

**EXHIBIT 5**

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

**The NASDAQ Stock Market Rules**

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**5700. Other Securities****5701. Preamble to the Listing Requirements for Other Securities**

(a) – (c) No Change

(d) A Company with securities listed under this Rule 5700 Series must provide Nasdaq with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5700 Series.

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**5705. Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares**

(a) Portfolio Depository Receipts

(1) – (2) No Change

(3) Equity. Nasdaq may approve a series of Portfolio Depository Receipts for listing and trading pursuant to Rule 19b-4(e) under the Act, provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components.

(i) U.S. Index or Portfolio. [Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the component]Component stocks of an index or portfolio of U.S. Component Stocks underlying such series of Portfolio Depository Receipts listed pursuant to Rule 19b-4(e) under the Act shall meet the following criteria on an initial and continued listing basis:

a. – e. No Change

(ii) International or global index or portfolio. [Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the components ]Components of an index or portfolio underlying a series of Portfolio Depository Receipts listed pursuant to Rule 19b-4(e) under the Act that consist of either only Non-

U.S. Component Stocks or both U.S. Component Stocks and Non-U.S. Component Stocks shall meet the following criteria on an initial and continued listing basis:

a. – e. No Change

(iii) Index or portfolio approved in connection with derivative securities. [Upon]For the initial and continued listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Portfolio Depository Receipts shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-U.S. Component Stocks and the requirements regarding dissemination of information, must continue to be satisfied. On an initial and continued listing basis, e[E]ach component stock of the index or portfolio shall be either

a. a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act; or

b. a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor;

(ii) – (iii) No Change

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during Nasdaq's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during Nasdaq's regular market session to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on Nasdaq, then the last

official calculated Intraday Indicative Value must remain available throughout Nasdaq's trading hours. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(D) – (F) No Change

(4) Fixed Income. Fixed Income Securities are 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 subdivision thereof. Nasdaq may approve a series of Portfolio Depository Receipts based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Act provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and the rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. [Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, each component ]Components of an index or portfolio that underlies a series of Portfolio Depository Receipts listed pursuant to Rule 19b-4(e) under the Act shall meet the following criteria on an initial and continued listing basis:

(i) – (vi) No Change

(B) Index Methodology and Calculation. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(i) – (iii) No Change

(5) Nasdaq may approve a series of Portfolio Depository Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Act provided: (i) each index has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Rule 5705(a)(3) or (4) above.

(A) Index Methodology and Calculation. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during the regular market session, provided however, that (a) with respect to the Non-U.S. Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on 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.

(6) The following provisions shall apply to all series of Portfolio Depositary Receipts listed pursuant Rules 5705(a)(4) and (5) above:

(A) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depositary Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by Nasdaq or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depositary Receipts is required to be outstanding [at start-up of trading.] upon initial listing.

(C) No Change

(7) - (8) No Change

(9) A Trust upon which a series of Portfolio Depository Receipts is based will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing —

(i) for each Trust, Nasdaq will establish a minimum number of Portfolio Depository Receipts required to be outstanding at the time of commencement of trading on Nasdaq.

(ii) Nasdaq will obtain a representation from the issuer of each series of Portfolio Depository Receipts that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

(i) Nasdaq will consider the suspension of trading in, [or removal from listing ]and will initiate delisting proceedings under the Rule 5800 Series of, a Trust upon which a series of Portfolio Depository Receipts is based under any of the following circumstances:

a. if any of the applicable requirements set forth in this rule are not continuously maintained; or

b. if Nasdaq files separate proposals under Section 19(b) of the Act, any of the representations regarding the index composition, the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Nasdaq rules and surveillance procedures, are not continuously maintained as referenced in subsection 10 of this rule;

[a]c. if, following the initial twelve month period after the formation of a Trust and commencement of trading on Nasdaq, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depository Receipts[ for 30 or more consecutive trading days];

[b]d. if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available or the index or portfolio on which the Trust is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 5705(a) for listing either pursuant to Rule 19b-4(e) under the Act (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Act; or

[c]e. 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 Portfolio Depository Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in

accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(C) No Change

(D) No Change

(10) Nasdaq may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of Portfolio Depositary Receipts that do not otherwise meet the standards set forth in this rule. Any of the representations regarding the index composition, the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Nasdaq rules and surveillance procedures, constitute continued listing standards.

~~[(10)]~~(11) 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 index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depositary Receipts, 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.

(b) Index Fund Shares

(1) – (2) No Change

(3) Equity. Nasdaq may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied, on an initial and, except for paragraph (D) below, continued listing basis:

(A) Eligibility Criteria for Index Components.

(i) U.S. Index or Portfolio. [Upon the initial listing of a series of Index Fund Shares pursuant to 19b-4(e) under the Act, the component ]Component stocks of an index or portfolio of U.S. Component Stocks underlying a series of Index Fund Shares listed pursuant to Rule 19b-4(e) under the Act shall meet the following criteria on an initial and continued listing basis:

a. – e. No Change

(ii) International or global index or portfolio. [Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the components ]Components of an index or portfolio underlying a series of Index Fund Shares listed pursuant to Rule 19b-4(e) that consist of either only Non-U.S. Component Stocks or both U.S. Component Stocks and Non-U.S. Component Stocks shall meet the following criteria on an initial and continued listing basis:

a. – e. No Change

(iii) Index or portfolio approved in connection with derivative securities. [Upon] For the initial and continued listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Index Fund Shares shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-U.S. Component Stocks and the requirements regarding dissemination of information, must continue to be satisfied. On an initial and continued listing basis, [E]each component stock of the index or portfolio shall be either

a. a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, or

b. a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor;

(ii) – (iii) No Change.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during Nasdaq's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative

Value will be updated at least every 15 seconds during Nasdaq's regular market session; to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on Nasdaq, then the last official calculated Intraday Indicative Value must remain available throughout Nasdaq's trading hours.

(D) – (F) No Change

(4) Fixed Income. Fixed Income Securities are 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 subdivision thereof. Nasdaq may approve a series of Index Fund Shares based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Act provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and the rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. [Upon the initial listing of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, each component ]Components of an index or portfolio that underlies a series of Index Fund Shares listed pursuant to Rule 19b-4(e) under the Act shall meet the following criteria on an initial and continued listing basis:

(i) – (vi) No Change

(B) Index Methodology and Calculation. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor;

(ii) – (iii) No Change

(5) Nasdaq may approve a series of Index Fund Shares based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and



trading pursuant to Rule 19b-4(e) under the Act provided: (i) such portfolio or combination of indexes has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Rule 5705(b)(3) or (4) above.

(A) Index Methodology and Calculation. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) – (iii) No Change.

(6) The following provisions shall apply to all series of Index Fund Shares listed pursuant Rules 5705(b)(4) and (5) above on an initial and, except for paragraph (B) below, continued listing basis:

(A) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by Nasdaq or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.

(B) – (C) No Change

(7) – (8) No Change

(9) Each series of Index Fund Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing —

(i) for each series, Nasdaq will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(ii) Nasdaq will obtain a representation from the issuer of each series of Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

(i) Nasdaq will consider the suspension of trading in, [or removal from listing ]and will initiate delisting proceedings under the Rule 5800 Series of, a series of Index Fund Shares under any of the following circumstances:

a. if any of the applicable requirements set forth in this rule are not continuously maintained;

b. if Nasdaq files separate proposals under Section 19(b) of the Act, any of the representations regarding (a) the index composition, (b) the description of the portfolio, (c) limitations on portfolio holdings or reference assets, or (d) the applicability of Nasdaq rules and surveillance procedures, are not continuously maintained as referenced in subsection 10 of this rule;

[a]c. if, following the initial twelve month period after commencement of trading on Nasdaq of a series of Index Fund Shares, there are fewer than 50 beneficial holders of the series of Index Fund Shares[ for 30 or more consecutive trading days];

[b]d. if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available or the index or portfolio on which the series of Index Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 5705(b) for listing either pursuant to Rule 19b-4(e) under the Act (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Act; or

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

Upon termination of an open-end management investment company, Nasdaq requires that Index Fund Shares issued in connection with such entity be removed from listing.

(C) No Change

(10) Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Index Fund Shares that do not otherwise meet the standards set forth in this rule. Any of the representations regarding (a) the index composition, (b) the description of the portfolio, (c) limitations on portfolio holdings or reference assets, or (d)

the applicability of Nasdaq rules and surveillance procedures, constitute continued listing standards.

[(10) ](11) 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 index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index Fund 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.

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#### **5710. Securities Linked to the Performance of Indexes and Commodities (Including Currencies)**

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Linked Securities may or may not provide for the repayment of the original principal investment amount. [Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth below in paragraphs (a) through (k). ]Nasdaq will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act, provided:

(a) Both the issue and the issuer of such security initially meet and continuously maintain the criteria for other securities set forth in Rule 5730(a), except that if the security is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required.

(b) The issue has a term of not less than one (1) year and not greater than thirty (30) years.

(c) The issue must, on an initial and continued listing basis, be the non-convertible debt of the Company.

(d) On an initial and continued listing basis, t[T]he payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds three times the performance of an underlying index, indexes or Reference Asset.

(e) On an initial and continued listing basis,[The] the Company will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in Rule 5405(b)(1)(A). In the alternative, the Company will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in Rule 5405(b)(1)(A), and (ii) not to have issued securities where the original issue price of all the Company's other index-linked note offerings (combined with index-linked note offerings of the Company's affiliates) listed on a national securities exchange exceeds 25% of the Company's net worth.

(f) The Company is in compliance with Rule 10A-3 under the Act.

(g) Maintenance and Dissemination—(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) Unless the Commission order applicable under paragraph (k) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during Nasdaq's regular market session, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (g) applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during Nasdaq's regular market session.

(h) – (k) No Change

(l) Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth in this rule. Any of the representations regarding (a) the index composition or reference

asset description and limitations or (b) the applicability of Nasdaq rules and surveillance procedures, constitute continued listing standards. If a series of Linked Securities does not satisfy these requirements, Nasdaq may halt trading in the securities and initiate delisting proceedings pursuant to the Rule 5800 Series.

### **Commentary**

No change.

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## **5711. Trading of Certain Derivative Securities**

### **(a) Index-Linked Exchangeable Notes**

Index-Linked Exchangeable Notes which are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer or at maturity for a cash amount (the "Cash Value Amount") based on the reported market prices of the underlying stocks of an underlying index will be considered for listing and trading by Nasdaq pursuant to Rule 19b-4(e) under the Act, provided:

(i) Both the issue and the issuer of such security initially meet and continuously maintain the requirements of Rule 5730, Listing Requirements for Securities Not Specified Above (Other Securities), except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations or redeemable at the option of the holders thereof on at least a weekly basis, then no minimum public distribution and no minimum number of holders.

(ii) The issue has a minimum term of one year.

(iii) On an initial and continued listing basis, [The ]the issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Rule 5405(b). In the alternative, the issuer will be expected: (A) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 5405(b); and (B) not to have issued Index-Linked Exchangeable Notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.

(iv) The index to which an exchangeable-note is linked shall either be (A) indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivatives securities (each, a "Third-Party Index") either by

the Commission under Section 19(b)(2) of the Act and rules thereunder or by Nasdaq under rules adopted pursuant to Rule 19b-4(e); or (B) indices which the issuer has created and for which Nasdaq will have obtained approval from either the Commission pursuant to Section 19(b)(2) and rules thereunder or from Nasdaq under rules adopted pursuant to Rule 19b-4(e) (each an "Issuer Index"). The Issuer Indices and their underlying securities must meet one of the following on an initial and continued listing basis:

(A) the procedures and criteria set forth in NOM Rules, Chapter XIV, Section 6(b) and (c), or

(B) the criteria set forth in Rules 5715(b)(3) and (4), the index concentration limits set forth in NOM Rule Chapter XIV, Section 6, and NOM Rule Chapter XIV, Section 6(b)(12) insofar as it relates to NOM Rule Chapter XIV, Section 6(b)(6).

(v) No Change

(vi) This section contains the continued listing requirements for Index-Linked Exchangeable Notes. If a series of Index-Linked Exchangeable Notes does not satisfy these requirements, Nasdaq may halt trading in the securities and will initiate delisting proceedings pursuant to the Rule 5800 Series.

[(vi)]a. The Intraday Indicative Value of the subject Index-Linked Exchangeable Notes must be calculated and widely disseminated by Nasdaq or one or more major market data vendors on at least a 15- second basis during the Regular Market Session (as defined in Rule 4120). For purposes of this Rule, the term "Intraday Indicative Value" means an estimate of the value of a note or a share of the series of Index-Linked Exchangeable Notes.

[(vii)]b. The value of the underlying index must be publicly available to investors, on a real time basis, every 15 seconds.

[(viii)]c. Beginning twelve months after the initial issuance of a series of index-linked exchangeable notes, Nasdaq will consider the suspension of trading in, [or removal from listing ]and will initiate delisting proceedings under the Rule 5800 Series of, that series of Index-Linked Exchangeable Notes under any of the following circumstances:

(A) if the series has fewer than 50,000 notes issued and outstanding;

(B) if the market value of all Index-Linked Exchangeable Notes of that series issued and outstanding is less than \$1,000,000; [or]

d. If Nasdaq submits a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Index-Linked Exchangeable Notes that do not otherwise meet the standards set forth in this rule and any of the representations regarding (a) the index

composition, (b) the intraday indicative value, or (c) the applicability of Nasdaq rules and surveillance procedures are not continuously maintained; or

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

**(b) Equity Gold Shares**

(i) – (iii) No Change

**(c) Trust Certificates**

Nasdaq will consider for trading, whether by listing or pursuant to unlisted trading privileges, certificates ("Trust Certificates") representing an interest in a special purpose trust (the "Trust") created pursuant to a trust agreement. The Trust will only issue Trust Certificates. Trust Certificates may or may not provide for the repayment of the original principal investment amount.

(i) – (ii) No Change

Commentary:

.01 Continued Listing. Nasdaq will commence delisting [or removal ]proceedings under the Rule 5800 Series with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue), under any of the following circumstances:

(a) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;

(b) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on Nasdaq (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout Nasdaq trading hours; [or]

(c) if the series of Trust Certificates 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 or reference assets; (b) limitations on index composition or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures;

(d) if any of the applicable requirements set forth in this rule are not continuously maintained; or

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

.02 No Change

.03 Trustee - The following requirements apply on an initial and continued listing basis:

(a) 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.

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

.04 -.11 No Change

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

(i) – (ii) No Change

(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; (b) limitations on the reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(iii)](iv) Definitions. The following terms as used in the Rules 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 (1) that is issued by a trust ("Trust") that holds a specified commodity deposited with the Trust; (2) 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 (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 the quantity of the underlying commodity.

(B) Commodity. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.



~~[(iv)]~~(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.

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

(A) Initial Listing—Nasdaq will establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing—~~[following the initial 12 month period following commencement of trading on Nasdaq of Commodity-Based Trust Shares, ]~~Nasdaq will consider the suspension of trading in, ~~[or removal from listing]~~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~~[ for 30 or more consecutive trading days]; [or]~~

~~[(2)]~~(b) if the Trust has fewer than 50,000 receipts issued and outstanding; or

~~[(3)]~~ (c) if the market value of all receipts issued and outstanding is less than \$1,000,000; ~~[or]~~

~~[(4)]~~(2) if the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or Nasdaq or Nasdaq stops providing a hyperlink on its Web site to any such unaffiliated commodity value; ~~[or]~~

~~[(5)]~~(3) if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or

(4) 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; (b) limitations on the reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures; or

~~[(6)]~~(5) if such other event shall occur or condition exists which, in the opinion of Nasdaq, makes ~~[further dealings ]~~listing 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) No Change

(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) No Change

[(vi)](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.

[(vii)](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, 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, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, 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, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by Nasdaq.

Commentary:

.01 - .03 No Change

[.04 Nasdaq will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares.]

**(e) Currency Trust Shares**

(i) Nasdaq will consider for listing and trading[, whether by listing or pursuant to unlisted trading privileges,] Currency Trust Shares that meet the criteria of this Rule.

(ii) Applicability. This Rule is applicable only to Currency 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. Currency Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of Nasdaq.

(iii) Currency Trust Shares. The term "Currency Trust Shares" as used in these Rules shall, unless the context otherwise requires, mean a security that (A) is issued by a trust ("Trust") that holds a specified non-U.S. currency or currencies deposited with the Trust; (B) when aggregated in some specified minimum number may be surrendered to the Trust by an Authorized Participant (as defined in the Trust's prospectus) to receive the specified non-U.S. currency or currencies; and (C) pays beneficial owners interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the Trust.

(iv) Designation of Non-U.S. Currency. Nasdaq may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency or currencies. Each issue of Currency Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.

(v) Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set

forth below. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the reference assets; (b) limitations on the reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(v)](vi) Initial and Continued Listing. Currency Trust Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing — Nasdaq will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing[ —following the initial 12 month period following commencement of trading on Nasdaq of Currency Trust Shares,] Nasdaq will consider the suspension of trading in [or removal from listing] 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 Currency Trust Shares[ for 30 or more consecutive trading days];

[(2)](b) if the Trust has fewer than 50,000 Currency Trust Shares issued and outstanding;  
or

[(3)](c) if the market value of all Currency Trust Shares issued and outstanding is less than \$1,000,000;

[(4)](2) if the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis [from a source unaffiliated with the sponsor, Trust, custodian or Nasdaq or Nasdaq stops providing a hyperlink on its Web site to any such unaffiliated applicable non-U.S. currency value;]by Nasdaq or one or more major market data vendors during the Regular Market Session (as defined in Nasdaq Rule 4120);

[(5)](3) if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; [or]

(4) If Nasdaq files separate proposals under Section 19(b) of the Act, any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the reference assets; (b) limitations on reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures are not satisfied on a continued listing basis; or

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

Upon termination of a Trust, Nasdaq requires that Currency 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) No Change

(vi) - (vii) No Change

[(viii) Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set forth in Commentary .04, below.]

Commentary:

.01 - .03 No Change

.04 Nasdaq may approve an issue of Currency Trust Shares [for listing and/or trading (including pursuant to unlisted trading privileges)] pursuant to Rule 19b-4(e) under the Act. Such issue shall satisfy the criteria set forth in this rule on an initial [and below] and, except for paragraph (a) below, continued listing basis, provided that, for issues approved for trading pursuant to unlisted trading privileges, only paragraphs (b), (c)<sub>2</sub> and (d) below are required to be satisfied:

(a) a minimum of 100,000 shares of a series of Currency Trust Shares is required to be outstanding at commencement of trading;

(b) the value of the applicable non-U.S. currency, currencies or currency index must be disseminated by one or more major market data vendors on at least a 15-second delayed basis;

(c) the Intraday Indicative Value must be calculated and widely disseminated by Nasdaq or one or more major market data vendors on at least a 15-second basis during the Regular Market Session (as defined in Nasdaq Rule 4120 ; and

(d) Nasdaq will implement written surveillance procedures applicable to Currency Trust Shares.

.05 If the value of a Currency 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 "fire\_wall" around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer.

Any advisory committee, supervisory board or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, nonpublic information regarding the applicable index or portfolio.

#### .06 Equity Trading Rules

Currency Trust Shares will be subject to Nasdaq's equity trading rules.

#### .07 Trading Halts

If the Intraday Indicative Value, or the value of the non-U.S. currency or currencies or the currency index applicable to a series of Currency Trust Shares is not being disseminated as required, Nasdaq may halt trading during the day on which such interruption first occurs. If such interruption 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. If Nasdaq becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

#### **(f) Commodity Index Trust Shares**

(i) - (ii) No Change

(iii) Nasdaq will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust

Shares. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the index or reference assets; (b) limitations on index composition or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(iii)](iv) Commodity Index Trust Shares. The term "Commodity Index Trust Shares" as used in the Rules shall, unless the context otherwise requires, mean a security that: (A) is issued by a trust ("Trust") that: (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions; and (B) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive positions in futures contracts on a specified index and cash or short term securities. The term "futures contract" is commonly known as a "contract of sale of a commodity for future delivery" set forth in Section 2(a) of the Commodity Exchange Act.

[(iv)](v) Designation. Nasdaq may trade, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares based on one or more securities. The Commodity Index Trust Shares based on particular securities shall be designated as a separate series and shall be identified by a unique symbol.

[(v)](vi) Initial and Continued Listing. Commodity Index Trust Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing—Nasdaq will establish a minimum number of Commodity Index Trust Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing—Nasdaq will consider the suspension of trading in, [or removal from listing]and will initiate delisting proceedings under the Rule 5800 Series of, a series of Commodity Index Trust Shares under any of the following circumstances:

(1) following the initial twelve-month period beginning upon the commencement of trading of the Commodity Index Trust Shares, there are fewer than 50 record and/or beneficial holders of Commodity Index Trust Shares [for 30 or more consecutive trading days];

(2) if the value of the applicable underlying index is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust;

(3) if the net asset value for the trust is no longer disseminated to all market participants at the same time;

(4) if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; [or]

(5) if the Commodity Futures Trust Shares do not comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the index or reference assets; (b) limitations on index composition or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures.;  
or

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

Upon termination of a Trust, Nasdaq requires that Commodity Index 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) No Change

(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) No Change

[(vi)](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 applicable underlying index value; the current value of the applicable positions or interests required to be deposited to the Trust in connection with issuance of Commodity Index Trust Shares; net asset value; or any other information relating to the purchase, redemption, or trading of the Commodity Index 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 or 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 the applicable positions or interests.



[(vii)](viii) Market Maker Accounts. A registered Market Maker in Commodity Index Trust Shares must file with Nasdaq in a manner prescribed by Nasdaq and keep current a list identifying all accounts for trading in the applicable physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in the applicable physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, 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), a registered Market Maker in Commodity Index 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 applicable physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, as may be requested by Nasdaq.

Commentary:

.01 A Commodity Index Trust Share is a Trust Issued Receipt that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions, deposited with the Trust.

.02 Nasdaq requires that Members provide all purchasers of newly issued Commodity Index Trust Shares a prospectus for the series of Commodity Index Trust Shares.

.03 Transactions in Commodity Index Trust Shares will occur during the trading hours specified in Rule 4120.

[.04 Nasdaq will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares.]

#### **(g) Commodity Futures Trust Shares**

(i) - (ii) No Change

(iii) Commodity Futures Trust Shares. The term "Commodity Futures Trust Shares" as used in the Rules shall, unless the context otherwise requires, mean a security that (A) is issued by a trust ("Trust") that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions; and (B) is issued and redeemed daily in specified aggregate amounts at net asset value. The term "futures contract" is a "contract of sale of a commodity for future delivery" set forth in Section 2(a) of the Commodity Exchange Act. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(iv) Designation of an Underlying Commodity Futures Contract. Nasdaq may trade, either by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares based on an underlying commodity futures contract. Each issue of Commodity Futures Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.

(v) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Commodity Futures Trust Shares designated on different underlying futures contracts. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(v)](vi) Initial and Continued Listing . Commodity Futures Trust Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing—Nasdaq will establish a minimum number of Commodity Futures Trust Shares required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing—Nasdaq will consider the suspension of trading in, [or removal from listing]and will initiate delisting proceedings under the Rule 5800 Series of, a series of Commodity Futures Trust Shares under any of the following circumstances:

(1) if, following the initial twelve-month period beginning upon the commencement of trading of the Commodity Futures Trust Shares: (a) the Trust has fewer than 50,000 Commodity Futures Trust Shares issued and outstanding; or (b) the market value of all Commodity Futures Trust Shares issued and outstanding is less than \$1,000,000; or (c) there are fewer than 50 record and/or beneficial holders of Commodity Futures Trust Shares; [for 30 consecutive trading days;]

(2) if the value of the underlying futures contracts is no longer calculated or available on at least a 15-second delayed basis during Nasdaq's Regular Market Session (as defined in Nasdaq Rule 4120) from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust;

(3) if the net asset value for the Trust is no longer disseminated to all market participants at the same time;

(4) if the Intraday Indicative Value is no longer disseminated on at least a 15-second delayed basis during Nasdaq's Regular Market Session (as defined in Nasdaq Rule 4120);  
[or]

(5) if the Commodity Futures Trust Shares do not comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio; (b) limitations on portfolio holdings or reference assets; or (d) the applicability of Nasdaq rules and surveillance procedures; or

~~[(5)]~~(6) if such other event shall occur or condition exists which in the opinion of Nasdaq makes ~~[further dealings]~~listing on Nasdaq inadvisable.

Upon termination of a Trust, Nasdaq requires that Commodity Futures Trust Shares issued in connection with such trust be removed from Nasdaq listing. A Trust will terminate in accordance with the provisions of the Trust prospectus.

(C) No Change

(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) No Change

~~[(vi)]~~(vii) Market Maker Accounts.

(A) A registered Market Maker in Commodity Futures Trust Shares must file with Nasdaq, in a manner prescribed by Nasdaq, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Commodity

Futures Trust Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to Nasdaq as required by this Rule.

(B) 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 Futures Trust Shares shall make available to Nasdaq such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or nonregistered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by Nasdaq.

[(vii)](viii) 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 futures contract value; the current value of positions or interests if required to be deposited to the Trust in connection with issuance of Commodity Futures Trust Shares; net asset value; or other information relating to the purchase, redemption or trading of Commodity Futures 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 or 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 reporting of transactions in an underlying futures contract.

[(viii) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Commodity Futures Trust Shares designated on different underlying futures contracts.]

Commentary:

No change.

#### **(h) Partnership Units**

(i) - (iii) No Change

(iv) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Partnership Units designated on different underlying investments, commodities and/or assets. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; or

(c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(iv)](v) Initial and Continued Listing. Partnership Units will be listed and/or traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing—Nasdaq will establish a minimum number of Partnership Units required to be outstanding at the time of commencement of trading on Nasdaq.

(B) Continued Listing— Nasdaq will consider the suspension of trading in [Nasdaq will consider removing from listing]and will initiate delisting proceedings under the Rule 5800 Series of Partnership Units under any of the following circumstances:

(1) if following the initial twelve month period following the commencement of trading of Partnership Units, (a) the partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Partnership Units[ for 30 or more consecutive trading days]; (b) the partnership has fewer than 50,000 Partnership Units issued and outstanding; or (c) the market value of all Partnership Units issued and outstanding is less than \$1,000,000;

(2) if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or Nasdaq stops providing a hyperlink on its website to any such investment, commodity, or asset value;

(3) if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; [or]

(4) if the Partnership Units do not comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; or (d) the applicability of Nasdaq rules and surveillance procedures; or

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

Upon termination of a partnership, Nasdaq requires that Partnership Units issued in connection with such partnership be removed from Nasdaq listing. A partnership will terminate in accordance with the provisions of the partnership prospectus.

(C) No Change

(D) General Partner—The following requirements apply on an initial and continued listing basis:

(1) The general partner of a partnership must be an entity having substantial capital and surplus and the experience and facilities for handling partnership business. In cases where, for any reason, an individual has been appointed as general partner, a qualified entity must also be appointed as general partner.

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

(E) No Change

[(v)](vi) Market Maker Accounts.

(A) A registered Market Maker in Partnership Units must file with Nasdaq, in a manner prescribed by Nasdaq, and keep current a list identifying all accounts for trading the underlying asset or commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Partnership Units shall trade in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to Nasdaq as required by this Rule.

(B) In addition to the existing obligations under Nasdaq rules regarding the production of books and records (see, e.g., Rule 4625), a registered Market Maker in Partnership Units shall make available to Nasdaq such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by Nasdaq.

[(vi)](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 asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the partnership in connection with issuance of Partnership Units; net asset value; or other information relating to the purchase, redemption or trading of Partnership Units, 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 or 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 asset or commodity.

[(vii) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Partnership Units designated on different underlying investments, commodities and/or assets.]

Commentary:

.01 Nasdaq requires that Members provide to all purchasers of newly issued Partnership Units a prospectus for the series of Partnership Units.

**(i) Trust Units**

(i) Applicability. The provisions in this Rule are applicable only to Trust Units. In addition, except to the extent inconsistent with this Rule, 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. Trust Units are included within the definition of "security," "securities," and "derivative securities products" as such terms are used in the Rules of Nasdaq.

(ii) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Trust Units designated on different underlying investments, commodities, assets and/or portfolios. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(ii)](iii) Definitions. The following terms as used in this Rule shall, unless the context otherwise requires, have the meanings herein specified:

(A) Commodity. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(B) Trust Units. The term "Trust Units" for purposes of this Rule means a security that is issued by a trust or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.

[(iii)](iv) Designation. Nasdaq may list and trade Trust Units based on an underlying asset, commodity, security or portfolio. Each issue of a Trust Unit shall be designated as a separate series and shall be identified by a unique symbol.

[(iv)](v) Initial and Continued Listing. Trust Units 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 Trust Units required to be outstanding at the time of commencement of trading on Nasdaq.

(2) Nasdaq will obtain a representation from the issuer of each series of Trust Units that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing.

(1) Nasdaq [will remove from listing Trust Units under any of the following circumstances:]will consider the suspension of trading in and will initiate delisting proceedings under the Rule 5800 Series of Trust Units under any of the following circumstances:

(a) if following the initial twelve month period following the commencement of trading of Trust Units, (i) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Units[ for 30 or more consecutive trading days]; (ii) the trust has fewer than 50,000 Trust Units issued and outstanding; or (iii) the market value of all Trust Units issued and outstanding is less than \$1,000,000; [or]

(b) if the Trust Units do not comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures;

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

(2) Nasdaq will halt trading in a series of Trust Units if the circuit breaker parameters in Rule 4120(a)(11) have been reached. In exercising its discretion to halt or suspend trading in a series of Trust Units, Nasdaq may consider any relevant factors. In particular, if the portfolio and net asset value per share are not being disseminated as required, Nasdaq may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings or net asset value per share 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.

Upon termination of a trust, Nasdaq requires that Trust Units issued in connection with such trust be removed from Nasdaq listing. A trust will terminate in accordance with the provisions of the prospectus.



(C) No Change

(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) No Change

[(v)](vi) 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 portfolio value; net asset value; or other information relating to the purchase, redemption or trading of Trust Units, 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 or 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 the Trust Units.

[(vi)](vii) Market Maker Accounts. A registered Market Maker in Trust Units must file with Nasdaq, in a manner prescribed by Nasdaq, and keep current a list identifying all accounts for trading in an underlying commodity, 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, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, 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), a registered Market Maker in Trust Units 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, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by Nasdaq .

Commentary:

.01 - .02 No Change

[.03 Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Trust Units designated on different underlying investments, commodities, assets and/or portfolios.]

**(j) Managed Trust Securities**

(i) Nasdaq will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Trust Securities that meet the criteria of this Rule.

(ii) Applicability. This Rule is applicable only to Managed Trust Securities. Managed Trust Securities are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of Nasdaq.

(iii) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Managed Trust Securities. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

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

(A) Managed Trust Securities. The term "Managed Trust Securities" as used in the Rules shall, unless the context otherwise requires, mean a security that is registered under the Securities Act of 1933, as amended, (1) is issued by a trust ("Trust") that (a) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (b) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the Trust's advisor consistent with the Trust's investment objectives, which will only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, each as disclosed in the Trust's prospectus as such may be amended from time to time; and (2) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value.

(B) Disclosed Portfolio. The term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Trust that will form the basis for the Trust's calculation of net asset value at the end of the business day.

(C) Intraday Indicative Value. The term "Intraday Indicative Value" is the estimated indicative value of a Managed Trust Security based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.

(D) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Trust Securities means Nasdaq, an institution, or a reporting or information service designated by Nasdaq or by the Trust or the exchange that lists a particular series of Managed Trust Securities (if Nasdaq 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 Intraday Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Trust Securities, net asset value, or other information relating to the issuance, redemption or trading of Managed Trust Securities. A series of Managed Trust Securities may have more than one Reporting Authority, each having different functions.

~~[(iv)]~~(v) Designation. Nasdaq may trade, either by listing or pursuant to unlisted trading privileges, Managed Trust Securities based on the underlying portfolio of exchange-traded futures and/or certain currency forward contracts described in the related prospectus. Each issue of Managed Trust Securities shall be designated as a separate trust or series and shall be identified by a unique symbol.

~~[(v)]~~(vi) Initial and Continued Listing . Managed Trust Securities will be listed and traded on Nasdaq subject to application of the following criteria:

(A) Initial Listing—Each series of Managed Trust Securities will be listed and traded on Nasdaq subject to application of the following initial listing criteria:

(1) Nasdaq will establish a minimum number of Managed Trust Securities required to be outstanding at the time of commencement of trading on Nasdaq.

(2) Nasdaq will obtain a representation from the issuer of each series of Managed Trust Securities that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

(B) Continued Listing—Each series of Managed Trust Securities will be listed and traded on Nasdaq subject to application of the following continued listing criteria:

(1) Intraday Indicative Value. The Intraday Indicative Value for Managed Trust Securities will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Trust Securities trade on Nasdaq.

(2) Disclosed Portfolio.

(a) The Disclosed Portfolio [will ]must be disseminated at least once daily and will be made available to all market participants at the same time.

(b) The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

(3) Rule Proposal Representations. Managed Trust Securities must continue to comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio; (b) limitations on portfolio holdings or reference assets; or (d) the applicability of Nasdaq rules and surveillance procedures; or

~~[(3)](4)~~ Suspension of trading or removal. Nasdaq will consider the suspension of trading in, [or removal from listing]and will initiate delisting proceedings under the Rule 5800 Series of, a series of Managed Trust Securities under any of the following circumstances:

(a) if, following the initial twelve-month period beginning upon the commencement of trading of the Managed Trust Securities: (A) the Trust has fewer than 50,000 Managed Trust Securities issued and outstanding; (B) the market value of all Managed Trust Securities issued and outstanding is less than \$1,000,000; or (C) there are fewer than 50 record and/or beneficial holders of Managed Trust Securities[for 30 consecutive trading days];

(b) if the Intraday Indicative Value for the Trust is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;

(c) if the Trust issuing the Managed Trust Securities has failed to file any filings required by the Securities and Exchange Commission or if Nasdaq is aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Trust with respect to the series of Managed Trust Securities; [or]

(d) if the series of Managed Trust Securities fails to comply with any of the requirements in paragraph (B) above; or

~~[(d)](e)~~ if such other event shall occur or condition exists which in the opinion of Nasdaq makes [further dealings]listing on Nasdaq inadvisable.

[(4)](5) Trading Halts. If the Intraday Indicative Value of a series of Managed Trust Securities 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 occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Trust Securities is trading on Nasdaq pursuant to unlisted trading privileges, Nasdaq will halt trading in that series as specified in Rule 4120(a) or (b), as applicable. In addition, if Nasdaq becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Trust Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

[(5)](6) Upon termination of a Trust, Nasdaq requires that Managed Trust Securities issued in connection with such Trust be removed from Nasdaq listing. A Trust will terminate in accordance with the provisions of the Trust prospectus.

(C) Term —The stated term of the Trust shall be as stated in the 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) No Change

[(vi)](vii) Market Maker Accounts.

(A) A registered Market Maker in Managed Trust Securities must file with Nasdaq, in a manner prescribed by Nasdaq, and keep current a list identifying all accounts for trading the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, which a registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Managed Trust Securities shall trade in the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in

the profits or losses thereof, which has not been reported to Nasdaq as required by this Rule.

(B) In addition to the existing obligations under Nasdaq rules regarding the production of books and records, (see, e.g., Rule 4625) a registered Market Maker in Managed Trust Securities shall make available to Nasdaq such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, as may be requested by Nasdaq.

[(vii)](viii) Limitation of Nasdaq 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 underlying futures contract value; the current value of positions or interests if required to be deposited to the Trust in connection with issuance of Managed Trust Securities; net asset value; or other information relating to the purchase, redemption or trading of Managed Trust Securities, resulting from any negligent act or omission by Nasdaq, or the Reporting Authority, or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq or its agent, or the Reporting Authority, including, but not limited to, 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 reporting of transactions in an underlying futures contract.

[(viii) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Managed Trust Securities.]

Commentary:

.01 Nasdaq requires that Members provide all purchasers of newly issued Managed Trust Securities a prospectus for the series of Managed Trust Securities.

.02 Transactions in Managed Trust Securities will occur during the trading hours specified in Rule 4120.

.03 Nasdaq's rules governing the trading of equity securities apply.

.04 Nasdaq will implement written surveillance procedures for Managed Trust Securities.

.05 If the Trust's advisor is affiliated with a broker-dealer, the broker-dealer shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. Personnel who make decisions on the Trust's portfolio composition must be subject to procedures designed to

prevent the use and dissemination of material nonpublic information regarding the applicable Trust portfolio.

**(k) Listing of Currency Warrants**

(i) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Currency Warrants. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the reference assets; (b) limitations on the reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(i)](ii) [The listing of Currency Warrant issues is considered on a case-by-case basis. Such warrant issues will be evaluated for listing against the following criteria: ]Each series of Currency Warrants will be listed and traded on Nasdaq subject to application of the following initial listing criteria:

(A) Term—One to five years from date of issuance.

(B) Cash Settlement—The warrants will be cash settled in U.S. dollars.

(C) Automatic Exercise—All currency warrants must include in their terms provisions specifying: (1) the time by which all exercise notices must be submitted, and (2) that all unexercised warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by Nasdaq (if such warrant issue has not been listed on another organized securities market in the United States).

(iii) Each series of Currency Warrants shall meet the following criteria on an initial and continued listing basis. If a series of Currency Warrants does not satisfy these requirements, Nasdaq may halt trading in the securities and will initiate delisting proceedings pursuant to the Rule 5800 Series.

(A) Size and Earnings of Warrant Issuer—The warrant issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5405(b). In the alternative, the warrant issuer will be expected: (1) to have a minimum tangible net worth of \$150,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5405(b), and (2) not to have issued warrants where the original issue price of all the issuer's currency warrant offerings (combined with currency warrant offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the warrant issuer's net worth.

[(B) Term—One to five years from date of issuance.]

[(C)](B) Distribution/Market Value—(i) Minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of \$4,000,000; or (ii) Minimum public distribution of 2,000,000 warrants together with a minimum number of public warrant holders determined on a case by case basis, an aggregate market value of \$12,000,000 and an initial warrant price of \$6.

[(D) Cash Settlement—The warrants will be cash settled in U.S. dollars.]

[(E) Automatic Exercise—All currency warrants must include in their terms provisions specifying: (1) the time by which all exercise notices must be submitted, and (2) that all unexercised warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by Nasdaq (if such warrant issue has not been listed on another organized securities market in the United States).]

[(ii) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Currency Warrants.]

(C) Rule Proposal Representations. Currency Warrants must continue to comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the reference assets; (b) limitations on the reference assets; or (d) the applicability of Nasdaq rules and surveillance procedures; or

[(iii)](iv) Regulatory Matters

(A) No Member shall accept an order from a customer to purchase or sell a Currency Warrant unless the customer's account has been approved for options trading pursuant to Chapter XI, Section 7 of the rules of the Nasdaq Options Market ("NOM").

(B) Suitability. The provisions of NOM Rules Chapter XI, Section 9 shall apply to recommendations in Currency Warrants and the term "option" as used therein shall be deemed for purposes of this Rule to include such warrants.

(C) Discretionary Accounts. Any account in which a Member exercises discretion to trade in Currency Warrants shall be subject to the provisions of NOM Rules, Chapter XI, Section 10 with respect to such trading. For purposes of this Rule, the terms, "option" and "options contract" as used in Chapter XI, Section 10 shall be deemed to include Currency Warrants.

(D) Supervision of Accounts. NOM Rules, Chapter XI, Section 8 shall apply to all customer accounts of a Member in which transactions in Currency Warrants are effected. The term "option" as used in Chapter XI, Section 8 shall be deemed to include Currency Warrants.



(E) Public Customer Complaints. NOM Rules, Chapter XI, Section 24 shall apply to all public customer complaints received by a Member regarding Currency Warrants. The term "option" as used in Chapter XI, Section 24 shall be deemed to include such warrants.

(F) Communications with Public Customers. Members participating in Currency Warrants shall be bound to comply with the Communications and Disclosures rule of FINRA, as applicable, as though such rule were part of these Rules.

~~[(iv)]~~(v) Trading Halts or Suspensions. Trading on Nasdaq may halt trading in any Currency Warrant ~~[shall be halted]~~if the requirements in paragraph (k)(iii) are not continuously maintained or whenever Nasdaq deems such action appropriate in the interests of a fair and orderly market or to protect investors. Trading in Currency Warrants that have been the subject of a halt or suspension by Nasdaq may resume if Nasdaq determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading.

~~[(v)]~~(vi) Reporting of Warrant Positions

(A) Each Member shall file with Nasdaq a report with respect to each account in which the Member has an interest, each account of a partner, officer, director, or employee of such Member, and each customer account that has established an aggregate position (whether long or short) of 100,000 warrants covering the same underlying currency combining for purposes of this Rule: (1) long positions in put warrants and short positions in call warrants, and (2) short positions in put warrants with long positions in call warrants. The report shall be in such form as may be prescribed by Nasdaq and shall be filed no later than the close of business on the next day following the day on which the transaction or transactions requiring the filing of such report occurred.

(B) Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the Member filing the same shall file with Nasdaq such additional periodic reports with respect to such account as Nasdaq may from time to time require.

(C) All reports required by this Rule shall be filed with Nasdaq in such manner and form as prescribed by Nasdaq.

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### **5712. Alpha Index-Linked Securities.**

Equity Index-Linked Securities are Linked Securities, as defined in Exchange Rule 5710, that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or indexes (an "Equity Reference Asset"). NASDAQ will

consider for listing and trading Equity Index-Linked Securities with respect to which the Equity Reference Asset is one of the following indexes (the "Alpha Indexes"): GOOG vs. SPY (GOOSY) and AAPL vs. SPY (AVSPY). Each such Equity Index-Linked Security is referred to herein as an Alpha Index-Linked Security.

The Alpha Indexes are proprietary relative performance based indexes owned and maintained by Nasdaq, Inc. Each Alpha Index consists of two components. The Alpha Indexes that underlie Alpha Index-Linked Securities measure relative total returns of one stock versus SPY, a non-leveraged ETF share (each such combination of two components is referred to as an "Alpha Pair"). The first component identified in an Alpha Pair (the "Target Component") is measured against the second component identified in the Alpha Pair (the "Benchmark Component").

(a) Nasdaq will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Alpha Index-Linked Securities that are not linked to previously approved Alpha Indexes. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the reference assets; (b) limitations on the reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(a)](b) Initial Listing. Nasdaq will consider Alpha-Index Linked Securities for listing and trading provided that:

(i) the requirements set forth for Equity Index-Linked Securities in Exchange Rule 5710(a)-(j) are met; and

(ii) each Alpha Index underlying an Alpha Index-Linked Security meets the following criteria. The initial listing criteria set forth in Rule 5710(k)(i)(A) do not apply to Alpha Index-Linked Securities. Instead, at initial listing of the Alpha Index-Linked Security, options on both the Target Component and the Benchmark Component of the Alpha Index must also be listed and traded on the NASDAQ Options Market and must meet the requirements of Chapter IV, Section 3, Criteria for Underlying Securities, of the NASDAQ Options Market rules. Additionally, both the Target Component's and the Benchmark Component's trading volume (in all markets in which the Target Component and the Benchmark Component are traded) must have averaged at least 2,250,000 shares per day in the preceding twelve months. No Alpha Index-Linked Security will be listed unless and until options overlying each of the Target Component and the Benchmark Component have been listed and traded on a national securities exchange with an average daily options trading volume during the three previous months of at least 10,000 contracts. Finally, values of Alpha Indexes underlying Alpha Index-Linked Securities must be disseminated at least once every second over the NASDAQ OMX Global Index Data Service ("GIDS").

~~(b)~~(c) Continued Listing. The continued listing criteria set forth in Rule 5710(k)(i)(B) do not apply to Alpha Index-Linked Securities. Instead, following the initial listing of the Alpha Index-Linked Security, options on both the Target Component and the Benchmark Component of the Alpha Index must continue to meet the continued listing standards set forth by Chapter IV, Section 4, Withdrawal of Approval of Underlying Securities, of the NASDAQ Options Market rules. Additionally, both the Target Component's and the Benchmark Component's trading volume (in all markets in which the Target Component and Benchmark Component are traded) must have averaged at least 2,000,000 shares per day in the preceding twelve months. Following the listing of an Alpha Index-Linked Security, options on each of the Target Component and Benchmark Component of the Alpha Index must continue to meet the options average daily volume standard set forth in Section (a)(ii) above.

~~(c)~~(d) Delisting or Removal Proceedings. Nasdaq may halt trading in the securities and will initiate delisting proceedings pursuant to the Rule 5800 Series~~[Delisting or removal proceedings will be commenced]~~ (unless the Commission has approved the continued trading) with respect to any Alpha Index-Linked Security if the standards set forth in Rule 5712(b) with respect to the underlying Alpha Index or any of the requirements below are not continuously maintained. ~~[Nasdaq will also commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Alpha Index-Linked Security) under any of the following circumstances:]~~

(i) if the aggregate market value or principal amount of the Alpha Index-Linked Securities publicly held is less than \$400,000;

(ii) if the value of the underlying Alpha Index is no longer calculated or widely disseminated on at least a one second basis, provided, however, that if the official index value does not change during some or all of the period when trading is occurring on Nasdaq then the last calculated official index value must remain available throughout Nasdaq trading hours;

(iii) if such other event shall occur or condition exists which in the opinion of Nasdaq makes further dealings on Nasdaq inadvisable;~~[ or]~~

(iv) if the Alpha-Index Linked Securities no longer comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the reference assets; (b) limitations on the reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures; or

~~(v)~~(iv) if an underlying Alpha Index fails to satisfy the maintenance standards or conditions for such index as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index for the trading of options or other derivatives.

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**5713. Paired Class Shares**

(a) Nasdaq will consider for trading, whether by listing or pursuant to unlisted trading privileges, Paired Class Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Paired Class Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the By-laws and all other rules and procedures of the Board of Directors shall be applicable to the trading on Nasdaq of such securities. Paired Class Shares are included within the definition of "security" or "securities" as such terms are used in the By-laws and Rules of Nasdaq.

(c) Nasdaq will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 ("Act") before trading Paired Class Shares. In addition, prior to a substitute or replacement Underlying Benchmark being selected for the Fund, Nasdaq must file a related proposed rule change pursuant to Rule 19b-4 under the Act to continue trading the Paired Class Shares. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

[(c)](d) Paired Class Shares. The term "Paired Class Share" means a security: (1) that is issued by a trust (the "Trust") on behalf of a segregated series (the "Fund") as part of a pair of shares of opposing classes whose respective underlying values move in opposite directions as the value of the Fund's Underlying Benchmark (defined in Rule 5713[(e)](f)) varies from its starting level, where one constituent of the pair is positively linked to the Fund's Underlying Benchmark ("Up Shares") and the other constituent is inversely linked to the Fund's Underlying Benchmark ("Down Shares"); (2) that is issued in exchange for cash; (3) the issuance proceeds of which are invested and reinvested in highly rated short-term financial instruments that mature within 90 calendar days and that serve the functions of (i) covering the Fund's expenses, (ii) providing income distributions to investors, based on income (after expenses) from the financial instruments held by the Fund, (iii) providing cash proceeds for regular and special distributions to be made in cash in lieu of Paired Class Shares, and (iv) providing cash proceeds to be paid upon the redemption of Paired Class Shares; (4) that represents a beneficial interest in the Fund; (5) the value of which is determined by the underlying value of the Fund that is attributable to the class of which such security is a part, which security underlying value will either (i) increase as a result of an increase in the Underlying Benchmark and decrease as a result of a decrease in the Underlying Benchmark (in the case of an Up Share) or (ii) increase as a result of a decrease in the

Underlying Benchmark and decrease as the result of an increase in the Underlying Benchmark (in the case of a Down Share); (6) that, when timely aggregated in a specified minimum number or amount of securities, along with an equal number or amount of the securities of the opposite class that constitute the other part of the pair, may be redeemed for a distribution of cash on specified dates by authorized parties; and (7) that may be subject to mandatory redemption of all Paired Class Shares under specified circumstances.

[(d)](e) Distributions. A Fund may engage in scheduled regular distributions, special distributions that are automatically triggered upon the Underlying Benchmark exceeding a fixed rate of change since the prior distribution, and corrective distributions that are automatically triggered when the trading price of a Paired Class Share deviates by a specified amount from its underlying value for a specified period of time.

[(e)](f) Designation. Nasdaq may trade, either by listing or pursuant to unlisted trading privileges, Paired Class Shares whose values are based on an index or other numerical variable ("Underlying Benchmark") whose value reflects the value of assets, prices, price volatility or other economic interests ("Reference Asset"). Each issue of Up Shares or Down Shares of a Fund shall be designated as a separate series and shall be identified by a unique symbol.

[(f)](g) Initial and Continued Listing. Paired Class Shares will be listed and traded on Nasdaq subject to application of the following criteria:

(i) Initial Listing

(A) Nasdaq will establish a minimum number of Paired Class Shares for each Fund required to be outstanding at the time of commencement of trading on Nasdaq;

(B) Nasdaq will obtain a representation from the Trust on behalf of each Fund that the underlying value per share of each Up Share and Down Share will be calculated daily and that these underlying values and information about the assets of the Fund will be made available to all market participants at the same time; and

(C) If the Underlying Benchmark is maintained by a broker-dealer or investment advisor, the broker-dealer or investment advisor shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the Underlying Benchmark.

(ii) Continued Listing—Nasdaq will consider the suspension of trading in [or removal from listing ]and will initiate delisting proceedings under the Rule 5800 Series of a Fund's Paired Class Shares under any of the following circumstances:

(A) if, following the initial twelve-month period beginning upon the commencement of trading of the Paired Class Shares: (i) there are fewer than 50 record and/or beneficial holders of the Fund's Up Shares or Down Shares[ for 30 or more consecutive trading days]; (ii) the Fund has fewer than 50,000 Up Shares or 50,000 Down Shares issued and outstanding; or (iii) the combined market value of all shares of a Fund issued and outstanding is less than \$1,000,000;

(B) if the intraday level of the Underlying Benchmark, or a substitute or replacement Underlying Benchmark based on the same Reference Asset, is no longer calculated or available on at least a 15-second delayed basis during the Regular Market Session from a source unaffiliated with the sponsor, the custodian, the trustee of the Trust, the Fund or Nasdaq that is a major market data vendor (e.g., Reuters or Bloomberg);

(C) if the underlying value per share of each Up Share and Down Share of a Fund is no longer made available on a daily basis to all market participants at the same time;

(D) if the estimate of the value of a share of the series of Paired Class Shares (the "Intraday Indicative Value") of the underlying value of each listed Up Share and Down Share of the Fund is no longer made available on at least a 15-second delayed basis by a major market vendor during the Regular Market Session;

(E) if the "fire\_wall" erected around the personnel who have access to information concerning changes and adjustments to the Underlying Benchmark is no longer in place; or,

(F) Rule Proposal Representations. Paired Class Shares must continue to comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio; (b) limitations on portfolio holdings or reference assets; or (d) the applicability of Nasdaq rules and surveillance procedures; or

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

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

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

(A) 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; and

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

(v) Voting - Voting rights, if any, shall be as set forth in the applicable Fund prospectus.

[(g)](h) 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 applicable Underlying Benchmark value; the underlying value of the Fund and its Paired Class Shares; distribution values or any other information relating to the purchase, redemption, or trading of the Paired Class 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 or 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 the applicable positions or interests.

[(h)](i) Market Maker Accounts.

(i) A registered Market Maker in Paired Class Shares must file with Nasdaq in a manner prescribed by Nasdaq and keep current a list identifying all accounts for trading in the applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in the applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to Nasdaq as required by this Rule.

(ii) In addition to the existing obligations under Nasdaq rules regarding the production of books and records, (see, e.g., Rule 4625), a registered Market Maker in Paired Class 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 applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any

other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, as may be requested by Nasdaq.

••• Commentary -----

.01 - .02 No change.

.03 [Nasdaq will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 ("Act") before trading Paired Class Shares.

.04 Prior to a substitute or replacement Underlying Benchmark being selected for the Fund, Nasdaq must file a related proposed rule change pursuant to Rule 19b-4 under the Act to continue trading the Paired Class Shares.]

.05 ]Nasdaq will implement written surveillance procedures for trading the Paired Class Shares.

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### **5715. Selected Equity-linked Debt Securities ("SEEDS")**

#### (a) Definition

(1) SEEDS are limited-term, non-convertible debt securities of a Company where the value of the debt is based, at least in part, on the value of up to thirty (30) other issuers' common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

(2) Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of SEEDS that do not otherwise meet the standards set forth in this rule. Any of the representations regarding the index composition or reference asset, the description of the index or reference asset, limitations on portfolio holdings or reference assets, or the applicability of Nasdaq rules and surveillance procedures, constitute continued listing standards.

~~(2)~~(3) Nasdaq will consider listing on the Nasdaq Global Market or Nasdaq Global Select Market Selected Equity-linked Debt Securities (SEEDS), pursuant to 19b-4(e) of the Act, that meet the criteria of paragraph (b) of this rule.

(b) Listing Requirements – SEEDS shall meet the following criteria on both an initial and continued listing basis. If a series of SEEDS does not satisfy these requirements, Nasdaq may halt trading in the securities and will initiate delisting proceedings pursuant to the Rule 5800 Series.



[Nasdaq will consider listing on the Nasdaq Global Market or Nasdaq Global Select Market Selected Equity-linked Debt Securities (SEEDS), pursuant to 19b-4(e) of the Act, that meet the criteria of this paragraph (b).]

(1) Issuer Listing Standards – An issuer of SEEDS shall meet the following criteria on both an initial and continued listing basis. If an issuer of SEEDS does not satisfy these requirements, Nasdaq may halt trading in the SEEDs and will initiate delisting proceedings pursuant to the Rule 5800 Series.

(A) The issuer of a SEEDS must be an entity that:

(i) is listed on the Nasdaq Global Market, Nasdaq Global Select or the New York Stock Exchange (NYSE) or is an affiliate of a Company listed on the Nasdaq Global Market, Nasdaq Global Select or the NYSE; provided, however, that the provisions of Rule 5730(b) will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

(ii) has a minimum net worth of \$150 million.

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the Company and traded on the Nasdaq Global, Nasdaq Global Select Market or another national securities exchange, may not be greater than 25 percent of the Company's net worth at the time of issuance.

(2) Issue Listing Standards– SEEDS shall meet the following criteria on both an initial and continued listing basis. If a series of SEEDS does not satisfy these requirements, Nasdaq may halt trading in the securities and will initiate delisting proceedings pursuant to the Rule 5800 Series.

(A) Equity-Linked Debt Security Listing Standards

The issue must have:

[(A)](i) a minimum public distribution of one million SEEDS;

[(B)](ii) a minimum of 400 holders of the SEEDS, provided, however, that if the SEEDS is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, there is no minimum number of holders and no minimum public distribution;

[(C)](iii) a minimum market value of \$4 million; and

[(D)](iv) a minimum term of one year.

(3) (B) Minimum Standards Applicable to the Linked Security

[(A)](i) An equity security on which the value of the SEEDS is based must:

[(i)] a. have a market value of listed securities of at least \$3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS;

[(ii)] b. have a market value of listed securities of at least \$1.5 billion and a trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the SEEDS; or

[(iii)] c. have a market value of listed securities of at least \$500 million and a trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the SEEDS.

[(B)](ii) be issued by a Company that has a continuous reporting obligation under the Act, and the security must be listed on the Nasdaq Global Market, Nasdaq Global Select or another national securities exchange and be subject to last sale reporting; and

[(C)](iii) be issued by:

[(i)] a. a U.S. company; or

[(ii)] b. a non-U.S. company (including a Company that is traded in the United States through sponsored ADRs) (for purposes of this paragraph (g), a non-U.S. company is any company formed or incorporated outside of the United States) if:

[a.] 1. Nasdaq or its subsidiaries has a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded);

[b.] 2. the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market and in markets with which Nasdaq or its subsidiaries has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of listing; or

[c.](iii)

[1. ] a. the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

[2. ]b. the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing is 100,000 or more shares; and

[3. ]c. the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

[d. ](iv) If the underlying security to which the SEEDS is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADR, ordinary shares or otherwise, then the minimum number of holders of the underlying linked security shall be 2,000.

[(4)](C) Limits on the Number of SEEDS Linked to a Particular Security

[(A)](i) The issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed:

[(i) ]a. two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing (The two percent limit, based on 20 percent of the worldwide trading volume in the non-U.S. security or sponsored ADR, applies only if there is a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded, or, in the case of an ADR, the primary exchange on which the security underlying the ADR is traded. If there is no such agreement, subparagraph (3) above requires that the combined trading volume of such security and other related securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined worldwide trading volume in such security, other related securities, and other classes of common stock related to such security over the six month period preceding the date of listing.);

[(ii) ]b. three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; or

[(iii) ]c. five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing.

[(B) ](i.) If a Company proposes to issue SEEDS that relate to more than the allowable percentages of the underlying security specified above, then Nasdaq, with the

concurrence of the staff of the Division of Market Regulation of the Commission, will evaluate the maximum percentage of SEEDS that may be issued on a case-by-case basis.

[(5)](D) Prior to the commencement of trading of a particular SEEDS listed pursuant to this subsection, Nasdaq or its subsidiaries will distribute a circular to the membership providing guidance regarding Nasdaq member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.

(3) Rule Proposal Representations. SEEDS must continue to comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding (a) the index composition or reference assets, (b) the description of the index or reference assets, (c) limitations on portfolio holdings or reference assets, or (d) the applicability of Nasdaq rules and surveillance procedures.

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## **5720. Trust Issued Receipts**

### (a) Definitions

(1) The term "Trust Issued Receipt" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(b) Nasdaq may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set forth below. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

### [(b)](c) Listing Requirements

(1) – (4) No change.

(5) Trust Issued Receipts will be listed and traded on Nasdaq subject to application of the following criteria:

(A) No change.

(B) Continued Listing — following the initial twelve month period following formation of a Trust and commencement of trading on Nasdaq, Nasdaq will consider the suspension of trading in, [or removal from listing ]and will initiate delisting proceedings under the Rule 5800 Series of, a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts[ for 30 or more consecutive trading days];

(ii) if the Trust has fewer than 50,000 receipts issued and outstanding;

(iii) if the market value of all receipts issued and outstanding is less than \$1 million; [or]

(iv) if the issuer of the Trust Issued Receipts does not comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; or (d) the applicability of Nasdaq rules and surveillance procedures;

(v) if any of the requirements set forth in this rule are not continuously maintained;

(vi) if the series of Trust Issued Receipts was listed pursuant to Rule 19b4-(e) under the Act, any component security does not meet any of the requirements of paragraph (7) below; or

[(iv)](vii) 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 Trust Issued Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in 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:

(i) 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.

(ii) 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 Trust prospectus.

(6) No change.

(7) Nasdaq may approve a series of Trust Issued Receipts for listing and trading on Nasdaq pursuant to Rule 19b-4(e) under the Act, provided each of the component securities satisfies the following criteria on an initial and continued listing basis:

(A) each component security must be registered under Section 12 of the Act;

(B) each component security must have a minimum public float of at least \$150 million;

(C) each component security must be listed on Nasdaq or another national securities exchange;

(D) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(E) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and

(F) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

## **5725. Index Warrants**

(a) Definitions

(1) "Index Warrants" means instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration (i.e., European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index. Index Warrants may be based on either foreign or domestic indexes.

(2) Nasdaq may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of Index Warrants that do not otherwise meet the standards set forth in this rule. Any of the representations regarding (a) the index composition or reference assets, (b) the description of the index or reference assets, (c) limitations on portfolio holdings or reference assets, or (d) the applicability of Nasdaq rules and surveillance procedures, constitute continued listing standards.

(b) Listing Requirements. Index Warrants listed pursuant to this rule shall meet the following criteria on an initial and continued listing basis. If any of these criteria are not continuously maintained, Nasdaq will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, the series of Index Warrants.

(1) An Index Warrant may be listed on the Global Market if it substantially meets the following criteria:

(A) – (K) No change.

(L) Rule Proposal Representations. Index Warrants must continue to comply with any statements or representations included in the applicable rule proposal under Section 19(b) regarding (a) the index composition or reference asset, (b) the description of the index or reference asset, (c) limitations on portfolio holdings or reference assets, or (d) the applicability of Nasdaq rules and surveillance procedures.

Any Index Warrant listed pursuant to this paragraph shall not be required to meet the requirements of Rule 5210(h), 5210(a), or 5450. Nasdaq may apply additional or more stringent criteria as necessary to protect investors and the public interest.

### **5730. Listing Requirements for Securities Not Otherwise Specified (Other Securities)**

No Change

### **5735. Managed Fund Shares**

(a) No Change.

(b) Applicability. Rule 5735 is applicable only to Managed Fund Shares. Except to the extent inconsistent with Rule 5735, 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. Managed Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of Nasdaq.

(1) Nasdaq may approve Managed Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. Components of a series of Managed Fund Shares listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in this Rule 5735 upon initial listing and on a continual basis. Nasdaq will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Fund Shares with components that do not satisfy the criteria set forth in this Rule 5735(b)(1) or components other than those specified below. Any of the representations regarding (a) the description of the portfolio; (b) limitations on portfolio holdings or

reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

(A) – (F) No change

(2) – (5) No change.

(c) No change

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

(1) No change

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

(A) – (B) No change.

(C) Suspension of trading or removal. Nasdaq will consider the suspension of trading in, [or removal from listing ]and will initiate delisting proceedings under the Rule 5800 Series of, a series of Managed Fund 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 Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Managed Fund Shares[ for 30 or more consecutive trading days];

(ii) No change.

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

(iv) if the series of Managed Fund 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 portfolio; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards;

(v) if any of the requirements set forth in this rule are not continuously maintained; or

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



(D) – (F) No Change

(e) – (f) No change

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

#### **5740. Derivative Securities Traded under Unlisted Trading Privileges**

No Change.

#### **5745. Exchange-Traded Managed Fund Shares ("NextShares")**

(a) No change.

(b) Applicability. Rule 5745 is applicable only to NextShares. 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. NextShares 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 NextShares. Any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures shall constitute continued listing standards.

(2) – (6) No change.

(c) No change.

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

(1) No change.

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

(A) No change.

(B) If the investment adviser to a NextShares Fund issuing NextShares is a registered broker-dealer or is affiliated with a broker-dealer, such investment adviser shall erect and maintain 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 NextShares Fund's portfolio holdings. Personnel who make decisions on the NextShares Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable NextShares Fund portfolio.

~~[(B)]~~(C) Suspension of trading or removal. Nasdaq will consider the suspension of trading in, ~~[or removal from listing]~~and will initiate delisting proceedings under the Rule 5800 Series of, a series of NextShares under any of the following circumstances:

(i) if, following the initial twelve-month period after commencement of trading on Nasdaq of a series of NextShares, there are fewer than 50 beneficial holders of the series of NextShares ~~[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 NextShares Fund issuing the NextShares has failed to file any filings required by the Commission or ~~[if Nasdaq is aware that]~~ the NextShares Fund 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 NextShares; ~~[or]~~

(iv) if the series of NextShares 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 portfolio; (b) limitations on portfolio holdings or reference assets; or (c) the applicability of Nasdaq rules and surveillance procedures; [or]

(v) if any of the requirements set forth in this rule are not continuously maintained; or

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

~~[(C)]~~(D) Trading Halt. If the Intraday Indicative Value of a series of NextShares 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 NextShares 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 NextShares 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)]~~(E) Termination. Upon termination of a NextShares Fund, Nasdaq requires that NextShares issued in connection with such entity be removed from listing on Nasdaq.

~~[(E)]~~(F) Voting. Voting rights shall be as set forth in the applicable NextShares Fund prospectus.

(e) - (f) No Change

~~[(g)]~~ If the investment adviser to a NextShares Fund issuing NextShares 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 NextShares Fund's portfolio holdings. Personnel who make decisions on the NextShares Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable NextShares Fund portfolio.]

~~[(h)]~~(g) Proxy Price Protection. Every NextShares order is subject to the Proxy Price Protection threshold of plus/minus \$1.00, which determines the lower and upper threshold for the life of the order and whereby the order will be cancelled at any point if it exceeds \$101.00 or falls below \$99.00, the established thresholds. This threshold is applied to the proxy price amount of \$100.00, which is the proxy price that reflects the NAV of a NextShares Fund.

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#### **5810. Notification of Deficiency by the Listing Qualifications Department**

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(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) No change.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through [(v)](vi) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iv) and (vi) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection (v) must be provided generally within 60 calendar days. If a Company that is not subject to the All-Inclusive Annual Listing Fee described in IM-5910-1 or IM-5920-1 submits a plan of compliance under subsections (i), (iii), (iv), [or ](v), or (vi) it must also pay a compliance plan review fee of \$5,000. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance, but does not need to also pay the compliance plan review fee.

(i) – (v) No change.

(vi) failure to meet a continued listing requirement contained in the Rule 5700 Series.

#### **IM-5810-2. Staff Review of Deficiencies**

No change.

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