

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103973; File No. SR-NASDAQ-2025-056]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change to Adopt Generic Listing Standards for Commodity-Based Trust Shares under Rule 5711(d)

September 15, 2025.

On July 30, 2025, the Nasdaq Stock Market LLC (“Exchange” or “Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Nasdaq Rule 5711(d) to adopt generic listing standards for Commodity-Based Trust Shares. The proposed rule change was published for comment in the Federal Register on August 4, 2025.³ On August 27, 2025, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. On September 10, 2025, the Exchange filed with the Commission Amendment No. 2 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 2 replaces and supersedes the proposed rule change, as modified by Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103596 (July 30, 2025), 90 FR 36461. Comments received on the proposed rule change are available at: <https://www-draft.sec.gov/comments/sr-nasdaq-2025-056/srnasdaq2025056.htm>.

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

The Exchange proposes to amend Rule 5711(d) to adopt generic listing standards for Commodity-Based Trust Shares (as defined below). This Amendment No. 2 supersedes Amendment No. 1 in its entirety.

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.

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 Rule 5711(d) to adopt generic listing standards for Commodity-Based Trust Shares.⁴ Effectively, the proposed rule change will allow the Exchange to approve the listing and trading of certain qualifying exchange-traded products (“ETPs”) that

⁴ The Exchange is working on a separate rule proposal to add quantitative metrics as additional eligibility criteria for the generic listing of Commodity-Based Trust Shares that it plans to file subsequent to this proposal.

physically hold commodities like precious metals and digital asset commodities on the Exchange without the need to submit a proposed rule change with the Commission for each new product.⁵

Under the Exchange’s current rules, a proposed rule change must be filed with the SEC for the listing and trading of each new series of Commodity-Based Trust Shares.⁶ The Exchange believes that the proposed generic listing rules, as described below, will facilitate efficient procedures for ETPs that would be eligible under these rules. Consistent with Exchange-Traded Fund Shares, Index Fund Shares, and Managed Fund Shares listed under the generic listing standards in Rules 5704, 5705(b), and 5735, respectively, series of Commodity-Based Trust Shares that meet the proposed standards in Rule 5711(d) would be permitted to be listed and traded on the Exchange without the Exchange being required to submit a rule filing pursuant to Section 19(b) of the Act.

⁵ As discussed later in this filing, Commodity-Based Trust Shares will also be expanded to allow for the ETP to hold not just physical commodities, but also commodity-based assets like commodity futures and securities.

⁶ Currently, the SEC has approved a number of spot bitcoin and spot ether ETPs, including ETPs that hold both spot bitcoin and spot ether. See e.g., Securities Exchange Act Nos. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (“Spot Bitcoin ETP Approval Order”); 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products) (“Spot ETH ETP Approval Order”); and 101998 (December 19, 2024), 89 FR 106707 (December 30, 2024) (Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Franklin Crypto Index ETF, a Series of the Franklin Crypto Trust) (“Dual Bitcoin and Ether ETP Approval Order”).

Background

Rule 5711(d) currently sets forth rules related to the listing and trading of Commodity-Based Trust Shares.⁷ The term “Commodity-Based Trust Shares” is currently defined in Rule 5711(d)(iv)(A) as a security:

- that is issued by a trust that holds (a) a specified commodity⁸ deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, cash;
- that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and
- that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

All Commodity-Based Trust Shares listed and/or traded pursuant to Rule 5711(d) (including pursuant to unlisted trading privileges) are subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.⁹ In addition, Rule 5711(d)(vi) currently provides for the criteria that Commodity-Based Trust Shares must satisfy for initial and continued listing on the Exchange. Specifically, on an initial listing basis, the Exchange establishes a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.¹⁰ On a continued

⁷ The Commission approved Nasdaq Rule 5711 in Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR NASDAQ 2012-013) (“Approval Order”).

⁸ The term “commodity” is defined in Section 1a(9) of the Commodity Exchange Act. See current Rule 5711(d)(iv)(B).

⁹ See Approval Order, supra note 7, at 19450.

¹⁰ See current Rule 5711(d)(vi)(A).

listing basis, the Exchange would consider the suspension of trading in or removal from listing of such series under any of the following circumstances:¹¹

- If following the initial 12-month period following commencement of trading on the Exchange, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity-Based Trust Shares;
- If following the initial 12-month period following commencement of trading on the Exchange, the Trust has fewer than 50,000 receipts issued and outstanding;
- If following the initial 12-month period following commencement of trading on the Exchange, the market value of all receipts issued and outstanding is less than \$1,000,000;
- If an interruption to the dissemination of the value of the underlying commodity persists past the trading day in which it occurred or is no longer calculated or available on at least a 15-second delayed basis by Nasdaq or one or more major market data vendors during the Regular Market Session (as defined in Nasdaq Rule 4120);
- If an interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred or is no longer made available on at least a 15-second delayed basis;
- If a series of Commodity-Based Trust Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the reference assets or trust holdings; (b) limitations on the reference assets or trust holdings; (c) dissemination and availability

¹¹ See current Rule 5711(d)(v)(B).

of the reference asset or intraday indicative values; or (d) the applicability of Nasdaq listing rules specified in such proposals;

- If any of the requirements set forth in Rule 5711(d) are not continuously maintained; or
- If such other event shall occur or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

As noted above, the current process for listing and trading new series of Commodity-Based Trust Shares requires that the Exchange submit separate proposed rule changes with the Commission before listing these ETPs.¹²

Proposal

The Exchange now proposes to amend Rule 5711(d)(i) to specify that the Exchange may list and/or trade Commodity-Based Trust Shares pursuant to Rule 19b-4(e) under the Act (“SEC Rule 19b-4(e)”). SEC Rule 19b-4(e) pertains to derivative securities products,¹³ and 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 noted above, this is the current method pursuant to which Exchange-Traded Fund Shares, Index

¹² See current Rule 5711(d)(iii).

¹³ 17 CFR 240.19b-4(e). As provided under SEC Rule 19b-4(e), the term “new derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. When relying on Rule 19b-4(e), SRO must submit Form 19b-4(e) within 5 business days of trading a new derivative securities product.

Fund Shares, and Managed Fund Shares are listed under Rules 5704, 5705(b), and 5735, respectively, if they meet the requirements of such rules.

As proposed in Rule 5711(d)(i), the Exchange would continue to submit a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of Commodity-Based Trust Shares that do not meet the standards set forth in Rule 5711(d) on an initial or a continuing basis. For example, if the components of a Commodity-Based Trust Share included a commodity that does not meet the eligibility requirements described in proposed Rule 5711(d)(iv) below, the Exchange would file a separate proposed rule change pursuant to Section 19(b) of the Act to permit the listing and trading such Commodity-Based Trust Share.

In proposed Rule 5711(d)(iii)(A), the Exchange proposes to amend the definition of Commodity-Based Trust Shares. Specifically, Commodity-Based Trust Shares will mean a security that:

- is issued by a trust, limited liability company, partnership, or other similar entity (“Trust”) that, if applicable, is operated by a registered commodity pool operator pursuant to the Commodity Exchange Act, and is not registered as an investment company pursuant to the Investment Company Act of 1940, or series or class thereof;
- is designed to reflect the performance of one or more reference assets or an index of reference assets, less expenses, and other liabilities;
- in order to reflect the performance as provided in proposed Rule 5711(d)(iii)(A)(2), is issued by a Trust that holds (a) one or more commodities or commodity-based assets as defined in proposed Rule 5711(d)(iii)(C), and (b) in addition to such commodities or commodity-based assets, may hold securities, cash, and cash equivalents;

- is issued by such Trust in a specified aggregate minimum number in return for a deposit of (a) a specified quantity of the underlying commodities, commodity-based assets, securities, cash, and/or cash equivalents, or (b) a cash amount with a value based on the next determined net asset value per Trust share; and
- when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder (a) the specified quantity of the underlying commodities, commodity-based assets, securities, cash, and/or cash equivalents, or (b) a cash amount with a value based on the next determined net asset value per Trust share.

As proposed, the definition of Commodity-Based Trust Shares will be amended in a number of ways. First, Commodity-Based Trust Shares could be issued, as proposed, by a trust, limited liability company, partnership, or other similar entity. Second, whereas Commodity-Based Trust Shares are currently based on underlying commodities only, the Exchange proposes that these ETPs could hold underlying commodities, commodity-based assets, and securities, provided that the ETP would not be able to hold securities or cash equivalents to the point where it could be considered an investment company pursuant to the Investment Company Act of 1940. The Exchange believes this flexibility with respect to the structure of the entity issuing Commodity-Based Trust Shares and the holdings underlying such Shares would benefit both issuers and the investing public and would facilitate the availability of additional types of Commodity-Based Trust Shares. Third, the definition would make clear that the Commodity-Based Trust Share will not be actively managed and will instead be passively managed in that it

will reflect the performance of one or more reference assets held in the Trust's portfolio or an index of reference assets that the Trust tracks.¹⁴

In proposed Rule 5711(d)(iii)(B), the Exchange proposes to amend the definition of commodity by explicitly carving out "excluded commodity" from this term. Specifically, the proposed definition provides that the term "commodity" is as defined in Section 1a(9) of the Commodity Exchange Act that is not an "excluded commodity" as defined in Section 1a(19) of the Commodity Exchange Act.¹⁵

Proposed Rule 5711(d)(iii)(C) defines the term "commodity-based asset" as any future, option, or swap on a commodity, as defined in proposed Rule 5711(d)(iii)(B).

Proposed Rule 5711(d)(iii)(D) defines the term "cash equivalent" as short-term instruments with maturities of less than three months as follows:

- U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities;
- certificates of deposit issued against funds deposited in a bank or savings and loan association;

¹⁴ Proposed rule changes for previously-listed series of Commodity-Based Trust Shares have also been passively managed. See supra note 6.

¹⁵ Pursuant to Section 1a(19) of the Commodity Exchange Act, the term "excluded commodity" means— (i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure; (ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is— (I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or (II) based solely on one or more commodities that have no cash market; (iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or (iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is— (I) beyond the control of the parties to the relevant contract, agreement, or transaction; and (II) associated with a financial, commercial, or economic consequence.

- bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;
- repurchase agreements and reverse repurchase agreements;
- bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest;
- commercial paper, which are short-term unsecured promissory notes; and
- money market funds.

Proposed Rule 5711(d)(iii)(E) defines the term “net asset value” as the value of Commodity-Based Trust Shares that is used in computing periodically the current price for the purpose of creation and redemption of Trust shares and is an amount which reflects the current market value of the assets held by the Trust less expenses and liabilities.

Proposed Rule 5711(d)(iii)(F) defines the term “designated contract market” as a board of trade or exchange that has been designated as a contract market under Section 5 of the Commodity Exchange Act and operates under the regulatory oversight of the Commodity Futures Trading Commission (“CFTC”) pursuant to Section 5 of the Commodity Exchange Act.

Proposed Rule 5711(d)(iii)(G) defines the term “exchange-traded fund” or “ETF” as an open-end management investment company or a unit investment trust as defined in Section 4(2) of the Investment Company Act of 1940 or series or class thereof, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order under the Investment Company Act of 1940 or in reliance on an exemptive rule adopted by the Securities and Exchange Commission.

Proposed Rule 5711(d)(iii)(H) defines the term “Intraday Indicative Value” as the estimated indicative value of a Trust share based on current information regarding the value of the Trust's underlying assets.

Proposed Rule 5711(d)(iii)(I) defines the term “market price” as (1) the official closing price of a Trust share; or (2) if it more accurately reflects the market value of a Trust share at the time as of which the Trust calculates current net asset value per share, the price that is the midpoint between the national best bid and national best offer as of that time.

Proposed Rule 5711(d)(iii)(J) defines the term “premium or discount” as the positive or negative difference between the market price of a Trust share at the time as of which the current net asset value is calculated and the Trust's current net asset value per share, expressed as a percentage of the Trust share's current net asset value per share.

Proposed Rule 5711(d)(iv) will set forth the eligibility requirements that the holdings of Commodity-Based Trust Shares would have to meet on an initial and, with the exception of proposed subparagraph (A)(3) described below, on a continuing basis. Proposed subparagraph (A) therein would set forth the eligibility requirements for the Trust's commodity or commodity-based asset holdings. Specifically, each commodity or commodity that underlies a commodity-based asset held by the Trust must fall into at least one of the following categories in proposed subparagraphs (A)(1) – (3):

- (1) the commodity trades on a market that is an Intermarket Surveillance Group (“ISG”) member; provided that the Exchange may obtain information about trading in such commodity from the ISG member;¹⁶

¹⁶ ISG is comprised of an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. See <https://isgportal.org/web/isg>. A list of ISG members is available at <https://isgportal.org/public-members>.

- (2) the commodity underlies a futures contract that has been made available to trade on a designated contract market for at least six months;¹⁷ provided that the Exchange has a comprehensive surveillance sharing agreement, whether directly or through common membership in ISG, with such designated contract market;¹⁸ or
- (3) on an initial basis only, an exchange-traded fund designed to provide economic exposure of no less than 40% of its net asset value to the commodity lists and trades on a national securities exchange.¹⁹

The proposed eligibility requirements for the commodity or commodity-based asset components held by the Trust in proposed Rule 5711(d)(iv)(A)(1) and (2) are intended to ensure that the Exchange can monitor trading activity in the underlying commodity market or CFTC-regulated futures market through a comprehensive surveillance sharing agreement, thereby facilitating the monitoring for fraud and manipulation. The eligibility requirement in proposed Rule 5711(d)(iv)(A)(3) is intended to cover underlying commodities that are already substantially investible through existing ETFs, and to prevent regulatory arbitrage between ETPs registered under the Securities Act of 1933 and ETFs registered under the Investment Company Act of 1940. Overall, the Exchange believes that the foregoing criteria will help ensure fair and efficient markets.

¹⁷ The Exchange notes that “made available to trade on a designated contract market” means the date of listing and trading the futures contract (instead of the date of certification) on a designated contract market.

¹⁸ As it relates to digital assets, this criteria would currently cover, for example, CME Bitcoin futures, CME Ethereum futures, and Coinbase Derivatives Litecoin futures. Both the CME and Coinbase Derivatives are presently ISG members, and both are also designated contract markets registered with the CFTC that trade these digital asset-based futures contracts.

¹⁹ For example, as it relates to digital assets, a number of ETFs already provide over 40% exposure to digital assets like Solana and XRP like the Volatility Shares Solana ETF and Volatility Shares XRP ETF.

Proposed subparagraph (B) of proposed Rule 5711(d)(iv) would set forth the eligibility requirements for the Trust’s security holdings. Specifically, if the Trust holds any securities, each security held by the Trust would need to meet the criteria of Rule 5735 (Managed Fund Shares), Sections (b)(1)(A) and (B), or if the security is a listed option, trades on an ISG market. Sections (b)(1)(A) and (B) of Rule 5735 presently set forth the standards for a Managed Fund Share portfolio that holds equity securities and fixed income securities, respectively. Section (b)(1)(A) defines equity securities to be U.S. Component Stocks (as defined in Rule 5705); Non-U.S. Component Stocks (as defined in Rule 5705); Exchange Traded Derivative Securities (as defined in Rule 5735(c)(6)); and Linked Securities (as defined in Rule 5710). Section (b)(1)(B) defines fixed income securities to be debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. As proposed, the Trust’s securities holdings must either be an equity security or a fixed income security, as defined in Rule 5735(b)(1)(A) and (B), respectively, and meet the listing standards thereunder, or if the security holdings are listed options, they trade on an ISG market.

Proposed Rule 5711(d)(v) will require the Trust to prominently display certain information on its public website to promote transparency. Specifically, the following information must be available on the Trust’s public website, free of charge:

- Before the opening of regular trading on the Exchange, for the Trust’s commodities, commodity-based assets, securities, cash, and cash equivalent, to the extent applicable:

- ticker symbol;
 - identifier;
 - description of the holding;
 - the quantity of each commodity, commodity-based asset, security, cash, and cash equivalent held; and
 - percentage weighting of the Trust's assets.
- The Trust's current net asset value per share, market price, and premium or discount, each as of the end of the prior business day.
- A table showing the number of days the Trust's shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the Trust, if shorter).
- A line graph showing the Trust share's premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the Trust, if shorter).
- The Trust share's median-ask spread, expressed as a percentage rounded to the nearest hundredth, computed by:
 - identifying the Trust share's national best bid and national best offer as of the end of each 10 second interval during each trading day of the last 30 calendar days;
 - dividing the difference between each such bid and offer by the midpoint of the national best bid and national best offer; and
 - identifying the median of those values.
- Liquidity risk policies and procedures as described in proposed Rule 5711(d)(vii).
- The Trust's methodology for the calculation of its net asset value.

- The Trust's trading volume for the previous day; and
- The Trust's effective prospectus, in a form available for download.

Other than the proposed liquidity risk policies and procedures, which will be discussed further below, the proposed website disclosure requirements discussed above are based on previous proposed rule changes for specific series of Commodity-Based Trust Shares.²⁰

Proposed Rule 5711(d)(vi) will specify that the Trust may not seek, directly or indirectly, to provide investment returns that correspond to the performance of an index, benchmark, or reference value by a specified multiple, or to provide investment returns that have an inverse or multiple inverse relationship to the performance of an index, benchmark, or reference value, over a predetermined period of time.²¹

Proposed Rule 5711(d)(vii) will specify the disclosure requirements for liquidity risk policies and procedures. In particular, if a Trust has on a daily basis less than 85% of its assets readily available to meet redemption requests, the Trust must have written liquidity risk policies and procedures reasonably designed to address the risk that it could not meet requests to redeem shares issued by the Trust without significant dilution of remaining shareholders' interest in the Trust. Such policies and procedures must be periodically reviewed (with such review occurring no less frequently than annually) by the Trust and must address the following, as applicable. For purposes of proposed Rule 5711(d)(vii), an asset is deemed not readily available to meet redemption requests if it is segregated, pledged, hypothecated, encumbered or otherwise restricted or prevented from being liquidated, sold, transferred, or assigned within one business

²⁰ See supra note 6. These website disclosure requirements are also based on SEC Rule 6c-11.

²¹ The Exchange notes that this prohibition on leveraged and inverse ETPs mirrors the representations made in proposed rule changes for spot bitcoin and spot ether ETPs. See supra note 6.

day. Proposed subparagraphs (A) – (C) will specify what must be addressed in these written policies and procedures:

- The Trust's investment strategy and liquidity of the Trust's assets during normal and stressed conditions, including holdings in derivatives and whether the investment strategy is appropriate for effective and efficient arbitrage.
- Holdings of cash and cash equivalents, as well as borrowing arrangements and other funding sources.
- Percentage and description of the Trust's assets that are segregated, pledged, hypothecated, encumbered, or otherwise restricted or prevented from being liquidated, sold, transferred, or assigned.

The disclosure requirements around liquidity risk in proposed Rule 5711(d)(vii) are intended to cover situations such as staking by the Trust of its digital assets, particularly if the staked amount exceeds 15% or more of the Trust's assets on any given day and such staked assets are not readily available for redemption requests within one business day. In particular, the proposed disclosure requirements would ensure that the Trust develops policies and procedures around how the Trust would mitigate risks for failure to fulfill redemption requests, and to provide information to the investing public with respect to such policies and procedures.

Proposed Rule 5711(d)(viii), which is currently Rule 5711(d)(vi), will set forth the proposed initial and continued listing requirements for Commodity-Based Trust Shares.²² For the initial listing standards in proposed Rule 5711(d)(viii)(A), the Exchange will continue to establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the

²² The Exchange will delete current Rule 5711(d)(v) (Designation of an Underlying Commodity) as the substance of that rule is already set out in proposed Rule 5711(d)(i).

time of commencement of trading on the Exchange.²³ In addition, the Exchange proposes to add that all Commodity-Based Trust Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.²⁴

For the continued listing standards in proposed Rule 5711(d)(viii)(B), the Exchange will specify that it will maintain surveillance procedures for Trust shares listed under proposed Rule 5711(d).²⁵ The Exchange's existing continued listing requirements will remain substantively unchanged except as noted below. The Exchange also proposes to add two additional continued listing requirements within proposed Rule 5711(d). As amended, proposed Rule 5711(d)(viii)(B) would provide that the Exchange would consider suspension of trading in, and would initiate delisting proceedings under the Rule 5800 Series of, such series under any of the following circumstances:

- if following the initial 12-month period following commencement of trading on the Exchange: (1) the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity-Based Trust Shares; (2) the Trust has fewer than 50,000 Trust shares issued and outstanding; or (3) the market value of all Trust shares issued and outstanding is less than \$1,000,000;²⁶
- if an interruption to the dissemination of the value of the underlying reference asset(s) or index persists past the trading day in which it occurred or is no longer calculated or

²³ See proposed Rule 5711(d)(viii)(A)(1).

²⁴ See proposed Rule 5711(d)(viii)(A)(2).

²⁵ See Approval Order, supra note 7, at 19450.

²⁶ See proposed Rule 5711(d)(viii)(B)(1), which is the same listing requirement in current Rule 5711(d)(vi)(B)(1) except the Exchange is replacing the reference to "receipts" with "Trust shares."

made widely available on at least a 15-second basis from a source unaffiliated with the sponsor or the Trust;²⁷

- if an interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred or is no longer made widely available to all market participants at the same time on at least a 15-second basis during the Regular Market Session;²⁸
- the net asset value is not calculated at least once daily or made widely available to all market participants at the same time;²⁹
- the information as set forth in proposed Rule 5711(d) is no longer being disclosed in accordance with the website disclosure requirements of proposed Rule 5711(d)(v);³⁰
- the Exchange submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of Commodity-Based Trust Shares that do not otherwise meet the standards set forth in proposed Rule 5711(d) and such series of Commodity-Based Trust Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the index, reference assets or trust holdings; (b)

²⁷ See proposed Rule 5711(d)(viii)(B)(2), which is substantially similar to the listing requirement in current Rule 5711(d)(vi)(B)(2) except the Exchange is proposing to replace the reference to “commodity” to “reference asset(s) or index” to be accurate about what the Trust tracks and to align with the changes to the definition of Commodity-Based Trust Shares described above. The Exchange is also modifying the rule text to more closely align with the halt language proposed in proposed Rule 5711(d)(ix)(A)(1), as discussed later in this filing.

²⁸ See proposed Rule 5711(d)(viii)(B)(3), which is substantially similar to the listing requirement in current Rule 5711(d)(vi)(B)(3), except the Exchange is modifying the rule text to more closely align with the halt language proposed in proposed Rule 5711(d)(ix)(A)(2), as discussed later in this filing.

²⁹ See proposed Rule 5711(d)(viii)(B)(4). This is new language that aligns to the representations generally made in 19b-4 rule filings for Commodity-Based Trust Shares. See supra note 6.

³⁰ See proposed Rule 5711(d)(viii)(B)(5). This is new language that aligns to the representations generally made in 19b-4 rule filings for Commodity-Based Trust Shares. See supra note 6.

limitations on the index, reference assets or trust holdings; (c) dissemination and availability of the index, reference asset or Intraday Indicative Values; or (d) the applicability of Nasdaq listing rules specified in such proposals;³¹

- if any of the requirements set forth in proposed Rule 5711(d) are not continuously maintained;³² or
- if such other event shall occur or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.³³

As is the case today, upon termination of a Trust, the Exchange requires that Commodity-Based Trust Shares issued in connection with such Trust be removed from Nasdaq listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.³⁴

The Exchange proposes to delete current Rule 5711(d)(vi)(C) – (E), which presently sets forth certain requirements for the trust issuing Commodity-Based Trust Shares and its trustee. With the proposed changes in proposed Rule 5711(d)(iii)(A)(1) discussed above to broaden the types of entities that could issue Commodity-Based Trust Shares, the Exchange believes that the current provisions in Rule 5711(d)(vi)(C) - (E) are no longer appropriate and seeks to ensure that

³¹ See proposed Rule 5711(d)(viii)(B)(6), which is substantially similar to the listing requirement in current Rule 5711(d)(vi)(B)(4) except the Exchange is proposing to clarify that this requirement applies only in the context of a Commodity-Based Trust Share that is subject to the representations made in its individual 19b-4 filing instead of the generic listing standards proposed in this rule. The Exchange is also proposing to add references to “index” throughout this provision and to capitalize “Intraday Indicative Value.”

³² See proposed Rule 5711(d)(viii)(B)(7), which is the same listing requirement in current Rule 5711(d)(vi)(B)(5).

³³ See proposed Rule 5711(d)(viii)(B)(8), which is the same listing requirement in current Rule 5711(d)(vi)(B)(6).

³⁴ See proposed Rule 5711(d)(viii)(B), which will be the same as current Rule 5711(vi)(B) except the Exchange is proposing to delete an errant reference to “entity.”

proposed Rule 5711(d) will be applicable overall to the entities specified in proposed Rule 5711(d)(iii)(A)(1).

Proposed Rule 5711(ix) will set forth trading halt provisions. Specifically proposed Rule 5711(ix)(A) will provide that the Exchange may halt trading during the day in which the interruption to the following occurs. If the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If Commodity-Based Trust Shares are trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading as specified in Equity 4, Rule 4120(b). In particular, the Exchange may halt trading in the following circumstances specified in proposed subparagraphs (1) – (3):

- the value of the underlying reference asset(s) or index is not made widely available on at least a 15-second basis from a source unaffiliated with the sponsor or the Trust.³⁵
- the Intraday Indicative Value is not made widely available to all market participants at the same time on at least a 15-second basis during the Regular Market Session;³⁶ or
- the information as set forth in proposed Rule 5711(d) is not being disclosed in accordance with the website disclosure requirements of paragraph (v) above.

Proposed Rule 5711(d)(ix)(B) will provide that if the Exchange becomes aware that the net asset value is not disseminated to all market participants at the same time, it will halt trading in the Commodity-Based Trust Shares until such time as the net asset value is available to all

³⁵ This proposed provision is based on previously approved rule changes for specific series of Commodity-Based Trust Shares, and on Nasdaq's trading halt rules in Equity 4, Rule 4120(a)(9). See supra note 6.

³⁶ This proposed provision is based on previous proposed rule changes for specific series of Commodity-Based Trust Shares, and on Nasdaq's trading halt rules in Equity 4, Rule 4120(a)(9). See supra note 6.

market participants.³⁷ In addition, trading in the Commodity-Based Trust Shares will be halted under the conditions for Limit Up-Limit Down trading pauses in Rule 4120(a)(12) and for market-wide circuit breakers under Rule 4121.

Proposed Rule 5711(x) will set forth certain firewall requirements. Proposed Rule 5711(x)(1) will provide that if the value of a Commodity-Based Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect and maintain a “firewall” around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index. Proposed Rule 5711(x)(2) will provide that any advisory committee, supervisory board, or similar entity that advises an index licensor or administrator or that makes decisions regarding the index composition, methodology, and related matters 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.³⁸ Proposed Rule 5711(x)(3) will provide that if the Trust is affiliated with any entity that has the ability to influence the price or supply of a commodity, or a commodity underlying a commodity-based asset, held by the Trust, the Trust shall (i) implement and maintain a “firewall” between any such entity and the Trust, (ii) have written policies and procedures designed to prevent the use and dissemination of material, non-public information regarding the Trust; and (iii) have written policies and procedures designed to prevent fraudulent, deceptive or manipulative acts, practices, or courses of business with respect to the Trust and such commodity. Proposed Rule 5711(x)(3) is a new requirement that is intended to cover

³⁷ This proposed provision is based on previous proposed rule changes for specific series of Commodity-Based Trust Shares, and on Nasdaq’s trading halt rules in Equity 4, Rule 4120(a)(10). See supra note 6.

³⁸ The proposed firewall requirements in Rule 5711(d)(x)(1) and (2) are substantively similar to those included in Rule 5704 (Exchange Traded Fund Shares) and 5705(b) (Index Fund Shares).

instances where, for example with respect to a digital asset-based Commodity-Based Trust Shares, the Trust is affiliated with the protocol’s developer or foundation, in which case there must be a firewall in place to prevent fraud and manipulation.

The Exchange will also renumber current Rule 5711(d)(vii) (Limitation of Nasdaq Liability) and (viii) (Market Maker Accounts) to proposed Rule 5711(d)(xi) and (xii). The Exchange also proposes to amend the Market Maker Accounts provision in current Rule 5711(d)(viii) (renumbered as proposed Rule 5711(xii)) to replace references of “related commodity futures or options on commodity futures, or any other related commodity derivatives” with the proposed defined term “commodity-based asset,” and make other clarifying changes throughout this provision.

The Exchange also proposes to amend the commentary to Rule 5711(d) by first deleting Commentary .01, which currently provides that a Commodity-Based Trust Share is a Trust-Issued Receipt that holds a specified commodity deposited with the Trust. With the proposed changes to expand the definition of Commodity-Based Trust Shares in proposed Rule 5711(d)(iii)(A) as described above, the Exchange is deleting Commentary .01 to avoid potential confusion. With the deletion of Commentary .01, current Commentaries .02 and .03 will be renumbered as Commentaries .01 and .02 with no changes. The Exchange also proposes to add as new Commentary .03 a general provision that requires an issuer of Commodity-Based Trust Shares to notify the Exchange of any failure to comply with the continued listing requirements.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Commodity-Based Trust Shares. Additionally, the Exchange believes that the proposed eligibility standards for the generic listing of Commodity-Based Trust Shares, many of which track existing representations made in the

Approval Order and in the proposed rule changes for already-listed Commodity-Based Trust Shares, are reasonably designed to promote a fair and orderly market for such products.³⁹

In support of this proposal, the Exchange represents that:⁴⁰

- the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of Commodity-Based Trust 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 includes Commodity-Based Trust Shares, to monitor trading in Commodity-Based Trust Shares;
- the issuer of a series of Commodity-Based Trust Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Commodity-Based Trust Shares; and
- prior to the commencement of trading of a particular series of Commodity-Based Trust Shares, the Exchange will inform its members in an information circular ("Information Circular") of the special characteristics and risks associated with trading the Commodity-Based Trust Shares, including the procedures for creations and redemptions of Commodity-Based Trust Shares; suitability requirements under Nasdaq General 9, Section 10; how information regarding the IIV and NAV is disseminated; the risks involved in trading the Shares during the pre-market and post-market sessions when an updated IIV will not be calculated or publicly disseminated; the requirement that members deliver a prospectus to investors purchasing newly

³⁹ See supra note 6. See also Approval Order, supra note 7, at 19450 – 19451.

⁴⁰ The Exchange made similar representations in the proposed rule changes for already-listed Commodity-Based Trust Shares and in the Approval Order. See supra note 6 and 7.

issued Shares prior to or concurrently with the confirmation of a transaction; and other trading information. The Information Circular will also discuss any exemptive, no action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Commodity-Based Trust Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. Specifically, after more than 13 years of the current process, whereby the Exchange is required to file a proposed rule change with the Commission for the listing and trading of each new series of Commodity-Based Trust Shares, the Exchange believes it is appropriate to codify certain rules within Rule 5711(d) that would generally eliminate the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Commodity-Based Trust Shares that have investment strategies similar to other Commodity-Based Trust Shares already approved for listing and trading, thereby creating greater efficiencies

⁴¹ 15 U.S.C. 78f(b).

⁴² 15 U.S.C. 78f(b)(5).

in the listing process for the Exchange and the Commission. In this regard, the Exchange notes that many of the standards proposed for Commodity-Based Trust Shares are based on previous proposed rule changes for specific series of Commodity-Based Trust Shares.⁴³

As discussed above, the Exchange is proposing to amend the definition of Commodity-Based Trust Shares in a number of ways. First, Commodity-Based Trust Shares could be issued, as proposed, by a trust, limited liability company, partnership, or other similar entity. Second, whereas Commodity-Based Trust Shares are currently based on underlying commodities only, the Exchange proposes that these ETPs could be based on underlying commodities, commodity-based assets, and securities, provided that the ETP would not be able to hold securities to the point where it could be considered an investment company pursuant to the Investment Company Act of 1940. The Exchange believes this flexibility with respect to the structure of the entity issuing Commodity-Based Trust Shares and the holdings underlying such securities would remove impediments to and perfect the mechanism of a free and open market, as well as promote competition, by promoting the listing and trading of additional types of Commodity-Based Trust Shares, to the benefit of all market participants.

With respect to the proposed eligibility criteria in Rule 5711(d)(iv)(A), the proposed rule text introduces specific criteria that each commodity or commodity-asset based component of Commodity-Based Trust Shares must meet. The proposed criteria are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest for the reasons that follow. As discussed above, the proposed eligibility requirements in Rule 5711(d)(iv)(A)(1) and (2) are intended to ensure that the Exchange can monitor trading activity in the underlying commodity or CFTC-regulated futures market through a comprehensive

⁴³ See supra note 6.

surveillance sharing agreement, thereby facilitating the monitoring for fraud and manipulation. The eligibility requirement in proposed Rule 5711(d)(iv)(A)(3) is intended to cover underlying commodities that are already investible through existing ETFs, indicating a level of market acceptance and liquidity. In addition, the proposed eligibility requirement is intended to prevent regulatory arbitrage between ETPs registered under the Securities Act of 1933 and ETFs registered under the Investment Company Act of 1940. Overall, the Exchange believes that the foregoing criteria will help ensure fair and efficient markets. By including multiple routes to eligibility with verifiable and objective metrics, the Exchange believes that its proposal will ensure flexibility for product innovation while maintaining robust investor protections.

With respect to the proposed public website disclosure requirements in Rule 5711(d)(v), the Exchange notes that proposed rule changes approved by the Commission for already-listed series of Commodity-Based Trust Shares have similarly included disclosure requirements with respect to the Trust's holdings and valuation metrics.⁴⁴ These requirements will promote transparency to the benefit of all market participants, and would align with modern ETF-style disclosures in SEC Rule 6c-11.

With respect to the public website disclosure requirements for liquidity risk, the Exchange believes that the proposed requirement will promote just and equitable principles of trade and protect investors by ensuring that the Trust develops policies and procedures around how the Trust would mitigate risks for failure to fulfill redemption requests, and to provide information to the investing public with respect to such policies and procedures. As noted above, this provision would be triggered in situations including where the Trust stakes 15% or

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See supra note 6.

more of its assets on any given day, where, for example, such staked assets are not readily available for redemption requests within one business day.

The Exchange believes that the new firewall requirements in proposed Rule 5711(d)(x) are consistent with the Act because they are intended to mitigate potential conflicts of interest and the misuse of material non-public information by affiliated entities, which will protect investors and the public interest. In addition, Commodity-Based Trust Shares will continue to be subject to the full panoply of Exchange rules and procedures that govern the trading of equity securities on the Exchange.

In addition, the Exchange believes that the proposed changes to the Market Maker Accounts provisions in proposed Rule 5711(d)(xii), as discussed above, are consistent with the Act because they are intended to better align the rule text therein with the proposed changes to add a new defined term for “commodity-based asset,” and to make other clarifying changes. The proposed changes are intended to promote clarity, specificity, and better readability, and are not intended to alter the substance of the current rule. The Exchange believes that the proposed changes will bring transparency and clarity to its Rulebook.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because Commodity-Based Trust Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 5711(d). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Commodity-Based Trust Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Commodity-Based Trust Shares with other markets and other entities that are members of the ISG, and the Exchange or

FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Commodity-Based Trust Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Commodity-Based Trust Shares via the ISG, from other exchanges that are members or affiliates of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b-4(e) under the Act by allowing Commodity-Based Trust Shares that satisfy the proposed generic listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before listing and trading of Commodity-Based Trust Shares that do not satisfy the criteria described above.

For these reasons, the Exchange believes that its proposal is consistent with the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Commodity-Based Trust Shares and result in a significantly more efficient process surrounding the listing and trading of such ETPs, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Commodity-Based Trust Shares to market, thereby reducing the burdens on issuers and other market participants, and promoting competition. In turn, the Exchange believes that the proposed rule change would make the process for listing Commodity-Based Trust Shares more competitive by applying uniform listing standards with respect to Commodity-Based Trust Shares.

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. 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. Please include file number SR-NASDAQ-2025-056 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-2025-056. 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 protection.

All submissions should refer to file number SR-NASDAQ-2025-056 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Sherry R. Haywood,

Assistant Secretary.

⁴⁵ 17 CFR 200.30-3(a)(12).