

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 103	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 023 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 proposal to adopt Nasdaq Rule 5760 to permit the listing and trading of Managed 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 04/14/2021
 By John Zecca
 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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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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 proposal to adopt Nasdaq Rule 5760 to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on November 5, 2020. No other action is necessary for the filing of the rule change.

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

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

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 5760 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 Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment company. This proposed rule change to add new Nasdaq Rule 5760 is substantially similar to the recently approved rule change by Cboe BZX Exchange, Inc. (“Cboe BZX”) to adopt rule 14.11(k).³

Proposed Listing Rules

Proposed Nasdaq Rule 5760(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of Nasdaq Rule 5760.

Proposed Nasdaq Rule 5760(b) provides that Nasdaq Rule 5760 is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Nasdaq Rule 5760, or unless the context otherwise requires, the rules and procedures of the Exchange’s Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Nasdaq Rule 5760(b) provides further that Managed 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 5760(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares. Additionally, that all statements or representations regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or

³ See Securities and Exchange Act Release No. 87759 (December 16, 2019) 84 FR 70223 (December 20, 2019) (SR-CboeBZX-2019-047).

intraday indicative values and Verified Intraday Indicative Values (“VIIV”) (as applicable); or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards.

Proposed Nasdaq Rule 5760(b)(2) provides that transactions in Managed Portfolio Shares will occur throughout the Exchange’s System Hours.⁴

Proposed Nasdaq Rule 5760(b)(3) provides that the minimum price variation for quoting and entry of orders in Managed Portfolio Shares is \$0.01.

Proposed Nasdaq Rule 5760(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Managed 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 portfolio holdings of each series of Managed Portfolio Shares.

Proposed Nasdaq Rule 5760(b)(5) provides that, if the investment adviser to the Investment Company issuing Managed 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 such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to information regarding the Investment Company’s portfolio composition or changes

⁴ See Nasdaq Equity Rules Equity 1. Section 1(a)(9). The term “System Hours” is defined as the period of time beginning at 4:00 a.m. E.T. and ending at 8:00 p.m.

thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 Investment Company portfolio or Creation Basket.

Proposed Nasdaq Rule 5760(c)(1) defines the term "Managed Portfolio Share" as 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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value ("NAV") and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the SEC)

E.T. (or such earlier time as may be designated by Nasdaq on a day when Nasdaq

through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined NAV delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.⁵

Proposed Nasdaq Rule 5760(c)(2) defines the term “Verified Intraday Indicative Value” as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Nasdaq’s regular market session by the Reporting Authority.

Proposed Nasdaq Rule 5760(c)(3) defines the term “AP Representative” as an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Proposed Nasdaq Rule 5760(c)(4) defines the term “Confidential Account” as an

closes early).

⁵ For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a “Fund” and shares of a series of Managed Portfolio Shares are generally referred to as the “Shares”.

account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed Nasdaq Rule 5760(c)(5) defines the term “Creation Basket” as on any given business day the names and quantities of the specified instruments and/or an amount of cash that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments and/or an amount of cash that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Proposed Nasdaq Rule 5760(c)(6) defines the term “Creation Unit” as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash

Proposed Nasdaq Rule 5760(c)(7) defines the term “Redemption Unit” as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash

Proposed Nasdaq Rule 5760(c)(8) defines the term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the NAV, the VIIV, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Nasdaq Rule 5760(c)(9) 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 5760(d)(1) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Nasdaq Rule 5760(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Nasdaq Rule 5760(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the

same time. Proposed Nasdaq Rule 5760(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Nasdaq Rule 5760(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Nasdaq Rule 5760(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Nasdaq's regular market session, and will be disseminated to all market participants at the same time. Proposed Nasdaq Rule 5760(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Nasdaq Rule 5800 Series, for a series of Managed Portfolio Shares, 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 Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940 ("1940 Act"), or such holdings are not made available

to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed 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 currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained; (vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and VIIVs; or (d) the applicability of Nasdaq listing rules specified in such proposals; or (viii) 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 5760(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

Proposed Nasdaq Rule 5760(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Nasdaq Rule 5760(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Nasdaq Rule 5760(e), which relates to limitation of Exchange liability, 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 Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed 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.

Proposed Nasdaq Rule 5760(f), which relates to disclosures, provides that the provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that Members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

A Member carrying an omnibus account for a non-Member broker-dealer is required to inform such non-Member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to Members under this rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to

that extent, similar to Managed Fund Shares (as defined in Nasdaq Rule 5735),⁶ Managed Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which require a “Disclosed Portfolio” to be disseminated at least once daily,⁷ the portfolio for a series of Managed Portfolio Shares will be disclosed at least quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.⁸ The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described further below in “Creation and Redemption of Shares”) without

⁶ The Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78918 (Sept. 23, 2016), 81 FR 67033 (Sept. 29, 2016) (SR-NASDAQ-2016-104) (order approving proposed rule change to amend Nasdaq Rule 5735 to adopt generic listing standards for Managed Fund Shares).

⁷ Nasdaq Rule 5735(c)(2) defines the term “Disclosed Portfolio” as 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 NAV at the end of the business day. Nasdaq Rule 5735(d)(1)(B) and Nasdaq Rule 5735(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁸ 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 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.

disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, the VIIV will be disseminated reflecting an estimated intraday value of a fund's portfolio. Specifically, the VIIV will be based upon all of a series' holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the regular market session. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange, after consulting with various Designated Liquidity Providers ("DLPs")⁹ that trade exchange-traded funds ("ETFs") on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value as long as a VIIV is disseminated in one second intervals, and market makers employ market making techniques such as "statistical arbitrage," including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹⁰ For Managed Portfolio Shares, market makers may use the knowledge of a

⁹ As defined in Nasdaq Equity 7 Sec. 114(f)(2), the term DLP means a registered Nasdaq market maker for a "Qualified Security" that has committed to maintain minimum performance standards. As defined in Nasdaq Equity 7 Sec. 114(f)(1), the term "Qualified Security" means an ETP that has at least one DLP. The performance measurement is the percent of time at the NBBO.

¹⁰ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to

Fund's means of achieving its investment objective, as described in the applicable Fund registration statement (the "Registration Statement"), to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares.

Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge¹¹ of a fund's underlying portfolio.¹² This is similar to certain other existing

other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Managed Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

¹¹ Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical

exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, i.e. the Deposit Instruments or “Redemption Instruments” and the estimated “Balancing Amount” (if any),¹³ for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a Fund, as described below.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption

function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

¹² APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum securities haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each Fund’s website.

¹³ The Balancing Amount is the cash amount necessary for the applicable Fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a Confidential Account¹⁴ with an AP Representative,¹⁵ which will be a broker-dealer for the benefit of an AP.¹⁶ An AP must be a Depository Trust Company (“DTC”) Participant that has executed a “Participant Agreement” with the applicable distributor (the “Distributor”) with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP’s Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP. The Funds will offer and redeem Creation Units and Redemption Units on a

¹⁴ Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a Fund’s Creation Basket or portfolio securities, such as a Fund’s custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

¹⁵ Each AP shall enter into its own separate Confidential Account with an AP Representative.

¹⁶ Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund’s Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit Funds to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances required or determined permissible by the Fund, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and APs redeeming their Shares will receive an in-kind transfer of Redemption Instruments through the AP Representative in their Confidential Account.¹⁷

In the case of a creation, the AP¹⁸ would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of

¹⁷ Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933.

¹⁸ An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during the regular market session.

portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, they will have to do so through an AP.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional Information ("SAI"). The NAV of each Fund is expected to be determined once each business day at a time determined by the board of the Investment Company ("Board"), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the "Valuation Time"). Each Fund will establish a cut-off time ("Order Cut-Off Time") for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per Share purchased plus applicable “Transaction Fees,” as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of the regular market session on the date such order is placed (“Transmittal Date”) in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.¹⁹

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (“AP Redemption Order”). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP

¹⁹ A “custom order” is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²⁰ Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a Fund's custodian ("Custodian") will typically deliver securities to the Confidential Account with a value approximately equal

²⁰ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

to the value of the Shares²¹ tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs will provide the AP Representative with a list of restricted securities applicable to the AP on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or

²¹ If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable Fund will receive

minus any cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed 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 Managed 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 Managed Portfolio Shares, upon initial listing and periodically thereafter, to provide a representation that it is in compliance with Nasdaq Rule 5760. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Nasdaq Rule 5760.

The Exchange will require each issuer of a Fund to represent 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 monitor 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 the Nasdaq Rule 5800 Series.

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances

or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Nasdaq Rule 5760(b)(4), 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 portfolio holdings of each series of Managed 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 portfolio holdings of any series of Managed 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 Managed 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.

The Exchange notes that any equity instruments or futures held by a Fund operating under an exemptive order would trade on markets that are a member of Intermarket Surveillance Group ("ISG") or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²² While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Nasdaq Rule 5760(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before

²² For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that cash equivalents may trade on markets that are members of ISG or with

listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series.

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from other markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the

which the Exchange has in place a comprehensive surveillance sharing agreement.

Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares) (collectively, “Availability of Information Halts”). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

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 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 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.

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. In addition, the VIIV, as defined in proposed Nasdaq Rule 5760(c)(2), will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the regular market session.

Trading Rules

The Exchange deems Managed 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. Transactions in Managed Portfolio Shares will occur throughout the Exchange’s System Hours as provided in proposed Nasdaq Rule 5760(b)(2). As provided in Nasdaq Rule 5760(b)(3), the minimum price variation for quoting and entry of orders in Managed Portfolio Shares traded on the Exchange is \$0.01.

Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, the Exchange will inform its Members in an Information Circular (“Circular”) of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares; (2) Members and associated persons of a Member shall comply with FINRA Rule 2111, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Managed Portfolio Shares to customers, as if such rule were part of Nasdaq’s rules; (3) how information regarding the VIIV is disseminated; (4) the requirement that Members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading

information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²³ in general and Section 6(b)(5) of the Act²⁴ 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 5760 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Nasdaq Rule 5760(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Nasdaq Rule 5760(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(5).

required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Nasdaq Rule 5760(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.²⁵ Proposed Nasdaq Rule 5760(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions (as defined in the rule).

Proposed Nasdaq Rule 5760(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Nasdaq Rule 5760(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the regular market session and will be disseminated to all market participants at the same time. Proposed Nasdaq Rule 5760(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Nasdaq Rule 5800 Series, for a series of Managed Portfolio Shares, 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 Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive

²⁵ Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940, or such holdings are not made available to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed 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 currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained; (vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and VIIVs; or (d) the applicability of Nasdaq listing rules

specified in such proposals; or (viii) 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 5760(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

Proposed Nasdaq Rule 5760(d)(2)(D) provides that, upon termination of an

Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Nasdaq Rule 5760(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or Statement of Additional Information. The Exchange also notes that an issuer must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise does not apply to issuers of Managed Fund Shares.

Proposed Nasdaq Rule 5760(b)(3) provides that the minimum price variation for quoting and entry of orders in Managed Portfolio Shares is \$0.01. Proposed Nasdaq Rule 5760(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Managed 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 portfolio holdings of each series of Managed Portfolio Shares.

Proposed Nasdaq Rule 5760(b)(5) provides that, if the investment adviser to the Investment Company issuing Managed 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 such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes

thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 Investment Company portfolio or Creation Basket.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed 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 5760(b)(6)²⁶ will act as a strong

²⁶ As described above, proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and

safeguard against any misuse and improper dissemination of information related to a Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material nonpublic information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer 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, after consulting with various DLPs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a Fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell

dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 Investment Company portfolio or Creation Basket.

one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The DLPs also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by DLPs were that a fund's investment objectives are clearly disclosed in the

applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Shares they perceive to be trading at a price higher than that which will be available at a subsequent time.

It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets²⁷ or by netting the exposure against other, offsetting

²⁷ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price

trading positions – much as such firms do with existing ETFs and other equities.

Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.²⁸

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the

deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

²⁸ With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge – buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

VIIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIIV at or near the close of trading is indeed predictive of the actual NAV.

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for "free riding" or "front-running," while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also 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 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. In addition, a

large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the regular market session by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its Members in a Circular of the special characteristics and risks associated with trading the Shares.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the shares of a Fund may be inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Specifically, the Exchange would halt trading as soon as practicable under the following circumstances: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made

available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

The Exchange is proposing to retain discretion to halt trading in a series of Managed Portfolio Shares based on market conditions or where the Exchange determines that trading in such series is inadvisable (each a “Discretionary Halt”) and is also proposing the four Availability of Information Halts described above. The Exchange believes that retaining discretion to implement a Discretionary Halt as specified is consistent with the Act. The proposed rule retaining discretion related to halts is designed to ensure the maintenance of a fair and orderly market and protect investors and the public interest in that it provides the Exchange with the ability to halt when it determines that trading in the shares is inadvisable. This could be based on the Exchange’s own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. There are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments composing the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent.

Also, as noted above, there are certain circumstances under which trading in the

Shares of a Fund may be inadvisable or where the Investment Company or its agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares. Upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio Shares is inadvisable and that halting trading is necessary in order to maintain a fair and orderly market. As such, the Exchange believes that the proposal to provide the Exchange with discretion to implement a Discretionary Halt is consistent with the Act.

The Exchange believes that the proposed Availability of Information Halts to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) the Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate; (ii) the other Availability of Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Nasdaq Rule 5735(d)(2)(D) related to trading halts in Managed Fund Shares²⁹ is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and

²⁹ Nasdaq Rule 5735(d)(2)(C)(ii) provides that “Nasdaq will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Managed Fund Shares under any of the following circumstances: ... if the Disclosed Portfolio is not made available to all market participants at the same time;” and (d)(2)(D) provides that “If Nasdaq becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.” These are generally consistent with the proposed Availability of Information Halts, specifically as it relates to whether the

orderly market in Managed Portfolio Shares;³⁰ and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading. The Exchange notes, however, that an Investment Company that issues Managed Portfolio Shares will still be subject to Nasdaq Rule 5701, which requires that a “A Company with securities listed under this Rule 5700 Series must provide Nasdaq with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5700 Series.”

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate

NAV or Disclosed Portfolio is not being made available to all market participants at the same time.

³⁰ See, e.g., Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017); Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that “the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities” and that “the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs” and that “by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs”); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that “[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities”).

the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff 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 and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, any equity instruments or futures held by a Fund operating under an exemptive order would trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Nasdaq Rule 5760(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and that all of the statements or representations regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c)

dissemination and availability of the reference asset or intraday indicative values and VIIVs; or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards. Also, such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

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 a new type of actively-managed exchange-traded product 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(k).³¹ Specifically, the Exchange proposes to adopt Nasdaq Rule 5760 to permit the listing and trading of Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment company, and which rules are substantially similar to the Managed Portfolio Shares rules approved for Cboe BZX.³² The Exchange believes this proposed change 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

³¹ See supra note 3.

³² Id.

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

The proposed rule change is based on the approved rule change of Cboe BZX to adopt rule 14.11(k).³³

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

Not applicable.

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

Not applicable.

11. Exhibits

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

³³ See Securities and Exchange Act Release No. 87759 (December 16, 2019) 84 FR 70223 (December 20, 2019) (SR-CboeBZX-2019-047).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2021-023)

April __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Nasdaq Rule 5760 to Permit the Listing and Trading of Managed Portfolio Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 14, 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 to adopt Nasdaq Rule 5760 to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

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.

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 5760 for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment company. This proposed rule change to add new Nasdaq Rule 5760 is substantially similar to the recently approved rule change by Cboe BZX Exchange, Inc. (“Cboe BZX”) to adopt rule 14.11(k).³

Proposed Listing Rules

Proposed Nasdaq Rule 5760(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of Nasdaq Rule 5760.

Proposed Nasdaq Rule 5760(b) provides that Nasdaq Rule 5760 is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Nasdaq Rule

³ See Securities and Exchange Act Release No. 87759 (December 16, 2019) 84 FR 70223 (December 20, 2019) (SR-CboeBZX-2019-047).

5760, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Nasdaq Rule 5760(b) provides further that Managed 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 5760(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares. Additionally, that all statements or representations regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values ("VIIV") (as applicable); or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards.

Proposed Nasdaq Rule 5760(b)(2) provides that transactions in Managed Portfolio Shares will occur throughout the Exchange's System Hours.⁴

Proposed Nasdaq Rule 5760(b)(3) provides that the minimum price variation for quoting and entry of orders in Managed Portfolio Shares is \$0.01.

Proposed Nasdaq Rule 5760(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request

⁴ See Nasdaq Equity Rules Equity 1. Section 1(a)(9). The term "System Hours" is defined as the period of time beginning at 4:00 a.m. E.T. and ending at 8:00 p.m. E.T. (or such earlier time as may be designated by Nasdaq on a day when Nasdaq closes early).

by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed Nasdaq Rule 5760(b)(5) provides that, if the investment adviser to the Investment Company issuing Managed 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 such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 Investment Company portfolio or Creation Basket.

Proposed Nasdaq Rule 5760(c)(1) defines the term “Managed Portfolio Share” as 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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value (“NAV”) and delivered to the Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the SEC) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined NAV delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.⁵

Proposed Nasdaq Rule 5760(c)(2) defines the term “Verified Intraday Indicative Value” as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business

⁵ For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a “Fund” and shares of a series of Managed Portfolio Shares are generally referred to as the “Shares”.

day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Nasdaq's regular market session by the Reporting Authority.

Proposed Nasdaq Rule 5760(c)(3) defines the term "AP Representative" as an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Proposed Nasdaq Rule 5760(c)(4) defines the term "Confidential Account" as an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed Nasdaq Rule 5760(c)(5) defines the term "Creation Basket" as on any given business day the names and quantities of the specified instruments and/or an amount of cash that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments and/or an amount of cash that will be transferred in-kind to

an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Proposed Nasdaq Rule 5760(c)(6) defines the term “Creation Unit” as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash

Proposed Nasdaq Rule 5760(c)(7) defines the term “Redemption Unit” as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash

Proposed Nasdaq Rule 5760(c)(8) defines the term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the NAV, the VIIV, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Nasdaq Rule 5760(c)(9) 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 5760(d)(1) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Nasdaq Rule 5760(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Nasdaq Rule 5760(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Nasdaq Rule 5760(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Nasdaq Rule 5760(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Nasdaq Rule 5760(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Nasdaq's regular market session, and will be disseminated to all market participants at the same time. Proposed Nasdaq Rule 5760(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Nasdaq Rule 5800 Series, for a series of Managed Portfolio Shares, 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 Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940 (“1940 Act”), or such holdings are not made available to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed 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 currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained; (vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding:

(a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and VIIVs; or (d) the applicability of Nasdaq listing rules specified in such proposals; or (viii) 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 5760(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed

Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

Proposed Nasdaq Rule 5760(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Nasdaq Rule 5760(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Nasdaq Rule 5760(e), which relates to limitation of Exchange liability, 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 Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed 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.

Proposed Nasdaq Rule 5760(f), which relates to disclosures, provides that the provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that Members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company

name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

A Member carrying an omnibus account for a non-Member broker-dealer is required to inform such non-Member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to Members under this rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Nasdaq Rule 5735),⁶ Managed Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which require a “Disclosed Portfolio” to be disseminated at least once daily,⁷ the portfolio for a series of Managed Portfolio Shares will be disclosed at least quarterly in accordance with normal disclosure requirements

⁶ The Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78918 (Sept. 23, 2016), 81 FR 67033 (Sept. 29, 2016 (SR-NASDAQ-2016-104) (order approving proposed rule change to amend Nasdaq Rule 5735 to adopt generic listing standards for Managed Fund Shares).

⁷ Nasdaq Rule 5735(c)(2) defines the term “Disclosed Portfolio” as 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 NAV at the end of the business day. Nasdaq Rule 5735(d)(1)(B) and Nasdaq Rule 5735(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

otherwise applicable to open-end investment companies registered under the 1940 Act.⁸ The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described further below in “Creation and Redemption of Shares”) without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, the VIIV will be disseminated reflecting an estimated intraday value of a fund’s portfolio. Specifically, the VIIV will be based upon all of a series’ holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the regular market session. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

⁸ 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 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, after consulting with various Designated Liquidity Providers (“DLPs”)⁹ that trade exchange-traded funds (“ETFs”) on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF’s intraday value as long as a VIIV is disseminated in one second intervals, and market makers employ market making techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹⁰ For Managed Portfolio Shares, market makers may use the knowledge of a Fund’s means of achieving its investment objective, as described in the applicable Fund

⁹ As defined in Nasdaq Equity 7 Sec. 114(f)(2), the term DLP means a registered Nasdaq market maker for a “Qualified Security” that has committed to maintain minimum performance standards. As defined in Nasdaq Equity 7 Sec. 114(f)(1), the term “Qualified Security” means an ETP that has at least one DLP. The performance measurement is the percent of time at the NBBO.

¹⁰ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Managed Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

registration statement (the “Registration Statement”), to construct a hedging proxy for a Fund to manage a market maker’s quoting risk in connection with trading Fund Shares.

Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge¹¹ of a fund’s underlying portfolio.¹² This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and

¹¹ Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund’s portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

¹² APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum securities haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each Fund’s website.

Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, i.e. the Deposit Instruments or “Redemption Instruments” and the estimated “Balancing Amount” (if any),¹³ for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a Fund, as described below.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a Confidential Account¹⁴ with an AP Representative,¹⁵ which will be a

¹³ The Balancing Amount is the cash amount necessary for the applicable Fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

¹⁴ Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a Fund’s Creation Basket or portfolio securities, such as a Fund’s custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

¹⁵ Each AP shall enter into its own separate Confidential Account with an AP Representative.

broker-dealer for the benefit of an AP.¹⁶ An AP must be a Depository Trust Company (“DTC”) Participant that has executed a “Participant Agreement” with the applicable distributor (the “Distributor”) with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP’s Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP. The Funds will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit Funds to be as fully invested as

¹⁶ Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund’s Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances required or determined permissible by the Fund, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and APs redeeming their Shares will receive an in-kind transfer of Redemption Instruments through the AP Representative in their Confidential Account.¹⁷

In the case of a creation, the AP¹⁸ would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, they will have to do so through an AP.

¹⁷ Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933.

¹⁸ An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during the regular market session.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional Information ("SAI"). The NAV of each Fund is expected to be determined once each business day at a time determined by the board of the Investment Company ("Board"), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the "Valuation Time"). Each Fund will establish a cut-off time ("Order Cut-Off Time") for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per Share purchased plus applicable "Transaction Fees," as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of the regular market session on the date such order is placed ("Transmittal Date") in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection

with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.¹⁹

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (“AP Redemption Order”). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the

¹⁹ A “custom order” is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²⁰ Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a Fund's custodian ("Custodian") will typically deliver securities to the Confidential Account with a value approximately equal to the value of the Shares²¹ tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account

²⁰ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

²¹ If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable Fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs will provide the AP Representative with a list of restricted securities applicable to the AP on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or minus any cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed 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 Managed 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 Managed Portfolio Shares, upon initial listing and periodically thereafter, to provide a representation that it is in compliance with Nasdaq Rule 5760. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Nasdaq Rule 5760.

The Exchange will require each issuer of a Fund to represent 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 monitor 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 the Nasdaq Rule 5800 Series.

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Nasdaq Rule 5760(b)(4), 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 portfolio holdings of each series of Managed 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 portfolio holdings of any series of Managed 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 Managed 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.

The Exchange notes that any equity instruments or futures held by a Fund operating under an exemptive order would trade on markets that are a member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²² While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Nasdaq Rule 5760(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange’s surveillance procedures applicable to such series.

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of

²² For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from other markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under

the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares) (collectively, “Availability of Information Halts”). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

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 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 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.

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. In addition, the VIIV, as defined in proposed Nasdaq Rule 5760(c)(2), will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the regular market session.

Trading Rules

The Exchange deems Managed 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. Transactions in Managed Portfolio Shares will occur throughout the Exchange's System Hours as provided in proposed Nasdaq Rule 5760(b)(2). As provided in Nasdaq Rule 5760(b)(3), the minimum price variation for quoting and entry of orders in Managed Portfolio Shares traded on the Exchange is \$0.01.

Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, the Exchange will inform its Members in an Information Circular ("Circular") of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares; (2) Members and associated persons of a Member shall comply with FINRA Rule 2111, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Managed Portfolio Shares to customers, as if such rule were part of Nasdaq's rules; (3) how information regarding the VIIV is disseminated; (4) the requirement that Members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules

under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²³ in general and Section 6(b)(5) of the Act²⁴ 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 5760 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Nasdaq Rule 5760(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Nasdaq Rule 5760(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Nasdaq Rule 5760(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(5).

NAV will be made available to all market participants at the same time.²⁵ Proposed Nasdaq Rule 5760(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions (as defined in the rule).

Proposed Nasdaq Rule 5760(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Nasdaq Rule 5760(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the regular market session and will be disseminated to all market participants at the same time. Proposed Nasdaq Rule 5760(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Nasdaq Rule 5800 Series, for a series of Managed Portfolio Shares, 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 Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares

²⁵ Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940, or such holdings are not made available to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed 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 currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained; (vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and VIIVs; or (d) the applicability of Nasdaq listing rules specified in such proposals; or (viii) 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 5760(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Nasdaq Rule 5760(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

Proposed Nasdaq Rule 5760(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Nasdaq Rule 5760(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment

Company prospectus and/or Statement of Additional Information. The Exchange also notes that an issuer must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise does not apply to issuers of Managed Fund Shares.

Proposed Nasdaq Rule 5760(b)(3) provides that the minimum price variation for quoting and entry of orders in Managed Portfolio Shares is \$0.01. Proposed Nasdaq Rule 5760(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Managed 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 portfolio holdings of each series of Managed Portfolio Shares.

Proposed Nasdaq Rule 5760(b)(5) provides that, if the investment adviser to the Investment Company issuing Managed 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 such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 Investment Company portfolio or Creation Basket.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed 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 5760(b)(6)²⁶ will act as a strong

²⁶ As described above, proposed Nasdaq Rule 5760(b)(6) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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

safeguard against any misuse and improper dissemination of information related to a Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material nonpublic information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer 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, after consulting with various DLPs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a Fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means

information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The DLPs also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by DLPs were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Shares they perceive to be trading at a price higher than that which will be available at a subsequent time.

It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets²⁷ or by netting the exposure against other, offsetting

²⁷ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by

trading positions – much as such firms do with existing ETFs and other equities.

Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.²⁸

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2)

executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

²⁸ With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge – buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

the securities in which a Fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for “free riding” or “front-running,” while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also 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 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. In addition, a large amount of information will be publicly available regarding the Funds and the

Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the regular market session by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its Members in a Circular of the special characteristics and risks associated with trading the Shares.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the shares of a Fund may be inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Specifically, the Exchange would halt trading as soon as practicable under the following circumstances: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings

are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

The Exchange is proposing to retain discretion to halt trading in a series of Managed Portfolio Shares based on market conditions or where the Exchange determines that trading in such series is inadvisable (each a “Discretionary Halt”) and is also proposing the four Availability of Information Halts described above. The Exchange believes that retaining discretion to implement a Discretionary Halt as specified is consistent with the Act. The proposed rule retaining discretion related to halts is designed to ensure the maintenance of a fair and orderly market and protect investors and the public interest in that it provides the Exchange with the ability to halt when it determines that trading in the shares is inadvisable. This could be based on the Exchange’s own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. There are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments composing the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent.

Also, as noted above, there are certain circumstances under which trading in the Shares of a Fund may be inadvisable or where the Investment Company or its agent will

request that the Exchange halt trading in the applicable series of Managed Portfolio Shares. Upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio Shares is inadvisable and that halting trading is necessary in order to maintain a fair and orderly market. As such, the Exchange believes that the proposal to provide the Exchange with discretion to implement a Discretionary Halt is consistent with the Act.

The Exchange believes that the proposed Availability of Information Halts to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) the Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate; (ii) the other Availability of Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Nasdaq Rule 5735(d)(2)(D) related to trading halts in Managed Fund Shares²⁹ is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and

²⁹ Nasdaq Rule 5735(d)(2)(C)(ii) provides that “Nasdaq will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Managed Fund Shares under any of the following circumstances: . . . if the Disclosed Portfolio is not made available to all market participants at the same time;” and (d)(2)(D) provides that “If Nasdaq becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.” These are generally consistent with the proposed Availability of Information Halts, specifically as it relates to whether the NAV or Disclosed Portfolio is not being made available to all market participants at the same time.

orderly market in Managed Portfolio Shares;³⁰ and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading. The Exchange notes, however, that an Investment Company that issues Managed Portfolio Shares will still be subject to Nasdaq Rule 5701, which requires that a “A Company with securities listed under this Rule 5700 Series must provide Nasdaq with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5700 Series.”

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product

³⁰ See, e.g., Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017); Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that “the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities” and that “the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs” and that “by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs”); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that “[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities”).

that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff 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 and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, any equity instruments or futures held by a Fund operating under an exemptive order would trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Nasdaq Rule 5760(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and that all of the statements or representations regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and

VIIIVs; or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards. Also, such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

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 a new type of actively-managed exchange-traded product 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 Act³¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.³²

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-2021-023 on the subject line.

³¹ 15 U.S.C. 78s(b)(3)(A)(iii).

³² 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-2021-023. 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-2021-023 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.³³

J. Matthew DeLesDernier
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

5760. Managed Portfolio Shares

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

(b) Applicability. This Rule is applicable only to Managed 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. Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(1) Nasdaq will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values (as applicable); or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards.

(2) Transactions in Managed Portfolio Shares will occur throughout the Exchange's System Hours.

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

(4) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed 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 portfolio holdings of each series of Managed Portfolio Shares.

(5) If the investment adviser to the Investment Company issuing Managed 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 such Investment Company portfolio and/or the

Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

(6) Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 Investment Company portfolio or Creation Basket.

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

(1) Managed Portfolio Share. The term "Managed 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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the SEC) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

(2) Verified Intraday Indicative Value. The term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Nasdaq's regular market session by the Reporting

Authority.

(3) AP Representative. The term “AP Representative” means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

(4) Confidential Account. The term “Confidential Account” means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

(5) Creation Basket. The term “Creation Basket” means on any given business day the names and quantities of the specified instruments and/or an amount of cash that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments and/or an amount of cash that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

(6) Creation Unit. The term “Creation Unit” means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

(7) Redemption Unit. The term “Redemption Unit” means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

(8) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value, the Verified Intraday Indicative Value, or other information relating

to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

(9) 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.

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

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

(A) For each series, the Exchange will establish a minimum number of Managed 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 Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.

(C) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

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

(A) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Nasdaq's regular market session, and will be disseminated to all market participants at the same time.

(B) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Rule 5800 Series, for a series of Managed Portfolio Shares, 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 Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days;

(ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available;

(iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred;

(iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue persists past the trading day in which it occurred;

(v) if the Investment Company issuing the Managed 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 currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;

(vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained;

(vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values; or (d) the applicability of Nasdaq listing rules specified in such proposals; or

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

(C) Trading Halt.

(i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 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: (a) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

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

(E) 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 Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed 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.

(f) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that Members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

A Member carrying an omnibus account for a non-Member broker-dealer is required to inform such non-Member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to Members under this rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

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