

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103194; File No. SR-NASDAQ-2025-016]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Nasdaq Rule 5712 to Provide for the Listing and Trading of Commodity- and/or Digital Asset-Based Investment Interests and to List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF under Proposed Nasdaq Rule 5712

June 4, 2025.

I. Introduction

On February 18, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new Nasdaq Rule 5712 to provide for the listing and trading of Commodity- and/or Digital Asset-Based Investment Interests and to list and trade shares (“Shares”) of the Hashdex Nasdaq Crypto Index US ETF (“Trust”) under proposed Nasdaq Rule 5712. On February 27, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on March 7, 2025.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 102513 (Mar. 3, 2025), 90 FR 11563 (“Notice”). Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nasdaq-2025-016/srnasdaq2025016.htm>.

On April 17, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Summary of the Proposal, as Modified by Amendment No. 1

A. Proposed Listing Standards for Commodity- and/or Digital Asset-Based Investment Interests

As described in more detail in the Notice,⁷ the Exchange proposes to adopt new Nasdaq Rule 5712 to provide for the listing and trading of Commodity- and/or Digital Asset-Based Investment Interests. Proposed Nasdaq Rule 5712(c)(1) defines “Commodity- and/or Digital Asset-Based Investment Interests” to mean “a security (a) that is issued by a trust, limited liability company, or other similar entity (the ‘Fund’) that holds (1) specified commodities and/or digital assets deposited with the Fund, or (2) specified commodities and/or digital assets and, in addition to such specified commodities and/or digital assets, derivative securities products⁸ deposited with the Fund and/or cash; (b) that is issued by such Fund in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity(ies), digital asset(s), derivative securities products, and/or cash; and (c) that, when aggregated in the same

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 102885, 90 FR 17092 (Apr. 23, 2025) (designating June 5, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See supra note 3.

⁸ The Exchange defines “derivative securities products” as securities that meet the definition of “derivative securities product” in Rule 19b-4(e) under the Act. See Notice at 11564.

specified minimum number, may be redeemed at a holder's request by such Fund which will deliver to the redeeming holder the quantity of the underlying commodity(ies), digital asset(s), derivative securities products, and/or cash.”⁹

Proposed Nasdaq Rule 5712(c)(2) states that “commodity,” for purposes of this rule, “means commodities as defined in Section 1a(9) of the Commodity Exchange Act.”¹⁰ Proposed Nasdaq Rule 5712(c)(3) defines the term “digital asset,” for purposes of this rule, to mean “any digital representation of value recorded on a cryptographically secured, distributed ledger (i.e., blockchain) or similar technology.”¹¹

Proposed Nasdaq Rule 5712 sets forth certain listing requirements specific to Commodity- and/or Digital Asset-Based Investment Interests, as described in more detail in the Notice and Exhibit 5 thereto.¹² Among other things, proposed Nasdaq Rule 5712(e)(1)(ii) would provide that there shall be no limitation on the percentage of a Fund's portfolio that may be invested in commodity and/or digital asset holdings, “except that, in the aggregate, at least 90% of the weight of such holdings shall, on both an initial and continuing basis, consist of commodities and/or digital assets concerning which the Exchange is able to obtain information via the Intermarket Surveillance Group (‘ISG’) from other members of the ISG or via a comprehensive surveillance sharing agreement.”¹³

The Exchange also proposes to amend Nasdaq Rule 5615(a)(6)(B) (Exemptions from Certain Corporate Governance Requirements) to include Commodity- and/or Digital Asset-

⁹ See id.

¹⁰ See id.

¹¹ See id.

¹² See Notice, supra note 3. See also Exhibit 5 to the proposed rule change, available at <https://www.sec.gov/files/rules/sro/nasdaq/2025/34-102513-ex5.pdf>.

¹³ See Notice at 11564.

Based Investment Interests in the definition of “Derivative Securities,” the issuers of which are exempt from certain enumerated corporate governance requirements.¹⁴ In addition, the Exchange proposes to amend its existing trading halt rules related to exchange-traded products (“ETPs”) to add references to Commodity- and/or Digital Asset-Based Investment Interests to make clear that such products will be subject to those rules.¹⁵

B. Hashdex Nasdaq Crypto Index US ETF

As described in more detail in the Notice,¹⁶ the Exchange also proposes to list and trade Shares of the Trust under proposed Nasdaq Rule 5712.¹⁷

¹⁴ See id. at 11565. Nasdaq Rule 5615(a)(6)(A) provides that for issuers whose only securities listed on Nasdaq are non-voting preferred securities, debt securities, or Derivative Securities, such issuers are exempt from the requirements relating to independent directors (Nasdaq Rule 5605(b)), compensation committees (Nasdaq Rule 5605(d)), director nominations (Nasdaq Rule 5605(e)), codes of conduct (Nasdaq Rule 5610), and meetings of shareholders (Nasdaq Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to audit committees (Nasdaq Rule 5605(c)), except for the applicable requirements of Exchange Act Rule 10A-3. If, on the other hand, the issuer lists on Nasdaq its common stock or voting preferred stock, or their equivalent, it will be subject to all the requirements of the Nasdaq 5600 Rule Series. See Nasdaq Rule 5615(a)(6)(A).

¹⁵ See Notice at 11565. Specifically, the Exchange proposes to (i) amend Equity 4, Nasdaq Rule 4120(a)(9) to add Commodity- and/or Digital Asset-Based Investment Interests to the list of ETPs for which the Exchange may halt trading under certain circumstances and (ii) amend Equity 4, Nasdaq Rule 4120(b)(4)(A) to add Commodity- and/or Digital Asset Based Investment Interests to the definition of “Derivative Securities Product” to make clear that this product type will be subject to the Exchange’s authority to halt Derivative Securities Products pursuant to Nasdaq Rule 4120(a)(10) if the net asset value (“NAV”) is not being disseminated to all market participants at the same time. See id.

¹⁶ See supra note 3.

¹⁷ The Commission previously approved the listing and trading of the Shares of the Trust under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares) on December 19, 2024. See 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, Securities Exchange Act Release No. 101998 (Dec. 19, 2024), 89 FR 106707 (Dec. 30, 2024) (SR-NASDAQ-2024-028; SR-CboeBZX-2024-091). See also Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF Under Nasdaq Rule 5711(d), Securities Exchange Act Release No. 101218 (Sept. 30, 2024), 89 FR 80970 (Oct. 4, 2024) (SR-NASDAQ-2024-028) (“Amendment No. 1”); and Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Certain Representations Relating to Service Providers and Basket Size of the Hashdex Nasdaq Crypto Index US ETF, Securities Exchange Act Release No. 102309 (Jan. 29, 2025), 90 FR 8961 (Feb. 4, 2025) (SR-NASDAQ-2025-006) (updating certain representations made in Amendment No. 1 and, together with Amendment No. 1, the “Original Trust Filing”). The Exchange states that the current filing amends representations regarding the investment

According to the Exchange, the investment objective of the Trust will be to ensure that the daily changes in the NAV of the Shares correspond to the daily changes in the price of the Nasdaq Crypto Settlement Price Index (“Index”),¹⁸ less expenses and liabilities of the Trust, by investing in the digital asset constituents of the Index (“Index Constituents”).¹⁹ The assets of the Trust will consist of the Index Constituents, cash, and cash equivalents.²⁰ The weighting of each Index Constituent in the Trust’s portfolio is generally expected to match the weighting of the Index Constituents in the Index,²¹ except when the Sponsor determines to exclude or limit the weight of one or more digital assets from the Trust’s portfolio in certain rules-based circumstances, in which case the weightings of the digital assets held by the Trust are generally expected to be calculated proportionally to the respective Index Constituents for the remaining Index Constituents.²² As of the date of the filing, the Index Components and their weightings were as follows:²³

objective and strategy of the Trust made in the Original Trust Filing and proposes to list and trade the Shares under proposed Nasdaq Rule 5712 instead of Nasdaq Rule 5711(d). The Exchange states that the Original Trust Filing will remain in effect until this proposal is approved by the Commission, at which time the Exchange would transfer the Trust from its current listing under Nasdaq Rule 5711(d) to a new listing under proposed Nasdaq Rule 5712, and the Trust would implement its amended investment strategy as described in this filing upon such approval. See Notice at 11563.

¹⁸ The Index, which is designed to measure the performance of a portion of the overall crypto asset market, is owned and administered by Nasdaq, Inc. and is calculated by CF Benchmarks Limited. See id. at 11567.

¹⁹ See id. at 11566. The Trust is managed and controlled by the Hashdex Asset Management Ltd. (“Sponsor”) and administered by U.S. Bancorp Fund Services, LLC (“Administrator”). Coinbase Custody Trust Company, LLC and BitGo Trust Company, Inc. will be responsible for the custody of the Trust’s digital assets. See id. at 11565-66.

²⁰ See id. at 11571.

²¹ According to the Exchange, crypto assets are eligible for inclusion in the Index if they satisfy the criteria set forth under the Nasdaq Crypto Index methodology, and the Index Constituents are weighted according to their relative free float market capitalizations. The Index adjusts its constituents and weightings on a quarterly basis to reflect changes in the crypto asset markets. See id. at 11567.

²² See id. at 11566.

²³ See id.

Constituents	Weight
Bitcoin (BTC)	72.70%
Ether (ETH)	14.48%
Solana (SOL)	4.78%
XRP Ledger (XRP)	5.02%
Cardano (ADA)	1.50%
Chainlink (LINK)	0.51%
Avalanche (AVAX)	0.37%
Litecoin (LTC)	0.37%
Uniswap (UNI)	0.27%

For purposes of calculating NAV, the Administrator will value the digital assets held by the Trust based on the settlement price of each Index Constituent (“Index Constituent Settlement Price”),²⁴ unless the Index Constituent Settlement Price is not available or the Administrator determines that the Index Constituent Settlement Price is unreliable.²⁵ The Trust will issue and redeem Shares in cash with authorized participants on a continuous basis in one or more “Baskets” of 10,000 Shares.²⁶

III. Proceedings to Determine Whether to Approve or Disapprove SR-NASDAQ-2025-016 and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁷ to determine whether the proposed rule change, as modified by Amendment No. 1, should be

²⁴ For additional details regarding the calculation of the Index Constituent Settlement Prices, see Notice at 11568.

²⁵ See id. at 11571.

²⁶ See id. at 11569-70.

²⁷ 15 U.S.C. 78s(b)(2)(B).

approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁸ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”²⁹

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, with respect to the proposal to allow the listing and trading of Commodity- and/or Digital Asset-Based Investment Interests on the Exchange, the Commission seeks comment on whether the requirements and associated definitions set forth in proposed Nasdaq Rule 5712 are sufficiently clear. The Commission also seeks comment on whether the proposal to list and trade Shares of the Trust, which would hold BTC, ETH, SOL, XRP, ADA, LINK, AVAX, LTC, and UNI, and potentially other commodities, digital assets, and/or derivative securities products, is designed to

²⁸ Id.

²⁹ 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices or raises any new or novel concerns not previously contemplated by the Commission.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³⁰

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

³⁰ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2025-016 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-2025-016. 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-2025-016 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Stephanie Fouse,

Assistant Secretary

³¹ 17 CFR 200.30-3(a)(57).