



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104252; File No. SR-NASDAQ-2025-037]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt New Rule 5703 to Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares

November 24, 2025.

On May 6, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new Nasdaq Rule 5703 to permit the generic listing and trading of Class Exchange-Traded Fund Shares. The proposed rule change was published for comment in the Federal Register on May 27, 2025.³

On June 30, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On August 15, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, and on August 21, 2025, the Commission issued notice of filing of Amendment No. 1 to the proposed rule change and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103072 (May 20, 2025), 90 FR 22373.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 103357, 90 FR 29598 (July 3, 2025).

⁶ 15 U.S.C. 78s(b)(2)(B).

whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ On November 3, 2025, pursuant to Section 19(b)(2) of the Act,⁸ the Commission designated a longer period for Commission action on the proposed rule change, as modified by Amendment No. 1.⁹ On November 19, 2025, the Exchange filed Amendment No. 2, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety.¹⁰ The Commission has received no comments regarding the proposed rule change.

The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to grant approval of the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

I. The Exchange's Description of the Proposal, as Modified by Amendment No. 2

The Exchange proposes to adopt Rule 5703 to permit the generic listing and trading of Class Exchange-Traded Fund (“ETF”) Shares. The Exchange is also proposing to make conforming changes to Rule 5615 (Exemptions from Certain Corporate Governance Requirements), Rule 5705(b) (Index Fund Shares), Rule 5735 (Managed Fund Shares), and Equity 4, Rule 4120 in order to accommodate the proposed listing of Class ETF Shares. This Amendment No. 2 to SR-NASDAQ-2025-037 amends and replaces in its entirety Amendment No. 1 as submitted on August 15, 2025. The Exchange submits this Amendment No. 2 in order to clarify certain points and make technical revisions to the proposed rule text.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings> and at the principal office of the Exchange.

⁷ See Securities Exchange Act Release No. 103758, 90 FR 41611 (Aug. 26, 2025).

⁸ 15 U.S.C. 78s(b)(2).

⁹ See Securities Exchange Act Release No. 104173, 90 FR 51424 (Nov. 17, 2025). The Commission, pursuant to Section 19(b)(2) of the Act, designated January 22, 2026, as the date by which the Commission shall either approve or disapprove the proposed rule change.

¹⁰ Amendment No. 2 to the proposed rule change is available on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2025-037/srnasdaq2025037-677367-2073094.pdf>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 5703 for the purpose of permitting the generic listing and trading, or trading pursuant to unlisted trading privileges, of Class ETF Shares.¹¹ The Exchange is also proposing to make conforming changes to Rule 5615 (Exemptions from Certain Corporate Governance Requirements), Rule 5705(b) (Index Fund Shares), Rule 5735 (Managed Fund Shares), and Equity 4, Rule 4120 in order to accommodate the proposed listing of Class ETF Shares. Consistent with Exchange Traded Fund Shares listed under the generic listing standards in Rule 5704, Class ETF Shares would be permitted to be listed and traded on the Exchange without prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.¹²

¹¹ The Exchange notes that Cboe BZX Exchange, Inc. (“BZX”) has filed a substantially similar filing. See Securities Exchange Act Release No. 103188 (June 4, 2025), 90 FR 24457 (June 10, 2025) (SR-CboeBZX-2025-076).

¹² Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by this Rule 5703, the Exchange proposes new Rule 5703 to establish generic listing standards for Class ETF Shares of the ETF Class (as defined herein) that would be required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief (as defined herein) and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act of 1940 (the “Investment Company Act”), except as noted in the Multi-Class Fund Exemptive Relief. Class ETF Shares listed under proposed Rule 5703 would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

Background

There are numerous applications for exemptive relief for Class ETF Shares currently before the Commission¹³ that request exemptive relief similar to that previously granted to other funds.¹⁴ This proposal would provide for the “generic” listing and/or trading of Class ETF Shares under proposed Rule 5703 on the Exchange.

Starting in 2000, the Commission began granting limited relief for The Vanguard Group, Inc. (“Vanguard”) to offer certain index-based open-end management investment companies with Class ETF Shares.¹⁵ After this relief was granted, there was limited public discourse about Class ETF Shares until 2019, when the prospect of providing blanket exemptive relief to Class ETF Shares was addressed in the Commission’s adoption of Rule 6c-11 under the Investment Company Act (the “ETF Rule”).¹⁶ The ETF Rule permits ETFs that satisfy certain conditions to operate without the expense or delay of obtaining an exemptive order. However, the ETF Rule did not provide blanket exemptive relief to allow for Class ETF Shares as part of the final rule. Instead, the Commission concluded that Class ETF Shares should request relief through the exemptive application process so that the Commission may assess all relevant policy

¹³ See e.g., DFA Investment Dimensions Group Inc. and Dimensional Investment Group Inc., (amendment filed March 31, 2025); F/m Investments LLC (amendment filed April 10, 2025); Fidelity Hastings Street Trust and Fidelity Management & Research Company (amendment filed April 11, 2025); Morgan Stanley Institutional Fund Trust and Morgan Stanley Investment Management Inc. (amendment filed April 11, 2025); BlackRock Funds (amendment filed April 15, 2025); Guinness Atkinson Funds (amendment filed April 17, 2025); Metropolitan West Funds, TCW ETF Trust, and TCW Funds, Inc. (amendment filed April 22, 2025); and Northern Funds and Northern Trust Investments, Inc. (amendment filed May 2, 2025).

¹⁴ See *infra* note 15.

¹⁵ See Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order). The Commission itself, as opposed to the Commission staff acting under delegated authority, considered the original Vanguard application and determined that the relief was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. In the process of granting the order, the Commission also considered and denied a hearing request on the original application, as reflected in the final Commission order. See also the Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order) (collectively referred to as the “Vanguard Orders”).

¹⁶ See Securities Exchange Act Release No. 33-10695 (September 25, 2019), 84 FR 57162 (October 24, 2019) (the “ETF Rule Adopting Release”).

considerations in the context of the facts and circumstances of particular applicants. The Exchange adopted Rule 5704 shortly after the implementation of the ETF Rule and, because there were no exemptive applications before the Commission, did not propose to include any language comparable to what is being proposed herein.¹⁷

As noted above, a number of applications for exemptive relief to permit the applicable fund to offer Class ETF Shares (the “Applications”) have been submitted to the Commission starting in early 2023. In general, the Applications state that the ability of a fund to offer Class ETF Shares, i.e., a fund offering both a class of mutual fund shares and a class of shares that are exchange traded, could be beneficial to the fund and to shareholders of each type of class for various reasons, including more efficient portfolio management, better secondary market trading opportunities, and cost efficiencies, among others.¹⁸ The Commission has granted, by order, specific exemptive relief (“Multi-Class Fund Exemptive Relief”) under the Investment Company Act on November 17, 2025, that permits, subject to certain conditions and requirements, a Multi-Class Fund (as defined below) to issue Class ETF Shares (as defined below) and one or more classes of shares that are not exchange traded, among other things.¹⁹

Proposal

Proposed Rule 5703(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Class ETF Shares that meet the criteria of this Rule.²⁰

¹⁷ See Securities Exchange Act Release No. 88561 (April 3, 2020), 85 FR 19984 (April 9, 2020) (SR-NASDAQ-2019-090).

¹⁸ See *supra* note 13.

¹⁹ See Investment Company Act Release No. 35786 (Nov. 17, 2025) (In the Matter of DFA Investment Dimensions Group Inc., Dimensional Investment Group Inc., Dimensional ETF Trust and Dimensional Fund Advisors LP) (File No. 812-15484).

²⁰ To the extent that Class ETF Shares do not satisfy one or more of the criteria in proposed Rule 5703, the Exchange may file a separate proposal under Section 19(b) of the Act in order to list such securities on the Exchange. Any of the statements or representations in that proposal regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in any filing to list such Class ETF Shares shall

Proposed Rule 5703(b) provides that the proposed rule would be applicable only to Class ETF Shares. 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 the Exchange of such securities. Class ETF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 5703(b) further provides that: (1) transactions in Class ETF Shares will occur throughout the Exchange’s trading hours; and (2) the Exchange will implement and maintain written surveillance procedures for Class ETF Shares.

Proposed Rule 5703(c) will set forth the definitions used in the Rule. Specifically, proposed Rule 5703(c)(1) provides that the term “Class ETF Shares” means shares of the ETF Class issued by a Multi-Class Fund.

Proposed Rule 5703(c)(2) provides that the term “ETF Class” means the class of exchange-traded shares of a Multi-Class Fund that (i) operates as an exchange-traded fund pursuant to exemptive relief granted by order under the Investment Company Act (“Multi-Class Fund Exemptive Relief”), and (ii) is in compliance with the requirements of Rules 5703(d)(ii) and 5703(d)(2)(A)(i)(2) below on an initial and continued listing basis.

Proposed Rule 5703(c)(3) provides that the term “Multi-Class Fund” means a registered open-end management company that (i) pursuant to Multi-Class Fund Exemptive Relief, issues Class ETF Shares and one or more classes of shares that are not exchange traded, and (ii) is in compliance with the conditions and requirements of the Multi-Class Fund Exemptive Relief.

Proposed Rule 5703(c)(4) provides that the term “Reporting Authority” in respect of a particular Multi-Class Fund means the Exchange, an institution, or a reporting service designated

constitute continued listing requirements for the Class ETF Shares. Further, in the event that Class ETF Shares become listed under proposed Rule 5703 and subsequently can no longer satisfy the requirements of proposed Rule 5703, such Class ETF Shares may be listed as a series of Index Fund Shares under Rule 5705(b) or Managed Fund Shares under Rule 5735, as applicable, as long as the Class ETF Shares meets all listing requirements applicable under the alternate listing rule. If the Class ETF Shares do change listing standards, the Exchange would have to comply with all of the requirements of Rule 19b-4(e) with respect to such Class ETF Shares.

by the Exchange or by the exchange that lists Class ETF Shares (if the Exchange is trading such securities pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such Multi-Class Fund, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of Class ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with the issuance of Class ETF Shares, or other information relating to the issuance, redemption or trading of Class ETF Shares. A Multi-Class Fund may have more than one Reporting Authority, each having different functions.

Proposed Rule 5703(d) provides that the Exchange may approve Class ETF Shares of a Multi-Class Fund for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided that: (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule 5703, as applicable, on an initial and continued listing basis.

Proposed Rule 5703(d)(1) provides that the requirements of paragraph (d) of this Rule must be satisfied by the Multi-Class Fund issuing the Class ETF Shares on an initial and continued listing basis. The Multi-Class Fund with respect to such Class ETF Shares must also satisfy the following criteria on an initial and, except for sub-paragraph (A) below, continued, listing basis. Further, proposed Rule 5703(d)(1) provides that: (A) for each Multi-Class Fund, the Exchange will establish a minimum number of Class ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (B) if an index underlying a Multi-Class Fund is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser 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 adviser. If the investment adviser to an actively managed Multi-Class Fund 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 Multi-Class Fund’s portfolio; and (C) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a Multi-Class Fund, 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. For actively managed Multi-Class Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 5703(d)(2) provides that Class ETF Shares of each Multi-Class Fund will be listed and traded on the Exchange subject to application of the continued listing criteria therein. Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of the Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which,

in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing.

Proposed Rule 5703(e) provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange 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 Multi-Class Fund in connection with the issuance of Class ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of Class ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of Class ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, 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.

The Exchange is also proposing to make corresponding amendments to include Class ETF Shares in other Exchange rules, which are intended to align the treatment of the proposed products with how other open-end management investment company shares (e.g., Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares) are treated under the Exchange's rules. First, the Exchange proposes to amend the definition of "Derivative Securities" in Rule 5615(a)(6)(B) to add Class ETF Shares so that Rule 5615(a)(6)(A) and its

exemptions from certain corporate governance requirements are applicable to Class ETF Shares.²¹

Second, the Exchange proposes to amend the definition of “Derivative Securities Products” in Rule 5705(b)(3)(A)(i)a. to add Class ETF Shares so the exclusions applicable to Derivative Securities Products in Nasdaq Rule 5705(b)(3)(A) will also apply to Class ETF Shares. The Exchange believes this is appropriate to ensure that Class ETF Shares are treated consistently with other open-end management investment company shares listed on the Exchange such as Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares.

Third, the Exchange proposes to amend the definition of “Exchange Traded Derivative Securities” in Rule 5735(c)(6) to add Class ETF Shares so the exclusions applicable to Exchange Traded Derivative Securities in Rule 5735(b)(1)(A) will also apply to Class ETF Shares. The Exchange believes this is appropriate to ensure that Class ETF Shares are treated consistently with other open-end management investment company shares listed on the Exchange such as Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares.

Fourth, the Exchange proposes to amend Equity 4, Rule 4120 to include Class ETF Shares in the Exchange’s trading halt provisions in Rule 4120(a)(9) and 4120(b)(4)(A).²² This will ensure the applicability of trading halts to the trading of Class ETF Shares listed on Nasdaq, and those traded on Nasdaq pursuant to unlisted trading privileges.

Discussion

²¹ Rule 5615(a)(6)(A) provides that issuers whose only securities listed on Nasdaq are non-voting preferred securities, debt securities or Derivative Securities, are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), and Meetings of Shareholders (as set forth in Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements of SEC Rule 10A-3. Notwithstanding, if the issuer also lists its common stock or voting preferred stock, or their equivalent on Nasdaq it will be subject to all the requirements of the Nasdaq 5600 Rule Series.

²² Rule 4120(b)(4)(A) sets out the definition of “Derivative Securities Product,” which is referenced in the Exchange’s halt authority pursuant to Rules 4120(a)(10) and 4120(b).

Proposed Rule 5703 is based on Rule 5704 related to the listing and trading of ETF Shares on the Exchange, which are issued under the Investment Company Act and qualify as ETF Shares under Rule 6c-11. Exchange Traded Fund Shares are similar to Class ETF Shares because the ETF Class is required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act (except as noted in the Multi-Class Fund Exemptive Relief).²³ The proposed Class ETF Shares generic listing rule would apply only to the class of shares that are exchange traded. Because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to Exchange Traded Fund Shares under Rule 5704, the Exchange believes that using Rule 5704 as the basis for proposed Rule 5703 is appropriate.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns are mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 5703(d)(2)(B), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 5703(d)(2)(A). The Exchange will halt trading in the Class ETF Shares under the conditions

²³ See supra note 19.

specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and under Nasdaq Rules 4120(a)(12). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from Rule 6c-11, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.²⁴ The Exchange also notes that there are firewall and other information barrier restrictions in place in the proposed rule text.²⁵ The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange. The Exchange will monitor for compliance to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. Specifically, the Exchange will review the website of Class ETF Shares listed on the Exchange in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5703 would

²⁴ The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

²⁵ See proposed Rules 5703(d)(1)(B) and (C).

require an issuer of Class ETF Shares to notify the Exchange of any failure to comply with the requirements of proposed Rule 5703, the Multi-Class Fund Exemptive Relief, or Rule 6c-11 under the Investment Company Act.

The Exchange may suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.²⁶ The Exchange also notes that Rule 5701(d) requires any issuer to provide the Exchange with prompt notification after it becomes aware that (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or otherwise no longer complies with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class is no longer compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, or (iii) the ETF Class or the Multi-Class Fund no longer satisfies the requirements of 5703, as applicable, on an initial and continuing basis.²⁷

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Class ETF Shares in all trading sessions and to deter and

²⁶ Specifically, proposed Rule 5703(d)(2) provides that Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 5703(d)(2)(A) and (B). Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Rule 5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing.

²⁷ The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to Rule 5701(d) would itself be considered non-compliance with the requirements of proposed Rule 5703 and would subject the Class ETF Shares to potential trading halts and the delisting process under the Rule 5800 Series.

detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Exchange Traded Fund Shares, Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in Class ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Finally, the issuer of Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5615(a)(6).²⁸

The Exchange notes that it may consider all relevant factors in exercising its discretion to halt or suspend trading in Class ETF Shares. Trading may be halted if the circuit breaker parameters in Rule 4121 have been reached, because of other market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Class ETF Shares that is required to be disclosed under Rule 6c-11 of the Investment Company Act is not being made available, including specifically where the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to Class ETF Shares is not disseminated to all market participants at the same time, it will halt trading in such securities until such time as the net asset

²⁸ See *supra* note 21. The Exchange notes that these proposed changes in Rule 5615(a)(6)(B) would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

value or the daily portfolio disclosure is available to all market participants;²⁹ (2) if an interruption to the dissemination to the value of the index or reference asset on which Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Exchange deems Class ETF Shares to be equity securities and therefore they would be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.³⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,³² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that proposed Rule 5703 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading Class ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 5703(d) sets forth initial and continued listing criteria

²⁹ The Exchange will obtain a representation from the issuer of Class ETF Shares that the net asset value per share will be calculated daily and made available to all market participants at the same time, and the requirements pertaining to the Multi-Class Fund Exemptive Relief and Rule 6c-11 under the Investment Company Act in proposed Rule 5703 will be satisfied.

³⁰ With respect to trading in Class ETF Shares, the Exchange represents that all of the Nasdaq member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with the Exchange's rules and federal securities laws, and Nasdaq will continue to monitor its members for compliance with such requirements, which are not changing as a result of the Multi-Class Fund Exemptive Relief order issued under the Investment Company Act.

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(5).

applicable to Class ETF Shares, specifically providing that the Exchange may approve Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided that: (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule 5703, as applicable, on an initial and continued listing basis.³³ The Exchange will comply with all the requirements of Rule 19b-4(e) to specifically note that such Class ETF Shares are being listed on the Exchange pursuant to Rule 5703.

Proposed Rule 5703(d)(2) provides that Class ETF Shares of each Multi-Class Fund will be listed and traded on the Exchange subject to application of proposed Rules 5703(d)(2)(A) and (B). Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment

³³ The Exchange notes that eligibility to operate in reliance on Rule 6c-11 or any applicable exemptive relief under the Investment Company Act does not necessarily mean that an investment company would be listed on the Exchange pursuant to proposed Rule 5703. To this point, an investment company that operates in reliance of exemptive relief providing for Class ETF Shares could alternatively be listed as a series of Index Fund Shares or Managed Fund Shares pursuant to Rule 5705(b) or 5735, respectively, and would be subject to all requirements under each of those rules. Further to this point, in the event that Class ETF Shares listed on the Exchange preferred to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), nothing would preclude such security from changing to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), as long as the security met each of the initial and continued listing obligations under the applicable rules.

Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule 5703 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of the Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange notes that it may become aware that the issuer is no longer compliant with Rule 6c-11 or any applicable exemptive relief thereunder, as described in proposed Rule 5703(d)(2)(A)(i), as a result of either the Exchange identifying non-compliance through its own monitoring process or through notification by the issuer.

Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing. The Exchange also notes that it will obtain a representation from the issuer of Class ETF Shares stating that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

The Exchange further believes that proposed Rule 5703 is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 5703(b)(2) along with the similarities of proposed Rule 5703 to the rules related to other securities that are already listed and traded on the Exchange and which would qualify as Class ETF Shares. ETF Shares are identical to Class ETF Shares except that Class ETF Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to an exchange-traded

fund under Rule 5704, the Exchange believes that using Rule 5704 as the basis for proposed Rule 5703 is appropriate.

The Exchange believes that the proposal is consistent with Section 6(b)(1) of the Act³⁴ in that, in addition to being designed to prevent fraudulent and manipulative acts and practices, the Exchange has the capacity to enforce proposed Rule 5703 by performing ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns that such standards are intended to address are mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 5703(d)(2)(B), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 5703(d)(2)(A). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from compliance with Rule 6c-11, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.³⁵ The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange. The Exchange will monitor for compliance

³⁴ 15 U.S.C. 78f(b)(1).

³⁵ The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of Class ETF Shares in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5701(d) would require an issuer of Class ETF Shares to notify the Exchange of any failure to comply with Rule 6c-11 or the requirements of the Multi-Class Fund Exemptive Relief under the Investment Company Act.

To the extent that any of the requirements under Rule 6c-11 or the Multi-Class Fund Exemptive Relief under the Investment Company Act are not being met, the Exchange may halt trading in Class ETF Shares as provided in proposed Rule 5703(d)(2)(B). Further, the Exchange may also suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable. As discussed above, the Exchange also notes that Rule 5701(d) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with proposed Rule 5703, which would include any failure of the issuer to comply with Rule 6c-11 or the Multi-Class Fund Exemptive Relief under the Investment Company Act.

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Index Fund Shares, Managed Fund Shares and ETF Shares, among other product types, to monitor trading in Class ETF Shares. The Exchange or FINRA, on behalf of the Exchange, will

communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a Multi-Class Fund for the Class ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in Class ETF Shares, to the extent that the Multi-Class Fund for the Class ETF Shares holds municipal securities. Finally, as noted above, the issuer of Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5615(a)(6).³⁶

The Exchange believes that permitting Class ETF Shares to list on the Exchange will help perfect the mechanism of a free and open market and, in general, will protect investors and the public interest in that it will permit the listing and trading of Class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors. Specifically, the Exchange believes that the relief proposed in the Applications and the expected benefits of the Class ETF Shares described above would be to the benefit of investors.

The Exchange also believes that proposed Rule 5703 to explicitly provide the initial and continued listing standards applicable to Class ETF Shares, including the suspension of trading or removal standards, are designed to promote transparency and clarity in the Exchange's Rules.

³⁶ See supra notes 21 and 28.

The Exchange also believes that the corresponding changes to add Class ETF Shares in the Exchange's corporate governance requirements under Rule 5615(a)(6)(B), the Index Fund Shares provisions in Rule 5705(b), the Managed Fund Shares provisions in Rule 5735, and the trading halt provisions in Equity 4, Rule 4120, each as discussed in detail above, will add clarity to the Exchange's Rulebook. ETF Shares, Managed Fund Shares, and Index Fund Shares are similarly included in these provisions. Therefore, the Exchange believes these are non-substantive changes meant only to subject Class ETF Shares to the same exemptions and provisions currently applicable to ETF Shares, among other product types, so that the treatment of these open-end management investment companies is consistent under the Exchange's rules.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, by permitting the listing and trading of Class ETF Shares under exemptive relief from the Investment Company Act and the rules and regulations thereunder, would introduce additional competition among various ETF products to the benefit of investors.

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

No written comments were either solicited or received.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁷ In particular, the Commission finds that the proposed rule

³⁷ In approving this proposed rule change, as modified by Amendment No. 2, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,³⁸ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.³⁹ In addition, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(1) of the Act,⁴⁰ which requires, among other things, that the Exchange is so organized and has the capacity to be able to enforce compliance by its members and persons associated with its members with the rules of the Exchange.

The Exchange proposes to adopt new Nasdaq Rule 5703 to permit the generic listing and trading, or trading pursuant to unlisted trading privileges, of Class ETF Shares in connection with the Multi-Class Fund Exemptive Relief granted by order under the Investment Company Act.⁴¹ Under the proposal and pursuant to the Multi-Class Fund Exemptive Relief, a Multi-Class Fund is permitted to issue a class of shares that are exchange-traded (i.e., ETF Class) and one or more classes of shares that are not exchange-traded. In accordance with the Multi-Class Fund Exemptive Relief, the ETF Class operates as an ETF in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in the Multi-Class Fund Exemptive Relief. The Exchange also proposes to make conforming changes to

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ See 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁴⁰ 15 U.S.C. 78f(b)(1).

⁴¹ See supra note 19 and accompanying text.

Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), Nasdaq Rule 5705(b) (Index Fund Shares), Nasdaq Rule 5735 (Managed Fund Shares), and Equity 4, Nasdaq Rule 4120 in order to accommodate the proposed listing of Class ETF Shares.

A. Consistency with Section 6(b)(5) of the Act

(1) Proposed Nasdaq Rule 5703

Proposed Nasdaq Rule 5703 is reasonably designed to help prevent fraudulent and manipulative acts and practices. Proposed Nasdaq Rule 5703 is based on Nasdaq Rule 5704, which governs the generic listing and trading of ETF Shares on the Exchange.⁴² Under current Nasdaq Rule 5704, ETF Shares, which must be eligible to operate in reliance on Rule 6c-11 under the Investment Company Act and must satisfy the requirements of Rule 6c-11 under the Investment Company Act on an initial and continued listing basis, are similar to Class ETF Shares because, under the proposal, the ETF Class also is required to operate as an ETF and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act (except as noted in the Multi-Class Fund Exemptive Relief).⁴³

As stated in the ETF Shares Approval Order, a central qualification for listing under the proposed rule is ongoing compliance with Rule 6c-11 under the Investment Company Act, which requires, among other things, ETFs to prominently disclose the portfolio holdings that will form the basis for each calculation of net asset value per share.⁴⁴ Because initial and ongoing compliance with Rule 6c-11 of the Investment Company Act is a condition for listing and trading Class ETF Shares on the Exchange,⁴⁵ proposed Nasdaq Rule 5703 would permit the Exchange to

⁴² See Nasdaq Rule 5704. See also *supra* note 17 and accompanying text; Securities Exchange Act Release No. 88561 (April 3, 2020), 85 FR 19984 (Apr. 9, 2020) (SR-NASDAQ-2019-090) (“ETF Shares Approval Order”).

⁴³ The Exchange represents that the proposed Class ETF Shares generic listing rules apply only to the class of shares (ETF Class) that are exchange-traded.

⁴⁴ See ETF Shares Approval Order, *supra* note 42, 85 FR at 19992. See also ETF Rule Adopting Release, *supra* note 16, 84 FR at 57180-81.

⁴⁵ See proposed Nasdaq Rule 5703(d) (“The Exchange may approve Class ETF Shares of a Multi-Class Fund for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided that . . . the ETF Class is in compliance with the conditions and

list and trade shares of an investment company with a fully transparent portfolio,⁴⁶ and as the Commission previously stated for ETF Shares,⁴⁷ portfolio transparency should equally help prevent manipulation of the price of Class ETF Shares.⁴⁸ Additionally, proposed Nasdaq Rule 5703 includes requirements relating to fire walls and procedures to prevent the use and dissemination of material, non-public information regarding the applicable Multi-Class Fund index and portfolio,⁴⁹ all such requirements of which are substantively identical to those applicable to ETF Shares under Nasdaq Rule 5704 and are designed to prevent fraudulent and manipulative acts and practices.⁵⁰ Certain of these requirements relating to such fire walls and

requirements of Rule 6c-11 under the Investment Company Act of 1940, except as noted in such Multi-Class Fund Exemptive Relief”) and Nasdaq Rule 5703(d)(2)(A) (“The Exchange will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, Class ETF Shares . . . if the Exchange becomes aware that, with respect to the Class ETF Shares . . . the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act of 1940, except as noted in such Multi-Class Fund Exemptive Relief”).

⁴⁶ The Commission stated that, with respect to ETF portfolio transparency, the disclosures are designed to promote an effective arbitrage mechanism and inform investors about the risks of deviation between market price and net asset value when deciding whether to invest in ETFs generally or in a particular ETF. See ETF Rule Adopting Release, supra note 16, 84 FR at 57166.

⁴⁷ See ETF Shares Approval Order, supra note 42, 85 FR at 19992 (concluding that because initial and ongoing compliance with Rule 6c-11 of the Investment Company Act is a condition for listing and trading on the Exchange, the proposed rule would permit the listing and trading of shares of an investment company with a fully transparent portfolio, and the Commission believes that portfolio transparency should help prevent manipulation of the price of ETF Shares).

⁴⁸ See ETF Rule Adopting Release, supra note 16, 84 FR at 57169 (concluding that portfolio transparency combined with existing requirements should be sufficient to protect against certain abuses).

⁴⁹ For example, proposed Nasdaq Rule 5703(d)(1)(B) provides that if an index underlying a Multi-Class Fund is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser 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 adviser. Proposed Nasdaq Rule 5703(d)(1)(B) further states that if the investment adviser to an actively managed Multi-Class Fund 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 Multi-Class Fund’s portfolio. Proposed Nasdaq Rule 5703(d)(1)(C) requires that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a Multi-Class Fund, 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. For actively managed Multi-Class Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable portfolio. See generally proposed Nasdaq Rule 5703(d)(1)(C). Compare proposed Nasdaq Rule 5703(d) (encompassing the initial and continued listing requirements for Class ETF Shares) with Nasdaq Rule 5704(b) (encompassing the initial and continued listing requirements for ETF Shares).

⁵⁰ In adopting Rule 6c-11 under the Investment Company Act, the Commission stated that the safeguards in the existing regulatory regime adequately address “special concerns that self-indexed ETFs present, including the potential ability of an affiliated index provider to manipulate an underlying index to the

procedures apply in addition to what is already required under the Act and the Investment Company Act and respective rules and regulations thereunder, and such requirements collectively provide additional protections against the potential misuse of material, non-public information.⁵¹ The Commission concludes that the proposed requirements relating to such fire walls and procedures, combined with Multi-Class Fund portfolio transparency with respect to the ETF Class and the existing requirements under the Act and Investment Company Act, should help to protect against fraudulent and manipulative acts and practices under Section 6(b)(5) of the Act.⁵²

Proposed Nasdaq Rule 5703(b)(2) requires that the Exchange implement and maintain written surveillance procedures for Class ETF Shares. The Exchange represents that it will utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to ETF Shares, among other product types, to monitor trading in Class ETF Shares, and further represents that its surveillance procedures are adequate to (a) properly monitor the trading of the Class ETF Shares during all trading sessions and (b) deter and detect violations of Exchange rules and the applicable federal securities laws. The Exchange also represents that the Exchange, or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive

benefit or detriment of a self-indexed ETF.” See ETF Rule Adopting Release, *supra* note 16, 84 FR at 57168. See also ETF Shares Approval Order, *supra* note 42, 85 FR at 19992 (concluding that the requirements of Nasdaq Rule 5704, which includes provisions relating to fire walls and procedures to prevent the use and dissemination of material, non-public information regarding the applicable ETF index and portfolio for ETF Shares, are designed to prevent fraudulent and manipulative acts and practices).

⁵¹ See ETF Shares Approval Order, *supra* note 42, 85 FR at 19992 (stating that the requirements for ETF Shares relating to fire walls and procedures, which are substantively identical to Nasdaq’s rules governing the listing and trading of index-based and actively managed ETFs, apply in addition to what is already required under the Act and the Investment Company Act and respective rules and regulations thereunder, and that such requirements collectively provide additional protections against the potential misuse of material, non-public information).

⁵² See *id.* (“Therefore, the Commission concludes that the proposed requirements relating to such fire walls and procedures, combined with ETF portfolio transparency and the existing requirements under the Act and [Investment Company Act], should help to protect against fraudulent and manipulative acts and practices under Section 6(b)(5) of the Act.”).

surveillance sharing agreement. The Exchange also may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a Multi-Class Fund for the Class ETF Shares reported to TRACE. FINRA also can access data obtained from the EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in Class ETF Shares, to the extent that the Multi-Class Fund for the Class ETF Shares holds municipal securities. The Exchange states that Nasdaq Rule 5701(d) requires any issuer to provide the Exchange with prompt notification after it becomes aware that (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or otherwise no longer complies with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class is no longer compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, or (iii) the ETF Class or the Multi-Class Fund no longer satisfies the requirements of Nasdaq Rule 5703, as applicable, on an initial and continuing basis.⁵³ The Exchange further states that it will obtain a representation from the issuer of Class ETF Shares stating that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

Consistent with the requirement of Section 6(b)(5) of the Act⁵⁴ that the Exchange's rules be designed to remove impediments to and perfect the mechanism of a free and open market, the

⁵³ See supra note 27 and accompanying text. See also Nasdaq Rule 5701(d) (requiring that “[a] Company with securities listed under this Rule 5700 Series must provide Nasdaq with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5700 Series.”).

⁵⁴ 15 U.S.C. 78f(b)(5).

Exchange's rules regarding trading halts will help to ensure the maintenance of fair and orderly markets for Class ETF Shares. Specifically, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Class ETF Shares. The Exchange states that trading in Class ETF Shares may be halted if the circuit breaker parameters in Nasdaq Rule 4121 have been reached, because of other market conditions, or for reasons that, in the view of the Exchange, make trading in the Class ETF Shares inadvisable. According to the Exchange, the reasons to halt trading may include: (1) the extent to which certain information about the Class ETF Shares that is required to be disclosed pursuant to Rule 6c-11 under the Investment Company Act is not being made available;⁵⁵ (2) if an interruption to the dissemination to the value of the index or reference asset on which the Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. As the Exchange further represents in the proposal, if the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to the Class ETF Shares is not disseminated to all market participants at the same time, it will halt trading in the Class ETF Shares until such time as the net asset value or the daily portfolio disclosure is available to all market participants.⁵⁶ The Exchange represents that it may suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.⁵⁷

⁵⁵ The Exchange will obtain a representation from the issuer of Class ETF Shares that the net asset value per share will be calculated daily and made available to all market participants at the same time, and the requirements pertaining to the Multi-Class Fund Exemptive Relief and Rule 6c-11 under the Investment Company Act in proposed Nasdaq Rule 5703 will be satisfied. See supra note 29 and accompanying text.

⁵⁶ See id.

⁵⁷ See supra note 26 and accompanying text.

The Commission also finds that, consistent with Section 11A(a)(1)(C)(iii) of the Act,⁵⁸ the proposed rule change, as modified by Amendment No. 2, is reasonably designed to promote fair disclosure of information that may be necessary to price the Class ETF Shares appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Class ETF Shares, and to ensure fair and orderly markets for Class ETF Shares.

(2) Other Related Proposed Rule Changes

The Exchange also proposes changes to accommodate Class ETF Shares in other Exchange rules. The Exchange proposes to amend: (1) the definition of “Derivative Securities” in Nasdaq Rule 5615(a)(6)(B) to add Class ETF Shares so that Nasdaq Rule 5615(a)(6)(A) and its exemptions from certain corporate governance requirements are applicable to Class ETF Shares;⁵⁹ and (2) the definition of “Derivative Securities Products” in Nasdaq Rule 5705(b)(3)(A)(i)a. to add Class ETF Shares so that the exclusions applicable to Derivative Securities Products in Nasdaq Rule 5705(b)(3)(A) will also apply to Class ETF Shares. In addition, the Exchange proposes to amend the definition of “Exchange Traded Derivative Securities” in Nasdaq Rule 5735(c)(6) to add Class ETF Shares so the exclusions applicable to Exchange Traded Derivative Securities in Nasdaq Rule 5735(b)(1)(A) will also apply to Class ETF Shares. The Exchange also proposes to amend Equity 4, Nasdaq Rule 4120 to include Class ETF Shares in the Exchange’s trading halt provisions in Nasdaq Rules 4120(a)(9) and 4120(b)(4)(A)⁶⁰ to ensure the applicability of trading halts to the trading of Class ETF Shares listed on Nasdaq, and those traded on Nasdaq pursuant to unlisted trading privileges.⁶¹ These proposed changes incorporate proposed Nasdaq Rule 5703 into the existing framework of

⁵⁸ See supra note 39 and accompanying text.

⁵⁹ See supra note 21 and accompanying text.

⁶⁰ See supra note 22 and accompanying text.

⁶¹ The Exchange states that these proposed changes would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange. See supra note 28 and accompanying text.

Nasdaq's rules, and therefore the Commission finds that such changes are consistent with Section 6(b)(5) of the Act.

B. Consistency with Section 6(b)(1) of the Act

The Commission also finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(1) of the Act,⁶² which requires, among other things, that the Exchange is so organized and has the capacity to be able to enforce compliance by its members and persons associated with its members with the rules of the Exchange. The Exchange represents that, consistent with Section 6(b)(1) of the Act,⁶³ it has the capacity to enforce proposed Nasdaq Rule 5703 and that it will perform ongoing surveillance of Class ETF Shares listed on the Exchange to ensure that: (1) the Multi-Class Fund is and continues to be eligible to operate an ETF Class as an ETF pursuant to, and is otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief; (2) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (3) the ETF Class and the Multi-Class Fund each satisfies the requirements of proposed Nasdaq Rule 5703, as applicable, on an initial and continued listing basis. In addition, the Exchange represents that it will review the website of the Class ETF Shares to ensure that the requirements of Rule 6c-11 under the Investment Company Act are being met, and will obtain a representation from the issuer of the Class ETF Shares that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied, and that the issuer will notify the Exchange of any failure to do so. The Exchange also represents that it will comply with all the

⁶² 15 U.S.C. 78f(b)(1).

⁶³ Id.

requirements of Rule 19b-4(e) to specifically note that such Class ETF Shares are being listed on the Exchange pursuant to Nasdaq Rule 5703.⁶⁴

The Exchange states that it will employ numerous intraday alerts to notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. The Exchange also states that Nasdaq Rule 5701(d) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with proposed Nasdaq Rule 5703,⁶⁵ which would include any failure of the issuer to comply with Rule 6c-11 under the Investment Company Act or with the terms and conditions of the Multi-Class Fund Exemptive Relief.⁶⁶ Further, proposed Nasdaq Rule 5703(d)(2)(A)(iii) requires that the Exchange commence delisting proceedings for Class ETF Shares if, following the initial 12-month period after commencement of trading on the Exchange, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days.⁶⁷ Finally, the Exchange deems Class ETF Shares to be equity securities and represents, therefore, that such Class ETF Shares would be subject to the full panoply of Exchange rules and procedures that currently govern the

⁶⁴ Rule 19b-4(e) requires an SRO seeking to rely on Rule 19b-4(e) to post on its publicly available internet website within five business days after commencement of trading a new derivative securities product the following information relating to the new derivative securities product, using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website: (A) type of issuer; (B) class; (C) name of underlying instrument; (D) if the underlying instrument is an index, whether it is broad-based or narrow-based; (E) ticker symbol(s); (F) market(s) upon which securities composing the underlying instrument trade; (G) settlement methodology; and (H) position limits (if applicable). See 17 CFR 240.19b-4(e)(2)(ii). See also supra note 20 and accompanying text.

⁶⁵ See Nasdaq Rule 5701(d) (requiring a company with securities listed under the Nasdaq Rule 5700 Series to provide the Exchange with prompt notification after the company becomes aware of any non-compliance by the company with the requirements of the Nasdaq Rule 5700 Series). See supra note 53 and accompanying text.

⁶⁶ The Exchange further represents that failure by an issuer to notify the Exchange of non-compliance pursuant to Nasdaq Rule 5701(d) would itself be considered non-compliance with the requirements of Nasdaq Rule 5703 and would subject the Class ETF Shares to potential trading halts and the delisting process under the Nasdaq Rule 5800 Series. See supra note 27 and accompanying text.

⁶⁷ See proposed Nasdaq Rule 5703(d)(2)(A)(iii).

trading of equity securities on the Exchange.⁶⁸ The Exchange states that Class ETF Shares will be subject to rules governing Exchange member disclosure obligations in connection with equities trading, and that Rule 6c-11 under the Investment Company Act does not change the applicability of these Exchange rules with respect to these securities.⁶⁹

This approval order is based on all of the Exchange's representations and descriptions in the proposed rule change, including those set forth above and in Amendment No. 2, which the Commission has carefully evaluated as discussed above. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Sections 6(b)(1) and 6(b)(5) of the Act⁷⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>);
- or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2025-037 on the subject line.

⁶⁸ See *supra* note 30 and accompanying text.

⁶⁹ With respect to trading in Class ETF Shares, the Exchange further represents that all of the Nasdaq member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with the Exchange rules and federal securities laws, and Nasdaq will continue to monitor its members for compliance with such requirements, which are not changing as a result of the Multi-Class Fund Exemptive Relief order issued under the Investment Company Act. See *supra* note 30 and accompanying text.

⁷⁰ 15 U.S.C. 78f(b)(1) and 15 U.S.C. 78f(b)(5), respectively.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2025-037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2025-037 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of Amendment No. 2 in the Federal Register. Amendment No. 2 reflects the Commission's grant of the Multi-Class Fund Exemptive Relief and provides additional clarity with respect to the application of the Exchange's proposed listing standards and the requirements of the Multi-Class Fund Exemptive Relief. Amendment No. 2 also makes certain additional corrections that are minor and technical in nature. In addition, the proposal, as modified by Amendment No. 1, has been subject to public comment and no comments have been received.

The Commission finds that Amendment No. 2 to the proposed rule change raises no novel regulatory issues that have not previously been subject to comment, and is reasonably designed, among other things, to prevent fraudulent and manipulative acts and practices, to

remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also finds that Amendment No. 2 to the proposed rule change is consistent with Section 11A(a)(1)(C)(iii) of the Act.⁷¹ Accordingly, pursuant to Section 19(b)(2) of the Act,⁷² the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷³ that the proposed rule change (SR-NASDAQ-2025-037), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁴

Sherry R. Haywood,

Assistant Secretary.

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⁷¹ See supra note 39 and accompanying text.

⁷² 15 U.S.C. 78s(b)(2).

⁷³ Id.

⁷⁴ 17 CFR 200.30-3(a)(12).