

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 32

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 065

Amendment No. (req. for Amendments *)

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 checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
---	--------------------------------------	-------------------------------------	--	--	--

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
--------------------------------	---	-------------------------------------

Rule

<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 type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

A proposed rule change to amend Nasdaq Rule 5750

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 of 1934, The Nasdaq Stock Market LLC has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 08/20/2021


(Title *)

By John Zecca

EVP and Chief Legal Officer

(Name *)

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

 Date: 2021.08.20 16:17:36 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

SR-NASDAQ-2021-065 19b-4.doc

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 *

Add Remove View

SR-NASDAQ-2021-065 Exhibit 1.doc

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 Advanced Notice by Clearing Agencies *

Add Remove View

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 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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 Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-NASDAQ-2021-065 Exhibit 5.doc

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

Add Remove View

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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act”)¹ and Rule 19b-4 thereunder,² The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend Nasdaq Rule 5750 (Proxy Portfolio Shares) to provide for the use of “Custom Baskets” consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to amend Nasdaq Rule 5750 (Proxy Portfolio Shares)³ to provide for the use of “Custom Baskets” consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940⁴ applicable to a series of Proxy Portfolio Shares.

To effectuate this change, the Exchange proposes the following amendments to Nasdaq Rule 5750:

First, the proposed rule change adopts new subparagraph (c)(6) under Nasdaq Rule 5750 (Definitions), which defines “Custom Basket”, for the purposes of Nasdaq Rule 5750, to mean a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares. The proposed rule change makes conforming amendments to the definition of Proxy Portfolio Shares in Nasdaq Rule 5750(c)(1) and Reporting Authority in Nasdaq Rule 5750(c)(3). The

³ Nasdaq Rule 5750 defines the term “Proxy 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 specified aggregate minimum number in return for a deposit of a specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁴ 15 U.S.C. 80a et seq.

proposed rule change amends the definition of “Proxy Portfolio Share” in Nasdaq Rule 5750(c)(1) to provide for creations of shares in return for a deposit by the purchaser of, and redemptions of shares at a holder’s request in return for, a Custom Basket rather than a Proxy Basket to the extent permitted by a fund’s exemptive relief.

In addition, the proposed rule change amends the definition of “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares in Nasdaq Rule 5750(c)(3) to provide for Custom Baskets to the extent permitted by a fund’s exemptive relief. Currently, “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. Nasdaq Rule 5750(c)(3) further provides that a series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions. The proposed rule change adds “Custom Basket” to the non-exclusive list of information relating to Proxy Portfolio Shares that a Reporting Authority calculates and reports, i.e., including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares.

Second, the proposed rule change amends Nasdaq Rule 5750(d) (Initial and

Continued Listing), which currently provides criteria that Proxy Portfolio Shares must satisfy for initial and continued listing on the Exchange, to incorporate specific initial and continued listing criteria for Custom Baskets. Specifically, Nasdaq Rule 5750(d)(1)(B) currently provides that the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio. The proposed rule change adopts an additional requirement in Nasdaq Rule 5750(d)(1)(B) providing that the Exchange will also obtain a representation from the issuer of each series of Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket.⁵

Third, the proposed Rule change amend Nasdaq Rule 5750(d)(2)(A), which currently provides that, with respect to each Proxy Basket, that it will be publicly disseminated at least once daily and will be made available to all market participants at the same time. Nasdaq Rule 5750(d)(2)(A) will be amended to provide that, with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session, the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable

⁵ 17 CFR 243.100-243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer’s securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

Proxy Portfolio only with respect to cash.

The proposed rule change also makes conforming amendments to Nasdaq Rule 5750(b)(5) and (6). In particular, Nasdaq Rule 5750(b)(5) currently provides that, if the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Proxy Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio and/or the Proxy Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto. The proposed rule change amends Nasdaq Rule 5750(b)(5) to provide for Custom Baskets to the extent permitted by a fund’s exemptive relief. As proposed, Nasdaq Rule 5750(b)(5) provides that if the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio, the Proxy Basket, and/or the Custom Basket, as applicable. In addition, proposed Nasdaq Rule 5750(b)(5) provides that any person related to the investment adviser or Investment Company who makes

decisions pertaining to the Investment Company's Fund Portfolio, the Proxy Basket, and/or the Custom Basket or has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, the Proxy Basket, and/or the Custom Basket, as applicable, or changes thereto.

Nasdaq Rule 5750(b)(6) currently provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Proxy Basket. The proposed rule change similarly amends Nasdaq Rule 5750(b)(6) to provide for Custom Baskets to the extent permitted by a fund's exemptive relief. As proposed, Nasdaq Rule 5750(b)(6) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity

is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Proxy Basket, or Custom Basket, as applicable.

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁶ in general and Section 6(b)(5) of the Act⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that proposed rule change to provide for the use of Custom Baskets consistent with the applicable exemptive relief applicable to a series of Proxy Portfolio Shares will perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will permit use of Custom Baskets, consistent with the applicable exemptive relief, in a manner that will benefit

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ Id.

investors by increasing efficiencies in the creation and redemption process. More specifically, Custom Baskets provide an issuer with flexibility in portfolio construction that may assist in reducing taxable capital gains distributions for investors and may generally improve tax efficiencies. Further, the use of Custom Baskets, to the extent permitted by a fund's exemptive relief, may also result in narrower bid/ask spreads and smaller premiums and discounts to the net asset value for Proxy Portfolio Shares to the extent that the Investment Company utilizes Custom Baskets with fewer securities which may, in turn, allow Authorized Participants to more efficiently hedge and participate generally in the Proxy Portfolio Shares. In addition to this, the flexibility provided in the creation of Custom Baskets may serve to increase competition between issuers. The Exchange believes the proposed rule change will enhance competition among market participants overall, to the benefit of investors and the marketplace.

The Exchange also believes that amending Nasdaq Rule 5750 to incorporate specific initial listing criteria required to be met by Proxy Portfolio Shares that utilize Custom Baskets is designed to prevent fraudulent and manipulative acts and practices. The Exchange believes that the daily dissemination of the composition of any Custom Basket transacted on the previous day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash, together with the right of Authorized Participants to create and redeem each day at the net asset value, will enable market participants to value and trade shares in a manner that will not lead to significant deviations between the bid/ask price and net asset value of shares of a series of Proxy Portfolio Shares.

Further, including Custom Baskets in the requirements of Nasdaq Rule 5750(b)(5) and (6) would act as a safeguard against any misuse and improper dissemination of nonpublic information related to a fund's Custom Basket or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Custom 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 the proposed rule change to Nasdaq Rule 5750 is designed to prevent fraudulent and manipulative acts and practices.

The Exchange also believes that the proposed initial and continued listing standards are designed to promote disclosure and transparency with respect to the use of Custom Baskets consistent with the applicable exemptive relief. Specifically, the Exchange believes that requiring as an initial listing condition that an issuer and any person acting on behalf of the series of Proxy Portfolio Shares comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket, would further the full and fair disclosure objectives of Regulation Fair Disclosure to the benefit of the investing public and all market participants. Additionally, with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, the Exchange believes that requiring, as a continued listing condition, that each business day, before the opening of trading in the regular market session, an investment company make publicly available on its website the composition of any Custom Basket transacted on the previous business

day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash, also furthers the goals of transparency and full and fair disclosure, to the benefit of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change, by permitting the use of Custom Baskets, is consistent with a fund's exemptive relief, would introduce additional competition among various ETF products to the benefit of investors.

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) or Section 19(b)(7)(D)

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) The proposed rule change is filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable. The Exchange believes that approval of

the proposed rule change on an accelerated basis will permit issuers of Proxy Portfolio Shares to utilize Custom Baskets for series of Proxy Portfolio Shares, to the extent permitted by a fund's exemptive relief, will serve in the interests of investors and the public interest as it is designed to increase efficiencies in the creation and redemption process, and may assist in reducing taxable capital gains distributions for investors and generally improve tax efficiencies, result in narrower bid/ask spreads and smaller premiums and discounts to the net asset value for Proxy Portfolio Shares, and enhance competition overall among market participants immediately following the issuance of the exemptive relief requested.

The Exchange additionally notes that the proposed rule change to disseminate daily the composition of any Custom Basket and to include Custom Baskets in the requirements of Nasdaq Rule 5750(b)(5) and (6) as a safeguard against any misuse and improper dissemination of nonpublic information is designed to prevent fraudulent and manipulative acts practices, and that the proposed rule change to require compliance with Regulation Fair Disclosure, including with respect to any Custom Basket, as an initial listing condition and the daily publication of the composition of any Custom Basket transacted as a continued listing condition is designed to promote disclosure and transparency with respect to the use of Custom Baskets consistent with the applicable exemptive relief. As such, the proposed rule change will not significantly affect the protection investors and the public interest. The Exchange believes it is appropriate for the Commission to approve the proposed rule change on an accelerated basis.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2021-065)

August __, 2021

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Nasdaq Rule 5750

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on August 20, 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 amend Nasdaq Rule 5750 (Proxy Portfolio Shares) to provide for the use of “Custom Baskets” consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares.

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 amend Nasdaq Rule 5750 (Proxy Portfolio Shares)³ to provide for the use of “Custom Baskets” consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940⁴ applicable to a series of Proxy Portfolio Shares.

To effectuate this change, the Exchange proposes the following amendments to Nasdaq Rule 5750:

³ Nasdaq Rule 5750 defines the term “Proxy 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 specified aggregate minimum number in return for a deposit of a specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁴ 15 U.S.C. 80a et seq.

First, the proposed rule change adopts new subparagraph (c)(6) under Nasdaq Rule 5750 (Definitions), which defines “Custom Basket”, for the purposes of Nasdaq Rule 5750, to mean a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares. The proposed rule change makes conforming amendments to the definition of Proxy Portfolio Shares in Nasdaq Rule 5750(c)(1) and Reporting Authority in Nasdaq Rule 5750(c)(3). The proposed rule change amends the definition of “Proxy Portfolio Share” in Nasdaq Rule 5750(c)(1) to provide for creations of shares in return for a deposit by the purchaser of, and redemptions of shares at a holder’s request in return for, a Custom Basket rather than a Proxy Basket to the extent permitted by a fund’s exemptive relief.

In addition, the proposed rule change amends the definition of “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares in Nasdaq Rule 5750(c)(3) to provide for Custom Baskets to the extent permitted by a fund’s exemptive relief. Currently, “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. Nasdaq Rule 5750(c)(3) further provides that a series of Proxy Portfolio Shares may have more than one

Reporting Authority, each having different functions. The proposed rule change adds “Custom Basket” to the non-exclusive list of information relating to Proxy Portfolio Shares that a Reporting Authority calculates and reports, i.e., including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares.

Second, the proposed rule change amends Nasdaq Rule 5750(d) (Initial and Continued Listing), which currently provides criteria that Proxy Portfolio Shares must satisfy for initial and continued listing on the Exchange, to incorporate specific initial and continued listing criteria for Custom Baskets. Specifically, Nasdaq Rule 5750(d)(1)(B) currently provides that the Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio. The proposed rule change adopts an additional requirement in Nasdaq Rule 5750(d)(1)(B) providing that the Exchange will also obtain a representation from the issuer of each series of Proxy Portfolio Shares that the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket.⁵

⁵ 17 CFR 243.100-243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer’s securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

Third, the proposed Rule change amend Nasdaq Rule 5750(d)(2)(A), which currently provides that, with respect to each Proxy Basket, that it will be publicly disseminated at least once daily and will be made available to all market participants at the same time. Nasdaq Rule 5750(d)(2)(A) will be amended to provide that, with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session, the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

The proposed rule change also makes conforming amendments to Nasdaq Rule 5750(b)(5) and (6). In particular, Nasdaq Rule 5750(b)(5) currently provides that, if the investment adviser to the Investment Company issuing Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Proxy Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio and/or the Proxy Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket or changes thereto. The proposed rule change amends Nasdaq Rule 5750(b)(5) to provide for Custom Baskets to the extent permitted by a fund’s

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

Nasdaq Rule 5750(b)(6) currently provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Proxy Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Proxy Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Proxy Basket. The

proposed rule change similarly amends Nasdaq Rule 5750(b)(6) to provide for Custom Baskets to the extent permitted by a fund's exemptive relief. As proposed, Nasdaq Rule 5750(b)(6) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Proxy Basket, or Custom Basket, as applicable.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁶ in general and Section 6(b)(5) of the Act⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirement that the rules of

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ Id.

an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that proposed rule change to provide for the use of Custom Baskets consistent with the applicable exemptive relief applicable to a series of Proxy Portfolio Shares will perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will permit use of Custom Baskets, consistent with the applicable exemptive relief, in a manner that will benefit investors by increasing efficiencies in the creation and redemption process. More specifically, Custom Baskets provide an issuer with flexibility in portfolio construction that may assist in reducing taxable capital gains distributions for investors and may generally improve tax efficiencies. Further, the use of Custom Baskets, to the extent permitted by a fund's exemptive relief, may also result in narrower bid/ask spreads and smaller premiums and discounts to the net asset value for Proxy Portfolio Shares to the extent that the Investment Company utilizes Custom Baskets with fewer securities which may, in turn, allow Authorized Participants to more efficiently hedge and participate generally in the Proxy Portfolio Shares. In addition to this, the flexibility provided in the creation of Custom Baskets may serve to increase competition between issuers. The Exchange believes the proposed rule change will enhance competition among market participants overall, to the benefit of investors and the marketplace.

The Exchange also believes that amending Nasdaq Rule 5750 to incorporate specific initial listing criteria required to be met by Proxy Portfolio Shares that utilize Custom Baskets is designed to prevent fraudulent and manipulative acts and practices. The Exchange believes that the daily dissemination of the composition of any Custom

Basket transacted on the previous day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash, together with the right of Authorized Participants to create and redeem each day at the net asset value, will enable market participants to value and trade shares in a manner that will not lead to significant deviations between the bid/ask price and net asset value of shares of a series of Proxy Portfolio Shares.

Further, including Custom Baskets in the requirements of Nasdaq Rule 5750(b)(5) and (6) would act as a safeguard against any misuse and improper dissemination of nonpublic information related to a fund's Custom Basket or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Custom 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 the proposed rule change to Nasdaq Rule 5750 is designed to prevent fraudulent and manipulative acts and practices.

The Exchange also believes that the proposed initial and continued listing standards are designed to promote disclosure and transparency with respect to the use of Custom Baskets consistent with the applicable exemptive relief. Specifically, the Exchange believes that requiring as an initial listing condition that an issuer and any person acting on behalf of the series of Proxy Portfolio Shares comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket, would

further the full and fair disclosure objectives of Regulation Fair Disclosure to the benefit of the investing public and all market participants. Additionally, with respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, the Exchange believes that requiring, as a continued listing condition, that each business day, before the opening of trading in the regular market session, an investment company make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Basket only with respect to cash, also furthers the goals of transparency and full and fair disclosure, to the benefit of investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change, by permitting the use of Custom Baskets, is consistent with a fund's exemptive relief, would introduce additional competition among various ETF products to the benefit of investors.

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

No written comments were either solicited or received.

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

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

disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2021-065 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2021-065. 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-2021-065 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.⁹

J. Matthew DeLesDernier
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

The Nasdaq Stock Market Rules

* * * * *

5750. Proxy Portfolio Shares

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

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

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

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

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

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

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

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

(6) Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, [or] the Proxy Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, [or] the Proxy Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, [or] Proxy Basket, or the Custom Basket, as applicable.

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

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

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

(3) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; Custom Basket; the amount of any cash

distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

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

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

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

(6) Custom Basket. For purposes of this rule, the term “Custom Basket” means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares.

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

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

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

and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.

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

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

(A) Proxy Basket and Custom Basket. The Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time. With respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session, the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

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

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

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

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

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

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

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

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

(D) Trading Halt.

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

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

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

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

(e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Proxy Portfolio Shares; net asset value; or other information relating to the purchase,

redemption, or trading of Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

* * * * *