

**EXHIBIT 5**

Proposed new language is underlined; proposed deletions are in brackets.

**4120. Limit Up-Limit Down Plan and Trading Halts****(a) Authority to Initiate Trading Halts or Pauses**

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq, pursuant to the procedures set forth in paragraph (c):

**(1) – (8) No Change**

(9) may halt trading in a series of Portfolio Depository Receipts, Index Fund Shares or Managed Fund Shares (as defined in Rules 5705 and 5735, respectively), Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Managed Trust Securities (as defined in Rule 5711(a) - (h) and (j), respectively), or ETMF Shares (as defined in Rule 5745) listed on Nasdaq if the Intraday Indicative Value (as defined in Rule 5705, for Portfolio Depository Receipts or Index Fund Shares, for derivative securities as defined in Rule 5711(a), (b), and (d) – (h), Rule 5711(j) for Managed Trust Securities, Rule 5735 for Managed Fund Shares, or Rule 5745 for ETMF Shares) or the index value applicable to that series is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. Nasdaq may also exercise discretion to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, [ or ] Managed Fund Shares, Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units (as defined in Rule 5711(i)), Managed Trust Securities, Currency Warrants (as defined in Rule 5711(k)), or ETMF Shares based on a consideration of the following factors: (A) trading in underlying securities comprising the index or portfolio applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index or portfolio, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

(10) shall halt trading in Derivative Securities Products (as defined in Rule 4120(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares under Rule 5735, a Disclosed Portfolio, and in the case of ETMF Shares under Rule 5745, a Composition File) is disseminated if Nasdaq becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, or in the case of ETMF Shares, the Composition File) is not being disseminated to all market participants at the same time.

Nasdaq will maintain the trading halt until such time as Nasdaq becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, or in the case of ETMF Shares, the

Composition File, as applicable) is available to all market participants or, in the case of Derivative Securities Products traded on Nasdaq pursuant to unlisted trading privileges, until such time trading resumes in the listing market.

(11) – (12) No Change

(b) Trading Halts for Trading of Certain Derivative Securities Products on Nasdaq Pursuant to Unlisted Trading Privileges

(1) – (3) No Change

(4) Definitions. For purposes of this Rule:

(A) Derivative Securities Product means a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, ETMF Shares, or Trust Issued Receipts (as defined in Rules 5705, 5735, 5745, and 5720, respectively), a series of Commodity-Related Securities (as defined in Rule 4630), securities representing interests in unit investment trusts or investment companies, Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, or Currency Warrants (as defined in Rule 5711(a) - (k)), or any other UTP Derivative Security (as defined in Rule 5740).

(B) – (D) No Change

(E) Required Value shall mean (i) the value of any index or any commodity-related value underlying a Derivative Securities Product, (ii) the indicative optimized portfolio value, intraday indicative value, or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day, (iii) a net asset value in the case of a Derivative Securities Product for which a net asset value is disseminated, and (iv) a [d]Disclosed [p]Portfolio in the case of a Derivative Securities Product that is a series of [m]Managed [f]Fund [s]Shares, as defined in Rule 5735, or Managed Trust Securities, as defined in Rule 5711(j), [actively managed exchange-traded funds for which a disclosed portfolio is disseminated]and a Composition File in the case of a Derivative Securities Product that is a series of ETMF Shares, as defined in Rule 5745.

(c) No Change

\*\*\*\*\*

### **5615. Exemptions from Certain Corporate Governance Requirements**

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and Companies ceasing to be Smaller Reporting Companies. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies. During the transition period before Companies

are subject to revised Rule 5605(d) and IM-5605-6, a reference in this Rule 5615 to Rule 5605(d) or IM-5605-6 shall be deemed to refer to Rule 5605A(d) or IM-5605A-6.

**(a) Exemptions to the Corporate Governance Requirements**

(1) – (4) No change

**(5) Management Investment Companies**

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the Independent Directors requirement, the Compensation Committee requirement, the Independent Director Oversight of Director Nominations requirement, and the Code of Conduct requirement, set forth in Rules 5605(b), (d) and (e) and 5610, respectively. In addition, management investment companies that issue [are ]Index Fund Shares, [and ]Managed Fund Shares, and Exchange-Traded Managed Fund Shares, as defined in Rules 5705(b), [and ]5735, and 5745, are exempt from the Audit Committee requirements set forth in Rule 5605(c), except for the applicable requirements of SEC Rule 10A-3.

**IM-5615-4. Management Investment Companies**

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, Nasdaq exempts from Rules 5605(b), (d), (e) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series. Management investment companies that issue [are ]Index Fund Shares, [and ]Managed Fund Shares, and Exchange-Traded Managed Fund Shares are exempt from the Audit Committee requirements set forth in Rule 5605(c), except for the applicable requirements of SEC Rule 10A-3.

\*\*\*\*\*

**5745. Exchange-Traded Managed Fund Shares (“ETMF Shares”)**

(a) Nasdaq will consider listing ETMF Shares that meet the criteria of Rule 5745.

(b) Applicability. Rule 5745 is applicable only to ETMF Shares. Except to the extent inconsistent with Rule 5745, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on Nasdaq of such securities. ETMF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of Nasdaq.

(1) Nasdaq will file separate proposals under Section 19(b) of the Act before the listing of ETMF Shares.

(2) Transactions in ETMF Shares will occur during the Regular Market Session through 4:00 p.m.

(3) NAV-Based Trading. ETMF Shares will trade on Nasdaq at market-determined premiums or discounts to the ETMF's next-determined net asset value per share. All bids, offers and execution prices will be expressed as a premium/discount (which may be zero) to the next-determined net asset value per share ("NAV-Based Trading"). The minimum price variation for quoting and entry of orders in ETMF Shares is \$0.01. Trade executions will be binding at the time that orders are matched, with the transaction price contingent upon the next-determined net asset value per share. After the Reporting Authority calculates the net asset value, Nasdaq will price each transaction at the agreed premium or discount to net asset value and deliver the trading data for clearance and settlement.

(4) Surveillance Procedures. Nasdaq will implement written surveillance procedures for ETMF Shares.

(5) Creation and Redemption. For ETMF Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of ETMF Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

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

(1) ETMF Share. The term "ETMF Share" means a security that (a) represents an interest in a registered investment company ("ETMF") organized as an open-end management investment company that invests in a portfolio of securities and other assets selected and managed by the ETMF's investment adviser consistent with the ETMF's investment objectives and policies; (b) is issued in a specified aggregate unit quantity in return for a deposit of a specified portfolio of securities and/or a cash amount with a value per ETMF Share equal to the ETMF's net asset value; (c) when aggregated in the same specified unit quantity, may be redeemed for a specified portfolio of securities and/or cash with a value per ETMF Share equal to the ETMF's net asset value; and (d) is traded on Nasdaq or another national securities exchange using NAV-Based Trading, including pursuant to unlisted trading privileges.

(2) Intraday Indicative Value. The term "Intraday Indicative Value" is the estimated indicative value of an ETMF Share based on current information regarding the value of the securities and other assets held by the ETMF.

(3) Composition File. The term “Composition File” means the specified portfolio of securities and/or cash that an ETMF will accept as a deposit in issuing ETMF Shares, and the specified portfolio of securities and/or cash that an ETMF will deliver in a redemption of ETMF Shares. The Composition File will be disseminated through the National Securities Clearing Corporation once each business day before the open of trading in ETMF Shares on Nasdaq on such day. To maintain the confidentiality of current portfolio trading, an ETMF’s Composition File generally will not be a pro rata reflection of the ETMF’s securities positions. Each security included in the Composition File will be a current holding of the ETMF, but the Composition File generally will not include all of the securities in the ETMF’s portfolio or match the weightings of the included securities in the portfolio. The Composition File also may consist entirely of cash, in which case it will not include any of the securities in the ETMF’s portfolio.

(4) Reporting Authority. The term “Reporting Authority” in respect of a particular series of ETMF Shares means Nasdaq, an institution, or a reporting service designated by Nasdaq as the official source for calculating and reporting information relating to such series of ETMF Shares, including, but not limited to, the Intraday Indicative Value, the amount of any cash distribution to holders of ETMF Shares, net asset value per share, and the Composition File or other information relating to the issuance, redemption or trading of ETMF Shares. A series of ETMF Shares may have more than one Reporting Authority, each having different functions.

(d) Initial and Continued Listing — ETMF Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(1) Initial Listing — Each series of ETMF Shares will be listed and traded on Nasdaq subject to application of the following initial listing criteria:

(A) For each series, Nasdaq will establish a minimum number of ETMF Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Nasdaq will obtain a representation from the issuer of each series of ETMF Shares that the net asset value per share for the series will be calculated on each business day that the New York Stock Exchange is open for trading and that the net asset value per share will be made available to all market participants at the same time.

(C) The Reporting Authority that provides the Composition File must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the ETMF’s portfolio positions and changes in the positions.

(2) Continued Listing — Each series of ETMF Shares will be listed and traded on Nasdaq subject to application of the following continued listing criteria:

(A) Intraday Indicative Value. The Intraday Indicative Value for the ETMF Shares will be widely disseminated by one or more major market data vendors at intervals of not more than 15 minutes during the Regular Market Session when the ETMF Shares trade on Nasdaq.

(B) Suspension of trading or removal. Nasdaq will consider the suspension of trading in or removal from listing of a series of ETMF Shares under any of the following circumstances:

(i) if, following the initial twelve-month period after commencement of trading on Nasdaq of a series of ETMF Shares, there are fewer than 50 beneficial holders of the series of ETMF Shares for 30 or more consecutive trading days;

(ii) if the value of the Intraday Indicative Value or the net asset value is no longer calculated, or if the Intraday Indicative Value, net asset value or Composition File is no longer available to all market participants at the same time;

(iii) if the ETMF issuing the ETMF Shares has failed to file any filings required by the Commission or if Nasdaq is aware that the ETMF is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission with respect to the series of ETMF Shares; or

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

(C) Trading Halt. If the Intraday Indicative Value of a series of ETMF Shares is not being disseminated as required, Nasdaq may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it first occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. In addition, if Nasdaq becomes aware that the net asset value per share with respect to a series of ETMF Shares is not calculated on each business day that the New York Stock Exchange is open for trading and disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value per share is available to all market participants. In addition, if Nasdaq becomes aware that the Composition File with respect to a series of ETMF Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the Composition File is available to all market participants.

(D) Termination. Upon termination of an ETMF, Nasdaq requires that ETMF Shares issued in connection with such entity be removed from listing on Nasdaq.

(E) Voting. Voting rights shall be as set forth in the applicable ETMF prospectus.

(e) Limitation of Liability. Neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any current portfolio value; the current value of the securities and other assets required to be deposited in connection with issuance of ETMF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETMF Shares; net asset value per share; the Composition File; or other information relating to the purchase, redemption or trading of ETMF Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq, 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.

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

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

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

Upon request of a customer, a member shall also provide a prospectus for the particular series of ETMF Shares.

(g) If the investment adviser to an ETMF issuing ETMF Shares is a registered broker-dealer or is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer personnel or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such ETMF's portfolio holdings. Personnel who make decisions on the ETMF's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable ETMF portfolio.

\*\*\*\*\*

#### **5940. Exchange Traded Products**

The fees in this Rule 5940 shall apply to securities listed under the Rule 5700 Series where no other fee schedule is specifically applicable. These securities include, but are not limited to, Portfolio Depository Receipts, Index Fund Shares, [and] Managed Fund Shares, and ETMF Shares.

**(a) Entry Fee**

(1) When a Company submits an application for listing a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, ETMF Shares or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable on the Nasdaq Global Market, it shall pay to Nasdaq a listing fee of \$5,000 (which shall include a \$1,000 non-refundable application fee).

(2) – (4) No Change

**(b) Annual Fee**

(1) The issuer of a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, or ETMF Shares or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable listed on The Nasdaq Global Market shall pay to Nasdaq an annual fee calculated on total shares outstanding according to the following schedule:

Schedule – No Change

(2) – (3) No Change

\*\*\*\*\*