

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103758; File No. SR-NASDAQ-2025-037]

### **Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt New Rule 5703 to Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares**

August 21, 2025.

On May 6, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new Nasdaq Rule 5703 to permit the generic listing and trading of Class Exchange-Traded Fund Shares. The proposed rule change was published for comment in the Federal Register on May 27, 2025.<sup>3</sup>

On June 30, 2025, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 103072 (May 20, 2025), 90 FR 22373 (“Notice”). The Commission has received no comments regarding the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 103357, 90 FR 29598 (July 3, 2025). The Commission designated August 25, 2025 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change

On August 15, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.<sup>6</sup>

The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 5703 to permit the generic listing and trading of Class Exchange-Traded Fund (“ETF”) Shares. The Exchange is also proposing to make conforming changes to Rule 5615 (Exemptions from Certain Corporate Governance Requirements), Rule 5705(b) (Index Fund Shares), Rule 5735 (Managed Fund Shares), and Equity 4, Rule 4120 in order to accommodate the proposed listing of Class ETF Shares. This Amendment No. 1 to SR-NASDAQ-2025-037 amends and replaces in its entirety the proposal as originally submitted on May 6, 2025. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal, and revises the proposed rule text.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings> and at the principal office of the Exchange.

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<sup>6</sup> Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nasdaq-2025-037/srnasdaq2025037.htm>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

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 adopt new Rule 5703 for the purpose of permitting the generic listing and trading, or trading pursuant to unlisted trading privileges, of Class ETF Shares.<sup>8</sup> The Exchange is also proposing to make conforming changes to Rule 5615 (Exemptions from Certain Corporate Governance Requirements), Rule 5705(b) (Index Fund Shares), Rule 5735 (Managed Fund Shares), and Equity 4, Rule 4120 in order to accommodate the proposed listing of Class ETF Shares. Consistent with Exchange Traded Fund Shares listed under the generic listing standards in Rule 5704, Class ETF Shares would be permitted to be listed and traded on the Exchange without prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.<sup>9</sup>

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<sup>8</sup> The Exchange notes that Cboe BZX Exchange, Inc. (“BZX”) has filed a substantially similar filing. See Securities Exchange Act Release No. 103188 (June 4, 2025), 90 FR 24457 (June 10, 2025) (SR-CboeBZX-2025-076).

<sup>9</sup> Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by this Rule 5703, the Exchange proposes new Rule 5703 to establish generic listing standards for Class ETF Shares that are permitted of the ETF Class that would be required to operate as an ETF pursuant to the Multi-Class Fund

## *Background*

There are numerous applications for exemptive relief for Class ETF Shares currently before the Commission<sup>10</sup> that request exemptive relief similar to that previously granted to other funds.<sup>11</sup> This proposal would provide for the “generic” listing and/or trading of Class ETF Shares under proposed Rule 5703 on the Exchange.

Starting in 2000, the Commission began granting limited relief for The Vanguard Group, Inc. (“Vanguard”) to offer certain index-based open-end management investment companies with Class ETF Shares.<sup>12</sup> After this relief was granted, there was limited public discourse about Class ETF Shares until 2019, when the prospect of providing blanket exemptive relief to Class ETF Shares was addressed in the Commission’s adoption of Rule 6c-11 under the Investment Company Act (the “ETF Rule”).<sup>13</sup> The ETF Rule permits ETFs that satisfy certain conditions to

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Exemptive Relief (as defined herein) and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act of 1940 (the “Investment Company Act”), except as noted in the Multi-Class Fund Exemptive Relief. Class ETF Shares listed under proposed Rule 5703 would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

<sup>10</sup> See e.g., DFA Investment Dimensions Group Inc. and Dimensional Investment Group Inc., (amendment filed March 31, 2025); F/m Investments LLC (amendment filed April 10, 2025); Fidelity Hastings Street Trust and Fidelity Management & Research Company (amendment filed April 11, 2025); Morgan Stanley Institutional Fund Trust and Morgan Stanley Investment Management Inc. (amendment filed April 11, 2025); BlackRock Funds (amendment filed April 15, 2025); Guinness Atkinson Funds (amendment filed April 17, 2025); Metropolitan West Funds, TCW ETF Trust, and TCW Funds, Inc. (amendment filed April 22, 2025); and Northern Funds and Northern Trust Investments, Inc. (amendment filed May 2, 2025).

<sup>11</sup> See infra note 12.

<sup>12</sup> See Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order). The Commission itself, as opposed to the Commission staff acting under delegated authority, considered the original Vanguard application and determined that the relief was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. In the process of granting the order, the Commission also considered and denied a hearing request on the original application, as reflected in the final Commission order. See also the Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order) (collectively referred to as the “Vanguard Orders”).

<sup>13</sup> See Securities Exchange Act Release No. 33-10695 (September 26, 2019), 84 FR 57162 (October 24, 2019) (the “ETF Rule Adopting Release”).

operate without the expense or delay of obtaining an exemptive order. However, the ETF Rule did not provide blanket exemptive relief to allow for Class ETF Shares as part of the final rule. Instead, the Commission concluded that Class ETF Shares should request relief through the exemptive application process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants. The Exchange adopted Rule 5704 shortly after the implementation of the ETF Rule and, because there were no exemptive applications before the Commission, did not propose to include any language comparable to what is being proposed herein.<sup>14</sup>

As noted above, a number of applications for exemptive relief to permit the applicable fund to offer Class ETF Shares (the “Applications”) have been submitted to the Commission starting in early 2023. In general, the Applications state that the ability of a fund to offer Class ETF Shares, i.e., both a class of mutual fund shares (each such class, a “Mutual Fund class” and such shares “Mutual Fund Shares”) and ETF Shares, could be beneficial to the fund and to shareholders of each type of class for various reasons, including more efficient portfolio management, better secondary market trading opportunities, and cost efficiencies, among others.<sup>15</sup> The Commission has granted, by order, specific exemptive relief (“Multi-Class Fund Exemptive Relief”) under the Investment Company Act on [DATE], that permits, subject to certain conditions and requirements, a Multi-Class Fund (as defined below) to issue Class ETF Shares (as defined below) and one or more classes of shares that are not exchange traded, among other things.<sup>16</sup>

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<sup>14</sup> See Securities Exchange Act Release No. 88561 (April 3, 2020), 85 FR 19984 (April 9, 2020) (SR-NASDAQ-2019-090).

<sup>15</sup> See *supra* note 12.

<sup>16</sup> The Exchange will amend this filing to add a cite to the Multi-Class Fund Exemptive Relief when that becomes available.

*Proposal*

Proposed Rule 5703(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Class ETF Shares that meet the criteria of this Rule.<sup>17</sup>

Proposed Rule 5703(b) provides that the proposed rule would be applicable only to Class ETF 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. Class ETF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 5703(b) further provides that: (1) transactions in Class ETF Shares will occur throughout the Exchange’s trading hours; and (2) the Exchange will implement and maintain written surveillance procedures for Class ETF Shares.

Proposed Rule 5703(c) will set forth the definitions used in the Rule. Specifically, proposed Rule 5703(c)(1) provides that the term “Class ETF Shares” means shares of the ETF Class issued by a Multi-Class Fund.

Proposed Rule 5703(c)(2) provides that the term “ETF Class” means the class of exchange-traded shares of a Multi-Class Fund that (i) operates as an exchange-traded fund pursuant to exemptive relief granted by order under the Investment Company Act (“Multi-Class

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<sup>17</sup> To the extent that Class ETF Shares do not satisfy one or more of the criteria in proposed Rule 5703, the Exchange may file a separate proposal under Section 19(b) of the Act in order to list such securities on the Exchange. Any of the statements or representations in that proposal regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in any filing to list such Class ETF Shares shall constitute continued listing requirements for the Class ETF Shares. Further, in the event that Class ETF Shares become listed under proposed Rule 5703 and subsequently can no longer satisfy the requirements of proposed Rule 5703, such Class ETF Shares may be listed as a series of Index Fund Shares under Rule 5705(b) or Managed Fund Shares under Rule 5735, as applicable, as long as the Class ETF Shares meets all listing requirements applicable under the alternate listing rule.

Fund Exemptive Relief”), and (ii) is in compliance with the requirements of Rules 5703(d)(ii) and 5703(d)(2)(A)(i)(2) below on an initial and continued listing basis.

Proposed Rule 5703(c)(3) provides that the term “Multi-Class Fund” means a registered open-end management company that (i) pursuant to Multi-Class Fund Exemptive Relief, issues Class ETF Shares and one or more classes of shares that are not exchange traded, and (ii) is in compliance with the conditions and requirements of the Multi-Class Fund Exemptive Relief.

Proposed Rule 5703(c)(4) provides that the term “Reporting Authority” in respect of a particular Multi-Class Fund means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists Class ETF Shares (if the Exchange is trading such securities pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such Multi-Class Fund, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of Class ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required in connection with the issuance of Class ETF Shares, or other information relating to the issuance, redemption or trading of Class ETF Shares. A Multi-Class Fund may have more than one Reporting Authority, each having different functions.

Proposed Rule 5703(d) provides that the Exchange may approve Class ETF Shares of a Multi-Class Fund for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided that: (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii)

the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule 5703, as applicable, on an initial and continued listing basis.

Proposed Rule 5703(d)(1) provides that the requirements of paragraph (d) of this Rule must be satisfied by the Multi-Class Fund issuing the Class ETF Shares on an initial and continued listing basis. The Multi-Class Fund with respect to such Class ETF Shares must also satisfy the following criteria on an initial and, except for sub-paragraph (A) below, continued, listing basis. Further, proposed Rule 5703(d)(1) provides that: (A) for each Multi-Class Fund, the Exchange will establish a minimum number of Class ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (B) if an index underlying a Multi-Class Fund is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to an actively managed Multi-Class Fund is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Multi-Class Fund’s portfolio; and (C) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a Multi-Class Fund, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Multi-Class Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 5703(d)(2) provides that Class ETF Shares of each Multi-Class Fund will be listed and traded on the Exchange subject to application of the continued listing criteria therein. Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of the Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing.

Proposed Rule 5703(e) provides that neither the Exchange, the 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 index or portfolio value; the current value of the portfolio of securities required to be deposited to the Multi-Class Fund in connection with the issuance of Class ETF Shares; the amount of any

dividend equivalent payment or cash distribution to holders of Class ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of Class ETF Shares, resulting from any negligent act or omission by the Exchange, the 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, 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.

The Exchange is also proposing to make corresponding amendments to include Class ETF Shares in other Exchange rules, which are intended to align the treatment of the proposed products with how other open-end management investment company shares (e.g., Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares) are treated under the Exchange's rules. First, the Exchange proposes to amend the definition of "Derivative Securities" in Rule 5615(a)(6)(B) to add Class ETF Shares so that Rule 5615(a)(6)(A) and its exemptions from certain corporate governance requirements are applicable to Class ETF Shares.<sup>18</sup>

Second, the Exchange proposes to amend the definition of "Derivative Securities Products" in Rule 5705(b)(3)(A)(i)a. to add Class ETF Shares so the exclusions applicable to Derivative Securities Products in Nasdaq Rule 5705(b)(3)(A) will also apply to Class ETF

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<sup>18</sup> Rule 5615(a)(6)(A) provides that issuers whose only securities listed on Nasdaq are non-voting preferred securities, debt securities or Derivative Securities, are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), and Meetings of Shareholders (as set forth in Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements of SEC Rule 10A-3. Notwithstanding, if the issuer also lists its common stock or voting preferred stock, or their equivalent on Nasdaq it will be subject to all the requirements of the Nasdaq 5600 Rule Series.

Shares. The Exchange believes this is appropriate to ensure that Class ETF Shares are treated consistently with other open-end management investment company shares listed on the Exchange such as Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares.

Third, the Exchange proposes to amend the definition of “Exchange Traded Derivative Securities” in Rule 5735(c)(6) to add Class ETF Shares so the exclusions applicable to Exchange Traded Derivative Securities in Rule 5735(b)(1)(A) will also apply to Class ETF Shares. The Exchange believes this is appropriate to ensure that Class ETF Shares are treated consistently with other open-end management investment company shares listed on the Exchange such as Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares.

Fourth, the Exchange proposes to amend Equity 4, Rule 4120 to include Class ETF Shares in the Exchange’s trading halt provisions in Rule 4120(a)(9) and 4120(b)(4)(A).<sup>19</sup> This will ensure the applicability of trading halts to the trading of Class ETF Shares listed on Nasdaq, and those traded on Nasdaq pursuant to unlisted trading privileges.

#### *Discussion*

Proposed Rule 5703 is based on Rule 5704 related to the listing and trading of ETF Shares on the Exchange, which are issued under the Investment Company Act and qualify as ETF Shares under Rule 6c-11. Exchange Traded Fund Shares are similar to Class ETF Shares because the ETF Class is required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act (except as noted in the Multi-Class Fund Exemptive Relief).<sup>20</sup> The proposed Class ETF Shares generic listing rule would apply only to the class of

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<sup>19</sup> Rule 4120(b)(4)(A) sets out the definition of “Derivative Securities Product,” which is referenced in the Exchange’s halt authority pursuant to Rules 4120(a)(10) and 4120(b).

<sup>20</sup> See supra note 16.

shares that are exchange traded. Because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to Exchange Traded Fund Shares under Rule 5704, the Exchange believes that using Rule 5704 as the basis for proposed Rule 5703 is appropriate.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns are mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 5703(d)(2)(B), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 5703(d)(2)(A). The Exchange will halt trading in the Class ETF Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and under Nasdaq Rules 4120(a)(12). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from Rule 6c-11, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule

6c-11.<sup>21</sup> The Exchange also notes that there are firewall and other information barrier restrictions in place in the proposed rule text.<sup>22</sup> The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange. The Exchange will monitor for compliance to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. Specifically, the Exchange will review the website of Class ETF Shares listed on the Exchange in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5703 would require an issuer of Class ETF Shares to notify the Exchange of any failure to comply with the requirements of proposed Rule 5703, the Multi-Class Fund Exemptive Relief, or Rule 6c-11 under the Investment Company Act.

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<sup>21</sup> The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

<sup>22</sup> See proposed Rules 5703(d)(1)(B) and (C).

The Exchange may suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.<sup>23</sup> The Exchange also notes that Rule 5701(d) requires any issuer to provide the Exchange with prompt notification after it becomes aware that (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or otherwise no longer complies with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class is no longer compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, or (iii) the ETF Class or the Multi-Class Fund no longer satisfies the requirements of 5703, as applicable, on an initial and continuing basis.<sup>24</sup>

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the

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<sup>23</sup> Specifically, proposed Rule 5703(d)(2) provides that Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 5703(d)(2)(A) and (B). Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Rule 5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing.

<sup>24</sup> The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to Rule 5701(d) would itself be considered non-compliance with the requirements of proposed Rule 5703 and would subject the Class ETF Shares to potential trading halts and the delisting process under the Rule 5800 Series.

Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Exchange Traded Fund Shares, Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in Class ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Finally, the issuer of Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5615(a)(6).<sup>25</sup>

The Exchange notes that it may consider all relevant factors in exercising its discretion to halt or suspend trading in Class ETF Shares. Trading may be halted if the circuit breaker parameters in Rule 4121 have been reached, because of other market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Class ETF Shares that is required to be disclosed under Rule 6c-11 of the Investment Company Act is not being made available, including specifically where the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to Class ETF Shares is not disseminated to all market participants at the same time, it will

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<sup>25</sup> See supra note 18. The Exchange notes that these proposed changes in Rule 5615(a)(6)(B) would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

halt trading in such securities until such time as the net asset value or the daily portfolio disclosure is available to all market participants;<sup>26</sup> (2) if an interruption to the dissemination to the value of the index or reference asset on which Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Exchange deems Class ETF Shares to be equity securities and therefore they would be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.<sup>27</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>28</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>29</sup> in particular, in that it is designed 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 Rule 5703 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading Class

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<sup>26</sup> The Exchange will obtain a representation from the issuer of Class ETF Shares that the net asset value per share will be calculated daily and made available to all market participants at the same time, and the requirements pertaining to the Multi-Class Fund Exemptive Relief and Rule 6c-11 under the Investment Company Act in proposed Rule 5703 will be satisfied.

<sup>27</sup> With respect to trading in Class ETF Shares, the Exchange represents that all of the Nasdaq member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with the Exchange's rules and federal securities laws, and Nasdaq will continue to monitor its members for compliance with such requirements, which are not changing as a result of the Multi-Class Fund Exemptive Relief order issued under the Investment Company Act.

<sup>28</sup> 15 U.S.C. 78f(b).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 5703(d) sets forth initial and continued listing criteria applicable to Class ETF Shares, specifically providing that the Exchange may approve Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided that: (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule 5703, as applicable, on an initial and continued listing basis.<sup>30</sup> The Exchange will comply with all the requirements of Rule 19b-4(e) to specifically note that such Class ETF Shares are being listed on the Exchange pursuant to Rule 5703.

Proposed Rule 5703(d)(2) provides that Class ETF Shares of each Multi-Class Fund will be listed and traded on the Exchange subject to application of proposed Rules 5703(d)(2)(A) and (B). Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with

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<sup>30</sup> The Exchange notes that eligibility to operate in reliance on Rule 6c-11 or any applicable exemptive relief under the Investment Company Act does not necessarily mean that an investment company would be listed on the Exchange pursuant to proposed Rule 5703. To this point, an investment company that operates in reliance of exemptive relief providing for Class ETF Shares could alternatively be listed as a series of Index Fund Shares or Managed Fund Shares pursuant to Rule 5705(b) or 5735, respectively, and would be subject to all requirements under each of those rules. Further to this point, in the event that Class ETF Shares listed on the Exchange preferred to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), nothing would preclude such security from changing to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), as long as the security met each of the initial and continued listing obligations under the applicable rules.

respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule 5703 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of the Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange notes that it may become aware that the issuer is no longer compliant with Rule 6c-11 or any applicable exemptive relief thereunder, as described in proposed Rule 5703(d)(2)(A)(i), as a result of either the Exchange identifying non-compliance through its own monitoring process or through notification by the issuer.

Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing. The Exchange also notes that it will obtain a representation from the issuer of Class ETF Shares stating that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

The Exchange further believes that proposed Rule 5703 is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 5703(b)(2) along with the similarities of proposed Rule 5703 to

the rules related to other securities that are already listed and traded on the Exchange and which would qualify as Class ETF Shares. ETF Shares are identical to Class ETF Shares except that Class ETF Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to an exchange-traded fund under Rule 5704, the Exchange believes that using Rule 5704 as the basis for proposed Rule 5703 is appropriate.

The Exchange believes that the proposal is consistent with Section 6(b)(1) of the Act<sup>31</sup> in that, in addition to being designed to prevent fraudulent and manipulative acts and practices, the Exchange has the capacity to enforce proposed Rule 5703 by performing ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns that such standards are intended to address are mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 5703(d)(2)(B), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 5703(d)(2)(A). The Exchange also believes that such concerns

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<sup>31</sup> 15 U.S.C. 78f(b)(1).

are further mitigated by enhancements to the arbitrage mechanism that have come from compliance with Rule 6c-11, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.<sup>32</sup> The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange. The Exchange will monitor for compliance with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of Class ETF Shares in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5701(d) would require an issuer of Class ETF Shares to notify the Exchange of any failure to comply with Rule 6c-11 or the Investment Company Act.

To the extent that any of the requirements under Rule 6c-11 or the Multi-Class Fund Exemptive Relief under the Investment Company Act are not being met, the Exchange may halt trading in Class ETF Shares as provided in proposed Rule 5703(d)(2)(B). Further, the Exchange may also suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange

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<sup>32</sup> The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

believes that further dealings on the Exchange are inadvisable. As discussed above, the Exchange also notes that Rule 5701(d) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with proposed Rule 5703, which would include any failure of the issuer to comply with Rule 6c-11 or the Multi-Class Fund Exemptive Relief under the Investment Company Act.

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Index Fund Shares, Managed Fund Shares and ETF Shares, among other product types, to monitor trading in Class ETF Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a Multi-Class Fund for the Class ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in Class ETF Shares, to the extent that the Multi-Class Fund for the Class ETF Shares holds municipal securities. Finally, as noted above, the issuer of Class ETF

Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5615(a)(6).<sup>33</sup>

The Exchange believes that permitting Class ETF Shares to list on the Exchange will help perfect the mechanism of a free and open market and, in general, will protect investors and the public interest in that it will permit the listing and trading of Class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors. Specifically, the Exchange believes that the relief proposed in the Applications and the expected benefits of the Class ETF Shares described above would be to the benefit of investors.

The Exchange also believes that proposed Rule 5703 to explicitly provide the initial and continued listing standards applicable to Class ETF Shares, including the suspension of trading or removal standards, are designed to promote transparency and clarity in the Exchange's Rules.

The Exchange also believes that the corresponding changes to add Class ETF Shares in the Exchange's corporate governance requirements under Rule 5615(a)(6)(B), the Index Fund Shares provisions in Rule 5705(b), the Managed Fund Shares provisions in Rule 5735, and the trading halt provisions in Equity 4, Rule 4120, each as discussed in detail above, will add clarity to the Exchange's Rulebook. ETF Shares, Managed Fund Shares, and Index Fund Shares are similarly included in these provisions. Therefore, the Exchange believes these are non-substantive changes meant only to subject Class ETF Shares to the same exemptions and provisions currently applicable to ETF Shares, among other product types, so that the treatment of these open-end management investment companies is consistent under the Exchange's rules. For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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<sup>33</sup> See supra notes 18 and 25.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, by permitting the listing and trading of Class ETF Shares under exemptive relief from the Investment Company Act and the rules and regulations thereunder, 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. Proceedings to Determine Whether to Approve or Disapprove SR-NASDAQ-2025-037, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>34</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>35</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to

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<sup>34</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>35</sup> Id.

prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”<sup>36</sup>

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice and Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 1. In particular, the Commission seeks comment on whether the proposal is consistent with Section 6(b)(5) of the Act,<sup>37</sup> and specifically, whether the proposed rule change is designed to prevent fraudulent and manipulative acts and practices.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>38</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE

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<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> Id.

<sup>38</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-

21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>);  
or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2025-037 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-2025-037. This file number should be included on the subject line if email 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 website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

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regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

protection. All submissions should refer to file number SR-NASDAQ-2025-037 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**Vanessa A. Countryman,**

*Secretary.*

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<sup>39</sup> 17 CFR 200.30-3(a)(57).