

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101783; File No. SR-NASDAQ-2024-075)

December 2, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Hennessy Stance ESG ETF Under Nasdaq Rule 5750 (Proxy Portfolio Shares)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to The Exchange proposes to list and trade shares of the Hennessy Stance ESG ETF (the “Fund”) under Nasdaq Rule 5750 (“Proxy Portfolio Shares”). Currently, the shares of the Fund are listed and traded on NYSE Arca, Inc. (“Arca”). The shares of the Fund are referred to herein as the “Shares.”

The text of the proposed rule change is set forth below.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 list and trade Shares of the Fund under Nasdaq Rule 5750.³ Currently, the Shares of the Fund are listed and traded on Arca under Arca Rule 8.601-E (Active Proxy Portfolio Shares).⁴ The Shares of the Fund are issued by Hennessy Funds Trust (the “Issuer”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The Fund’s investment adviser is Hennessy Advisors, Inc. (the “Adviser”). Stance Capital, LLC and Vident Advisory, LLC are the sub-advisers (the “Sub-Advisers”) for the Fund.

³ The Exchange adopted Nasdaq Rule 5750 in Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (SR-NASDAQ-2020-032).

⁴ The SEC previously approved Stance Equity ESG Large Cap Core ETF, which was the predecessor of the Fund before it was reorganized and renamed as Hennessy Stance ESG Large Cap ETF. The Fund subsequently filed to amend its investment strategy and change its name to Hennessy Stance ESG ETF. See Securities Exchange Act Release Nos. 91266 (March 5, 2021), 86 FR 13930 (March 11, 2021) (SR-NYSEArca-2020-104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Stance Equity ESG Large Cap Core ETF under NYSE Arca Rule 8.601-E) (“2020 Filing”); 34-94961 (May 23, 2022), 87 FR 32215 (May 27, 2022) (Notice of filing and Immediate Effectiveness of Proposed Rule Change to facilitate the use of custom baskets by certain series of Active Proxy Portfolio Shares) (“Custom Basket Filing”); 96559 (December 21, 2022), 87 FR 79919 (December 28, 2022) (SR-NYSEARCA-2022-84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Representations, including renaming the Fund from Stance Equity ESG Large Cap Core ETF to Hennessy Stance ESG Large Cap ETF) (“2022 Filing”); and 97378 (April 25, 2023), 88 FR 26636 (May 1, 2023) (SR-NYSEARCA-2023-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Representations Relating to the Hennessy Stance ESG Large Cap ETF) (“2023 Filing”) (2020 Filing, as amended by Custom Basket Filing, 2022 Filing and 2023 Filing, will be referred to hereinafter as “Fund Filing”).

All descriptions, representations, and information provided with respect to the Fund and the operation of the Fund in the Fund Filing remain unchanged with the exception of the Nasdaq listing rules that would apply as discussed herein.

Nasdaq Rule 5750(b) provides that if the investment adviser to the investment company issuing Proxy Portfolio Shares⁵ is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio,⁶ the Proxy Basket⁷ and/or Custom Basket,⁸ as applicable. In addition, Nasdaq Rule 5750(b)(5) further requires that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or has access to nonpublic information regarding the Fund

⁵ The term “Proxy Portfolio Share” means a security that: (A) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (B) is issued in a specified aggregate minimum number in return for a deposit of a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. See Nasdaq Rule 5750(c)(1).

⁶ The term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day. See Nasdaq Rule 5750(c)(2).

⁷ The term “Proxy Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 5750, to the extent applicable: (A) Ticker symbol; (B) CUSIP or other identifier; (C) Description of holding; (D) Quantity of each security or other asset held; and (E) Percentage weight of the holding in the portfolio. See Nasdaq Rule 5750(c)(5).

⁸ For purposes of this rule, the term “Custom Basket” means a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares. See Nasdaq Rule 5750(c)(6).

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

In addition, in accordance with Nasdaq Rule 5750(b)(6), any person or entity, including a custodian, Reporting Authority,⁹ distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket or Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto.

The Adviser and Sub-Advisers are not registered as broker-dealers and are not affiliated with a broker-dealer. In the event (a) the Adviser or Sub-Adviser(s) becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a “fire wall” with respect to its relevant personnel or its broker-dealer

⁹ The term “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; Custom Basket; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions. See Nasdaq Rule 5750(c)(3).

affiliate regarding access to information concerning the composition and/or changes to the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto. Any person related to the Adviser, Sub-Adviser(s), or the Fund who makes decisions pertaining to the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or has access to non-public information regarding the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund Portfolio, Proxy Basket or Custom Basket, as applicable, or changes thereto.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the 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 the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of 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 trading is not occurring in the securities and/or financial instruments composing the Proxy Basket or Fund Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5750(d)(2)(D), which sets forth circumstances under which a series of Proxy Portfolio Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5750(b)(3), the minimum price variation for quoting and entry of orders in Proxy Portfolio Shares traded on the Exchange is \$0.01. The Shares of the Fund will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5750.

With respect to Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Additionally, Nasdaq Rule 5750(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Proxy Portfolio Shares.

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA,

on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

Prior to the commencement of trading, the Exchange will require the Fund to represent to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities.¹⁰ The Exchange also may obtain information regarding trading in the Shares via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Additional Information

The Exchange represents that the Shares will conform to the initial and continued listing criteria under Nasdaq Rule 5750, including the dissemination of key information such as the

¹⁰ For a list of the current members of ISG, see www.isgportal.com.

Proxy Basket, the Custom Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Proxy Portfolio Shares, and firewalls as set forth in the proposed Exchange rules applicable to Proxy Portfolio Shares.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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 the proposed rule change to switch the listing of the Fund from Arca to Nasdaq is consistent with the Act. In particular, Nasdaq's Rules and procedures as described above are designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria for Proxy Portfolio Shares in Nasdaq Rule 5750.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Additionally, Nasdaq Rule 5750(b)(4) provides that the Exchange will implement and maintain written surveillance procedures for Proxy Portfolio

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Proxy Portfolio Shares.

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange will require the Fund to represent to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares from such markets and other entities.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of the Shares,

which are Proxy Portfolio Shares and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that all descriptions, representations, and information provided with respect to the Fund and the operation of the Fund in the Fund Filing remain unchanged except that the Nasdaq listing rules referenced above would apply instead of the rules referenced

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

in the Fund Filing.¹⁶ In addition, the Exchange represents that the Shares will be subject to Nasdaq's surveillance procedures and the trading halts and trading rules described herein.¹⁷ Therefore, the Commission believes that the proposal raises no novel legal or regulatory issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-075 on the subject line.

¹⁶ See *supra* Item II.

¹⁷ See *id.*

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2024-075. 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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also 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-2024-075 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.¹⁹

Sherry R. Haywood,

Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12), (59).