

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–103539; File No. SR–NASDAQ–2025–052]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend the Hashdex Nasdaq Crypto Index US ETF To Allow for In-Kind Transfers Under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)

July 24, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on July 11, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Hashdex Nasdaq Crypto Index US ETF (the “Trust”), shares (“Shares”) of which have been approved by the Commission to list and trade on the Exchange pursuant to Nasdaq Rule 5711(d), to allow for “in-kind” transfers of the Trust’s bitcoin and ether.

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

#### 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 Commission approved the listing and trading of the Shares of the Trust under Nasdaq Rule 5711(d)<sup>3</sup> on December 19, 2024.<sup>4</sup> The Trust is managed and controlled by Hashdex Asset Management Ltd. (“Sponsor”) and administered by U.S. Bancorp Fund Services, LLC (the “Administrator”). U.S. Bancorp Fund Services, LLC is the transfer agent for the Trust (“Transfer Agent”). U.S. Bank, N.A. holds the Trust’s cash and/or cash equivalents<sup>5</sup> (“Cash Custodian”). Coinbase Custody Trust Company, LLC and BitGo Trust Company, Inc. are the custodians of the Trust’s digital assets (“Crypto Custodians”, and together with the Cash Custodian, the “Custodians”).

In the Hashdex Original Filing, the Exchange represented that the Trust would only allow for cash creations and redemptions.<sup>6</sup> The Exchange now proposes to amend the Hashdex Original Filing to allow for in-kind transfers of the Trust’s bitcoin and ether. The proposed in-kind transfer process will be an alternative to the Trust’s current cash creation and redemption process. Except for the changes described below, all other representations in the Hashdex Original Filing remain unchanged and will continue to constitute continued listing requirements. In addition, the Trust will continue to comply with the terms of

<sup>3</sup> Nasdaq Rule 5711(d) governs the listing and trading of Commodity-Based Trust Shares, which means a security (1) that is issued by a trust that holds (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, cash; (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/or cash; 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 and/or cash. See Nasdaq Rule 5711(d)(iv)(A).

<sup>4</sup> See Securities Exchange Act Release No. 101998 (December 19, 2024), 89 FR 106707 (December 30, 2024) (SR–NASDAQ–2024–028; SR–CboeBZX–2024–091). See also Securities Exchange Act Release Nos. 101218 (Sept. 30, 2024), 89 FR 80970 (Oct. 4, 2024) (SR–NASDAQ–2024–028) (“Amendment No. 1”); and 102309 (January 29, 2025), 90 FR 8961 (February 4, 2025) (SR–NASDAQ–2025–006). SR–NASDAQ–2025–006 updated certain representations made in Amendment No. 1 relating to the service providers and the basket size of the Hashdex Nasdaq Crypto Index US ETF. Amendment No. 1, as amended by SR–NASDAQ–2025–006, will hereinafter be referred to as the “Hashdex Original Filing.”

<sup>5</sup> “Cash equivalents” are limited to short-term treasury bills (90 days or less to maturity), money market funds, and demand deposit accounts.

<sup>6</sup> See Hashdex Original Filing, at 80973–80974.

the Hashdex Original Filing and the requirements in Rule 5711(d).

Specifically, as noted in the Hashdex Original Filing, the Sponsor executed an agreement so that Coinbase Inc. could serve as the Trust’s “Prime Execution Agent.” In this capacity, the Prime Execution Agent will facilitate the transfer of bitcoin and ether between the Trust and an Authorized Participant,<sup>7</sup> its designated agent or client as part of in-kind creations and redemptions.<sup>8</sup>

Further, as noted in the Hashdex Original Filing, the Trust issues and redeems “Baskets”<sup>9</sup> on a continuous basis. In relation to in-kind creations and redemptions, Baskets will be issued or redeemed in exchange for bitcoin and ether, and no Shares will be issued unless the Trust confirms receipt of the corresponding amount of bitcoin and ether.

In connection with Share creations and redemptions, Authorized Participants would deliver either cash or, in the case of in-kind transactions, bitcoin and ether to the Trust, and would receive either cash or bitcoin and ether, as applicable.

For the creation of a Basket, the Authorized Participant is required to submit the order by 2:00 p.m. ET, or the close of regular trading on the Exchange, whichever is earlier (the “Order Cutoff Time”).

Specifically, in connection with in-kind creations and redemptions, the Authorized Participants will submit orders to create Baskets in exchange for bitcoin and ether. On settlement date for an in-kind creation, the Trust delivers Shares to the Authorized Participant in exchange for bitcoin and ether received from the Authorized Participant, or its designated agent or client. The Authorized Participant (or its designated agent or client) will deposit such bitcoin and ether into the Trust’s account.

In the event the Authorized Participant, or its designated agent or client, has not deposited the bitcoin and ether to the Trust’s account by the applicable time on the settlement date of the in-kind creation order, the

<sup>7</sup> “Authorized Participants” are registered broker-dealers that are Depository Trust Company (“DTC”) participants that enter into an authorized participant agreement with the Sponsor.

<sup>8</sup> In certain instances, an Authorized Participant may request the creation or redemption of shares on an agency basis on behalf of its client, in which case the client will deliver or receive the required bitcoin and ether directly to or from the Trust via the Prime Execution Agent. Similarly, when acting on a principal basis, an Authorized Participant may designate an agent to manage the transfer of bitcoin and ether to or from the Trust in connection with creation or redemption requests.

<sup>9</sup> Baskets will be offered continuously at NAV per Share for 10,000 Shares.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

Authorized Participant may elect to (1) cancel the in-kind creation order, (2) delay settlement of the order to enable delivery of the bitcoin and ether at a later date, or (3) accept that the Trust will execute a transaction required for the creation and the Authorized Participant will deliver the U.S. dollars required for this purchase. In the case of (3), the Authorized Participant is responsible for the dollar cost of the difference between the Creation NAV Price<sup>10</sup> and the Creation Execution Price<sup>11</sup> if the Creation Execution Price is higher. In case the Creation Execution Price is lower than the Creation NAV Price, the Authorized Participant shall get to keep the dollar impact of any such difference.

In the event the Authorized Participant has not deposited the Shares to the Trust, by the applicable time on the settlement date of the in-kind redemption order, the Authorized Participant may elect to (1) cancel the in-kind creation order, (2) delay settlement of the order to enable delivery of the Shares at a later date, or (3) accept that the Trust will cancel the in-kind creation order.

On the settlement date for an in-kind redemption, the Trust transfers bitcoin and ether to the Authorized Participant (or its designated agent or client) against receipt of the corresponding Shares.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> 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 permitting in-kind transfers with respect to the Trust's creation and redemption process promotes just and equitable principles of trade and helps remove impediments to and perfect the mechanism of a free and open market and a national market system. As discussed above, the proposed changes would permit the Trust to utilize an in-kind creation and redemption process in addition to the cash creation and redemption process. This added ability would make the

Trust (and the market more generally) operate more efficiently because Authorized Participants, their designated agents or clients, would be able to source bitcoin and ether rather than to provide cash to the Trust and/or receive bitcoin and ether from the Trust. This means that the Authorized Participant, its designated agent or client, would be responsible for buying and selling the bitcoin and ether rather than the Trust itself, which would potentially lessen the impact on the market of the Trust on both sides of the transaction by allowing the Authorized Participant to decide how and where to source the underlying bitcoin and ether for creations and deciding how, where, and whether to sell the underlying bitcoin and ether for redemptions. This could lead to improvements in the creation and redemption process for both Authorized Participants and the Trust, and could potentially increase efficiency, and ultimately benefit the end investors in the Trust.

Except for the changes described above, all other representations in the Hashdex Original Filing remain unchanged and will continue to constitute continued listing requirements. In addition, the Trust will continue to comply with the terms of the Hashdex Original Filing and the requirements in Rule 5711(d).

### 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. As discussed above, the proposed amendments are intended to reflect changes to the Trust's creation and redemption process, specifically to allow for in-kind transfers. The Exchange believes that the proposed rule change would increase operational efficiencies for the Trust (and the market more generally). The Exchange believes these changes will not impose any burden on competition.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may

designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

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

### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2025-052 on the subject line.

### Paper Comments

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

All submissions should refer to file number SR-NASDAQ-2025-052. 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-2025-052 and should be submitted on or before August 19, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2025-14234 Filed 7-28-25; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>10</sup> "Creation NAV Price" will mean the bitcoin and ether price utilized in calculating the NAV per Share on the date of the Order Cutoff Time for a creation order ("Creation Order Date").

<sup>11</sup> "Creation Execution Price" will mean the price at which the Trust acquires the bitcoin and ether.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 17 CFR 200.30-3(a)(12).