. This proposal reflects the investments covered by the Exemptive Order, to which the Fund's holdings are limited under this proposal. The Exchange believes that listing the Shares on the Exchange raises no substantive issues for the SEC. For the foregoing

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

reasons, this Exchange believes that this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under Rule 19b-4(f)(6) of the Act.

The Exchange respectfully requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> A waiver of the 30-day operative delay will allow the Fund to list and trade on the Exchange without unnecessary delay. The Exchange does not believe that there is any reason for delay since the Exemptive Order covers the Fund’s investments, to which the Fund’s holdings are limited under this proposal. A waiver of the operative delay is consistent with the protection of investors and the public interest for the reasons described above.

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

Not applicable.

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2021-005)

January \_\_, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change relating to the ALPS Active REIT ETF of ALPS ETF Trust to list and trade shares of the Fund under Nasdaq Rule 5750

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 25, 2021, 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 a rule change relating to the ALPS Active REIT ETF (the “Fund”) of ALPS ETF Trust (the “Trust”), to list and trade shares of the Fund under Nasdaq Rule 5750 (“Proxy Portfolio Shares”). The shares of the Fund are collectively referred to herein as the “Shares.”

(b) Not applicable.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

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

1. Purpose

The Commission has approved the listing and trading of Proxy Portfolio Shares under Nasdaq Rule 5750, which governs the listing and trading of Proxy Portfolio Shares on the Exchange.<sup>3</sup>

The Fund is an actively-managed exchange-traded fund ("ETF"). The Shares are offered by the Trust, which was established as a Delaware statutory trust on September 13, 2007.<sup>4</sup> The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the "1940 Act"), has filed a

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<sup>3</sup> The Commission approved Nasdaq Rule 5750 in Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032).

<sup>4</sup> The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 34181 (Jan. 21, 2021) ("Exemptive Order").



registration statement on Form N-1A (“Registration Statement”) relating to the Fund with the Commission.<sup>5</sup> The Fund is a series of the Trust. ALPS Advisors, Inc. (“Adviser”) is the investment adviser to the Fund. ALPS Portfolio Solutions Distributor, Inc. is the principal underwriter and distributor of the Fund’s Shares. ALPS Fund Services, Inc. acts as the administrator and provides fund accounting services to the Fund. State Street Bank and Trust Company acts as the custodian and transfer agent to the Fund.

Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the investment company issuing Proxy Portfolio Shares<sup>6</sup> 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 and/or changes to the Fund Portfolio<sup>7</sup> and/or the Proxy Basket.<sup>8</sup> In addition, Nasdaq

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<sup>5</sup> The Registration Statement is available on the Commission’s website at [https://www.sec.gov/Archives/edgar/data/1414040/000139834420019856/fp0058104\\_485apos.htm](https://www.sec.gov/Archives/edgar/data/1414040/000139834420019856/fp0058104_485apos.htm).

<sup>6</sup> 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.

<sup>7</sup> 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.

Rule 5750(b)(5) further requires that 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 Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund Portfolio or the Proxy Basket or changes thereto.<sup>9</sup>

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<sup>8</sup> 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 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.

<sup>9</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i)

In addition, any person or entity, including a custodian, Reporting Authority,<sup>10</sup> 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.

In the event (a) the Adviser or any sub-adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund’s Portfolio and/or the Proxy Basket and will be subject to procedures designed to prevent the use and dissemination of material

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above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>10</sup> 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.

non-public information regarding the Fund's Portfolio and/or the Proxy Basket.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund's Principal Investment Strategies

The investment objective of the Fund will be to seek total return through dividends and capital appreciation. Under normal market conditions,<sup>11</sup> the Fund will seek to achieve its investment objective by investing at least 80% of its net assets in exchange-traded equity securities of real estate investment trusts.

Under the terms of the Exemptive Order,<sup>12</sup> the Fund's investments are limited to the following: ETFs, exchange-traded notes, exchange listed common stocks (excluding "penny stocks" as defined in Rule 3a51-1 under the Act), exchange-traded preferred stocks, exchange-traded American Depositary Receipts (ADRs), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, and exchange-traded currency trusts, in each case that are traded on a U.S. securities exchange contemporaneously with the Fund Shares; exchange-traded futures that trade contemporaneously with the Fund Shares that are U.S. listed futures contracts where the future contract's reference asset is an asset that the Fund could invest in

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<sup>11</sup> The term "normal market conditions" as used herein, is defined in Nasdaq Rule 5750(c)(4). On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser or any sub-adviser believes securities in which such Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

<sup>12</sup> See supra note 4.

directly, or in the case of an index future, is based on an index of a type of asset that the Fund could invest in directly; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Fund Shares; and cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Order and the holdings will be consistent with all requirements in the Exemptive Order. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement.

#### 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 on 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 the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material,

non-public information by its employees.

The Adviser will upon request make available to the Exchange and/or Financial Industry Regulatory Authority (“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

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Proxy Portfolio Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Basket or Fund Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Proxy Portfolio Shares also will be subject to

Rule 5750(d)(2)(D), which sets forth circumstances under which a series of Proxy Portfolio Shares may be halted.

#### Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares traded on the Exchange is \$0.01.

#### Availability of Information

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 Statement of Additional Information, 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 for 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](http://www.sec.gov). The Exchange also notes that the Exemptive Order provides that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise does 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.

Proxy Basket for the Proposed Fund

For the Fund, the Proxy Basket will consist of all of the Fund's portfolio holdings but will be weighted differently, subject to a minimum weightings overlap of 90% with the Fund's Portfolio at the beginning of each business day. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that the Fund's net asset value ("NAV") will form the basis for creations and redemptions for the Fund and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares.<sup>13</sup> The Adviser expects that the Shares of the Fund will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as the Fund's Proxy Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Proxy Basket is not the same as the Fund's NAV, the creation and redemption baskets will consist of the securities included in the Proxy Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Proxy Basket, as further described below.

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<sup>13</sup> See Nasdaq Rule 5735.



The Proxy Basket will be constructed utilizing a proprietary algorithmic process that will be applied to the Fund Portfolio on a daily basis. The Proxy Basket will be publicly available on the Fund website before the commencement of trading in Fund Shares on each business day. The Proxy Basket will contain all of the names of the securities in the Fund Portfolio, and only the securities that are in the Fund Portfolio (and also could contain cash to represent the Fund Portfolio's holdings of cash). The Proxy Basket will have a minimum overlap of 90% with the Fund Portfolio at the beginning of each business day, with the precise percentage of aggregate overlap in weightings from 90% to 100% to be randomly generated each day.

In addition to the disclosure of the Proxy Basket, the Fund will also publish the "Guardrail Amount" on its website on each business day before the commencement of trading in Shares on the Exchange. The Guardrail Amount is the maximum deviation between the weightings of the specific securities and cash positions in the Proxy Basket from the weightings of those specific securities and cash positions in the Fund Portfolio. The Guardrail Amount is intended to ensure that no individual security in the Proxy Basket will be overweighted or underweighted by more than the publicly disclosed percentage when compared to the actual weighting of each security within the Fund Portfolio as of the beginning of each business day. The Adviser expects the performance of the Proxy Basket and the Fund Portfolio to be closely aligned in light of the construction of the Proxy Basket, and does not expect the "Tracking Error" to exceed 1%. "Tracking Error" is defined to mean the standard deviation over the past three months of the daily difference, in percentage terms, between the Proxy Basket per Share NAV and that of the Fund at the end of the business day.

The Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. As described above, the Exchange notes that the concept of the Proxy Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Fund from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of the Fund.

#### Additional Information

The Exchange represents that the Shares of the Fund will continue to comply with all other proposed requirements applicable to Proxy Portfolio Shares, including the dissemination of key information such as the Proxy Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares.

Price information for the exchange-listed instruments held by the Fund, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. Moreover, U.S.-listed equity securities held by the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a

comprehensive surveillance sharing agreement.<sup>14</sup> Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Fund may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets (as applicable) such as the Fund Portfolio and Proxy Basket, or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per share of the Fund will be calculated daily and will be made

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<sup>14</sup> For a list of the current members of ISG, see [www.isgportal.com](http://www.isgportal.com). The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

available to all market participants at the same time.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares 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. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

## 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the particular instruments that may be included in the Fund Portfolio and Proxy Basket do not raise any concerns related to the Proxy Basket being able to closely track the NAV of the Fund because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, the Fund's Proxy Basket is designed to reliably and consistently correlate to the performance of the Fund.

The Adviser anticipates that the returns between the Fund and its respective Proxy Basket will have a consistent relationship and that the deviation in the returns between the Fund and its Proxy Basket will be sufficiently small such that the Proxy Basket will provide authorized participants, arbitrageurs and other market participants (collectively, “Market Makers”) with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Fund will allow Market Makers to understand the relationship between the performance of the Fund and its Proxy Basket. Market Makers will be able to estimate the value of and hedge positions in the Fund’s Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund’s Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

The Exchange notes that a significant amount of information about the Fund and its Fund Portfolio is 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. Intraday pricing information for all constituents of the Proxy Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. 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 the 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 any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. On each business day, before the commencement of trading of Shares, the Fund will publish on its website the Proxy Basket and the Guardrail Amount for that day.

The Exchange represents that the Shares of the Fund will continue to comply with all other proposed requirements applicable to Proxy Portfolio Shares, including the dissemination of key information such as the Proxy Basket, disclosure of the Fund Portfolio quarterly, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares and the orders approving such rules. Moreover, U.S.-listed equity securities held by the Fund will trade on markets that are a

member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>15</sup>

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares 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. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per share of the Fund will be calculated daily and will be made available to all market participants at the same time.

FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

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.

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<sup>15</sup> Id.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new type of actively-managed exchange-traded product, thus enhancing 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 Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup>

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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 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.



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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-005 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2021-005. 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-2021-005 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.<sup>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).