

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**THE NASDAQ STOCK MARKET LLC RULES**

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**5711. Trading of Certain Derivative Securities**

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**(d) Commodity-Based Trust Shares**

(i) Nasdaq will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares that meet the criteria of this Rule. The Exchange may list and/or trade Commodity-Based Trust Shares pursuant to Rule 19b-4(e) under the Act or may 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 this Rule 5711(d) on an initial or a continuing basis. All statements or representations contained in such rule filing regarding: (1) the description of the index, trust holdings, or reference assets, (2) limitations on the index, trust holdings, or reference assets, (3) dissemination and availability of the index, trust holdings, reference assets or Intraday Indicative Values (as defined below) or (4) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If Commodity-Based Trust Shares do not satisfy these requirements, the Exchange may suspend trading in the Trust shares and will initiate delisting proceedings under the Rule 5800 Series.

(ii) **Applicability.** This Rule is applicable only to Commodity-Based Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the [trust issued receipts rules,] Bylaws[,] and all other rules and procedures of the Board of Directors shall be applicable to the trading on Nasdaq of such securities. Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of Nasdaq and are subject to the Exchange's existing rules governing the trading of equity securities.

[(iii) Nasdaq will file separate proposals under Section 19(b) of the Act before listing Commodity-Based Trust Shares. 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 of the reference asset or intraday indicative values; or (d) the applicability of Nasdaq

listing rules specified in such proposals shall constitute continued listing standards.]

(iii[v]) **Definitions.** The following terms as used in the Rule[s] shall, unless the context otherwise requires, have the meaning herein specified:

(A) **Commodity-Based Trust Shares.** The term "Commodity-Based Trust Shares" means a security that:

(1) [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;

(2) is designed to reflect the performance of one or more reference assets or an index of reference assets, less expenses and other liabilities;

(3) in order to reflect the performance as provided in (d)(iii)(A)(2) above, is issued by a Trust that holds (a) one or more commodities or commodity-based assets as defined in (d)(iii)(C) below[a specified commodity deposited with the Trust], and[or] (b) [a specified commodity and,] in addition to such [specified] commodities[y] or commodity-based assets, may hold securities, cash, and cash equivalents;

(4[2]) [that] 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[y], commodity-based assets, securities, [and/or] 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

(5[3]) [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 (a) the specified quantity of the underlying commodities[y], commodity-based assets, securities, [and/or] cash, and/or cash equivalents, or (b) a cash amount with a value based on the next determined net asset value per Trust share.

(B) **Commodity.** The term "commodity" is defined in Section 1a(9) of the Commodity Exchange Act.

(C) **Commodity-Based Asset.** The term "commodity-based asset" means any of commodity futures, commodity options, or commodity swaps.

(D) **Cash Equivalent.** The term "cash equivalent" means short-term instruments with maturities of less than three months as follows:

(1) 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;

(2) certificates of deposit issued against funds deposited in a bank or savings and loan association;

(3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;

(4) repurchase agreements and reverse repurchase agreements;

(5) 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;

(6) commercial paper, which are short-term unsecured promissory notes; and

(7) money market funds.

**(E) Net Asset Value.** The term “net asset value” means 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.

**(F) Designated Contract Market.** The term “designated contract market” means 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 pursuant to Section 5 of the Commodity Exchange Act.

**(G) Exchange-Traded Fund.** The term “exchange-traded fund” or “ETF” means 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.

**(H) Intraday Indicative Value.** The term “Intraday Indicative Value” means the estimated indicative value of a Trust share based on current information regarding the value of the Trust's underlying assets.

**(I) Market Price.** The term “market price” means:

(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.

**(J) Premium or Discount.** The term “premium or discount” means 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.

**(iv) Eligibility Criteria.** The Commodity-Based Trust Shares holdings shall meet the following criteria initially and, with the exception of (A)(3) below, on a continuing basis:

**(A) Commodities and commodity-based assets.** For each commodity or commodity that underlies a commodity-based asset held by the Trust, at least one of the following in (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;

(2) the commodity underlies a futures contract that has been made available to trade on a designated contract market for at least six months; provided that the Exchange has a comprehensive surveillance sharing agreement, whether directly or through common membership in ISG, with such designated contract market; 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.

**(B) Securities.** Each security held by the Trust shall meet the criteria of Rule 5735 (Managed Fund Shares), Sections (b)(1)(A), (B), or if the security is a listed option, trades on an ISG market.

**(v) Disclosed Information.** The Trust must disclose prominently on its website, which is publicly available and free of charge, the following information:

**(A) 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:**

(1) ticker symbol;

(2) identifier;

(3) description of the holding;

(4) the quantity of each commodity, commodity-based asset, security, cash, and cash equivalent held; and

(5) percentage weighting of the Trust's assets.

(B) 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.

(C) 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).

(D) 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).

(E) The Trust share's median-ask spread, expressed as a percentage rounded to the nearest hundredth, computed by:

(1) 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;

(2) dividing the difference between each such bid and offer by the midpoint of the national best bid and national best offer; and

(3) identifying the median of those values.

(F) Liquidity risk policies and procedures as described in paragraph (vii) below of this Rule.

(G) The Trust's methodology for the calculation of its net asset value.

(H) The Trust's trading volume for the previous day; and

(I) The Trust's effective prospectus, in a form available for download.

(vi) 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.

(vii) **Liquidity risk policies and procedures.** 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 this Rule, 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 day.

(A) The Trust's investment strategy and liquidity of the Trust's assets during normal and stressed conditions, including use of derivatives and whether the investment strategy is appropriate for effective and efficient arbitrage.

(B) Holdings of cash and cash equivalents, as well as borrowing arrangements and other funding sources.

(C) 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.

[(v) Designation of an Underlying Commodity. Nasdaq may trade, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares based on an underlying commodity. Each issue of a Commodity-Based Trust Share shall be designated as a separate series and shall be identified by a unique symbol.]

(viii[vi]) **Initial and Continued Listing.** Commodity-Based Trust Shares will be listed and/or traded on Nasdaq subject to application of the following criteria:

(A) **Initial Listing**[—]

(1) Nasdaq will establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on Nasdaq; and[.]

(2) All Commodity-Based Trust Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

**(B) Continued Listing.** ~~[—]~~ Nasdaq will maintain surveillance procedures for Trust shares listed under this Rule and will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, such series under any of the following circumstances:

(1) if following the initial 12 month period following commencement of trading on Nasdaq:

a. 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;

b. if the Trust has fewer than 50,000 ~~[receipts]~~ Trust shares issued and outstanding; or

c. if the market value of all ~~[receipts]~~ Trust shares issued and outstanding is less than \$1,000,000;

(2) if an interruption to the dissemination of the value of the underlying ~~[commodity]~~ reference asset(s) or index persists past the trading day in which it occurred or is no longer calculated or made widely available on at least a 15-second ~~[delayed]~~ basis from a source unaffiliated with the sponsor or the Trust ~~[by Nasdaq or one or more major market data vendors during the Regular Market Session (as defined in Nasdaq Rule 4120)]~~.

(3) 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 ~~[delayed]~~ basis during the Regular Market Session; ~~[or]~~

(4) the net asset value is not calculated at least once daily or made widely available to all market participants at the same time;

(5) the information as set forth in this Rule is no longer being disclosed in accordance with the requirements of paragraph (v) above;

(6[4]) 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 this Rule 5711(d) and [if a] 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) limitations on the index, reference assets or trust holdings; (c) dissemination and availability of the index, reference asset or [i] Intraday [i] Indicative

[v]Values; or (d) the applicability of Nasdaq listing rules specified in such proposals;

(7[5]) if any of the requirements set forth in this rule are not continuously maintained; or

(8[6]) if such other event shall occur or condition exists which, in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

Upon termination of a Trust, Nasdaq requires that Commodity-Based Trust Shares issued in connection with such [entity] 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.

[(C) Term - The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(D) Trustee - The following requirements apply on an initial and continued listing basis:

(1) The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(2) No change is to be made in the trustee of a listed issue without prior notice to and approval of Nasdaq.

(E) Voting—Voting rights shall be as set forth in the applicable Trust prospectus.]

**(ix) Trading Halt.**

(A) 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).

(1) 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;



(2) 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; or

(3) the information as set forth in this Rule is not being disclosed in accordance with the requirements of paragraph (v) above.

(B) 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 market participants.

**(x) Firewalls.**

(1) 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.

(2) 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.

(3) 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.

**(xi[vii]) Limitation of Nasdaq Liability.** Neither Nasdaq 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 underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by Nasdaq, or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, 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 an underlying commodity.

(~~xii~~[viii]) **Market Maker Accounts.** A registered Market Maker in Commodity-Based Trust Shares must file with Nasdaq in a manner prescribed by Nasdaq and keep current a list identifying all accounts for trading in an underlying commodity[, and commodity-based asset[related commodity futures or options on commodity futures, or any other related commodity derivatives,] which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, commodity-based asset[related commodity futures or options on commodity futures], or any other related [commodity] derivative[s,] thereon in an account in which a registered Market Maker[,](1) directly or indirectly[,] controls trading activities, or has a direct interest in the profits or losses thereof, (2) is required by this Rule to disclose to the Exchange, and (3) [which] has not [been] reported to Nasdaq [as required by this Rule].

In addition to the existing obligations under Nasdaq rules regarding the production of books and records (see, e.g., Rule 4625), the registered Market Maker in Commodity-Based Trust Shares shall make available to Nasdaq such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying [physical] commodity or commodity-based asset, [related commodity futures or options on commodity futures,] or [any other related commodity]applicable derivatives of each of the foregoing, as may be requested by Nasdaq.

Commentary:

[.01 A Commodity-Based Trust Share is a Trust Issued Receipt that holds a specified commodity deposited with the Trust.]

.01[2] Nasdaq requires that Members provide all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-Based Trust Shares.

.02[3] Transactions in Commodity-Based Trust Shares will occur during the trading hours specified in Rule 4120.

.03 An issuer of Commodity-Based Trust Shares must notify the Exchange of any failure to comply with the continued listing requirements.

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