printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2020–008 and should be submitted on or before March 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03417 Filed 2–19–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88207; File No. SR–NASDAQ–2019–090]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Nasdaq Rule 5704 and Other Related Amendments

February 13, 2020.

On November 8, 2019, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC), 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, among other things, adopt new Nasdaq Rule 5704 to list and trade Exchange Traded Fund Shares. The proposed rule change was published for comment in the **Federal Register** on November 22, 2019.[3]

On December 17, 2019, 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 February 6, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.[6] The Commission has received no comment letters on 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. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Exchange's Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to adopt new Nasdaq Rule 5704 to list and trade shares of securities issued by an exchange-traded fund, as defined herein, as well as amendments to Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), and to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b). This Amendment No. 1 replaces and supersedes the original filing in its entirety.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes Nasdaq Rule 5704 to establish generic listing standards that permit the listing and trading of shares (''Exchange Traded Fund Shares'') of exchange-traded funds (''ETFs'' as defined below) that meet the criteria established by the Commission in its adoption of Rule 6c–11 [8] (''Rule 6c–11'') under the Investment Company Act of 1940, as amended (1940 Act''), to operate without obtaining an exemptive order from the SEC under the 1940 Act.[9] This will help to accomplish the SEC's goal in adopting Rule 6c–11 to allow such ETFs to come directly to market without the cost and delay of obtaining exemptive relief while still protecting the interests of investors and other market participants. Rule 6c–11 will provide exemptions applicable to both index-based and transparent actively managed ETFs. Rule 6c–11 will enhance the regulatory framework through streamlining existing procedures and reducing the costs and time frames associated with bringing ETFs to market. This, in turn, will also serve to enhance competition among ETF issuers and ultimately reduce investor costs.[10]

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87559 (Nov. 18, 2019), 84 FR 64574.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87776, 84 FR 70610 (Dec. 23, 2019). The Commission designated February 20, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-nasdaq-2019-090/srnasdaq2019090-6786146-208249.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Specifically, Rule 6c–11 applies to open-end funds that (i) issue and redeem creation units to and from authorized participants in exchange for a basket of securities and other assets (and any cash balancing amount), and (ii) whose shares are listed on a national securities exchange and trade at market-determined prices. Rule 6c–11 does not apply to leveraged, inverse, non-transparent, share classes, or exchange-traded funds structured as unit investment trusts.

[9] *See* Release No. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (''Adopting Release'').

[10] The SEC said in the Adopting Release that Rule 6c–11 ''will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.'' *See* Adopting Release at 57163. The SEC also said that in reference to the impact of Rule 6c–11 that: ''We believe rule 6c–11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.'' *See* Adopting Release at 57204.

Nasdaq believes that the proposed generic listing rules for Exchange Traded Fund Shares, described below, will facilitate efficient procedures for ETFs that are permitted to operate in reliance on Rule 6c–11. The Exchange also believes that proposed Nasdaq Rule 5704 is consistent with, and will further, the Commission's goals in adopting Rule 6c–11. Exchange Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 will be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act. This will significantly reduce the time frame and costs associated with bringing Exchange Traded Fund Shares to market, which, in turn, will promote competition among issuers of Exchange Traded Fund Shares, to the benefit of investors.

Nasdaq will notify the Commission through the filing of a Form 19b–4(e) when an ETF lists on Nasdaq pursuant to proposed Nasdaq Rule 5704. The Form 19b–4(e) will identify the Nasdaq rule under which the ETF is being filed. The Exchange will retain its right to file a Form 19b–4 to receive SEC approval under Nasdaq Rule 5705(b) and Nasdaq Rule 5735, respectively, for the listing and trading of Index Fund Shares or Managed Fund Shares. Additionally, Nasdaq will also file a Form 19b–4(e) for ETFs that decide to switch from operating under Nasdaq rules other than proposed Nasdaq Rule 5704 to operating in compliance with Rule 6c–11 and in conformity with proposed Nasdaq Rule 5704.

The Exchange also proposes to amend Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), and to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b).

Proposed Nasdaq Rule 5704 will enable ETFs, whether index-based or actively managed, to qualify for listing and trading on the Exchange both on an initial and continued basis by meeting and maintaining compliance with the criteria set forth in Rule 6c–11.[11] The specific provisions of proposed Nasdaq Rule 5704 are presented below, as well as amendments to Nasdaq Rule 4120 (Limit Up-Limit Down Plan and Trading Halts) and Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), which would be necessitated by adoption of the proposed rule. Additionally, the proposed rule change to discontinue the quarterly reports currently required with respect to Managed Fund Shares under Nasdaq Rule 5735(b) is also discussed below.

Proposed Nasdaq Rule 5704

Proposed Definitions.

Proposed Nasdaq Rule 5704(a)(1)(A) defines the term ''Exchange Traded Fund'' (''ETF'') as having the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11.[12] In the case of an ETF that is not currently listed on a national securities exchange, the portion of the definition found in Rule 6c–11 requiring such listing will become applicable if the ETF is listed on a national securities exchange.

Proposed Nasdaq Rule 5704(a)(1)(B) defines the term ''Exchange Traded Fund Share'' as having the same meaning as the term is defined as having in Rule 6c–11.[13]

Proposed Nasdaq Rule 5704(a)(1)(C) defines the term ''Reporting Authority'' in respect of a particular series of Exchange Traded Fund Shares to mean Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange Traded Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Exchange Traded Fund Shares. The definition also notes that it does not imply that an institution or reporting service that is the source for calculating and reporting information relating to Exchange Traded Fund Shares must be designated by Nasdaq; the term ''Reporting Authority'' does not refer to an institution or reporting service not so designated.

Initial and Continued Listing. Proposed Nasdaq Rule 5704(b) states that Nasdaq may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b–4(e) under the Act, provided each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c–11 and satisfies the requirements of Rule 5704 on an initial and continued listing basis.[14]

Proposed Nasdaq Rule 5704(b)(1) says that each series of Exchange Traded Fund Shares must also satisfy the follow criteria on an initial and continued listing (except for paragraph (A) below) basis:

Proposed Nasdaq Rule 5704(b)(1)(A) states that for each series of Exchange Traded Fund Shares, Nasdaq will establish a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

Proposed Nasdaq Rule 5704(b)(1)(B) sets forth the requirements regarding index calculation and dissemination that must be satisfied on both an initial and continued listing basis. Proposed

[11] Rule 6c–11 is now effective so Exchange Traded Fund Shares that are permitted to operate in reliance on Rule 6c–11 will be eligible for listing and trading on Nasdaq under proposed Nasdaq Rule 5704.

[12] Rule 6c–11(a)(1) defines ''exchange-traded fund'' as a registered open-end management company: (i) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. The terms ''authorized participant,'' ''basket'' and ''creation unit'' are defined in Rule 6c–11(a).

[13] Rule 6c–11(a)(1) defines ''exchange-traded fund share'' as a share of stock issued by an exchange-traded fund.

[14] Rule 6c–11(c) sets forth certain conditions applicable to exchange-traded funds, and specifies the information required to be disclosed prominently on the fund's website free of charge, including the following: (i) Before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares, the estimated cash balancing amount (if any) and the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share: (A) Ticker symbol; (B) CUSIP or other identifier; (C) Description of holding; (D) Quantity of each security or other asset held; and (E) Percentage weight of the holding in the portfolio; (ii) The exchange-traded fund's current net asset value per share, market price, and premium or discount, each as of the end of the prior business day; (iii) A table showing the number of days the exchange-traded fund's shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter); (iv) A line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter); (v) The exchange-traded fund's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth (and computed in a manner described in Rule 6c–11(c)(v)(A) through (D)); and (vi) If the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter. Rule 6c–11(c)(4) provides that the exchange-traded fund may not seek, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time.

Nasdaq Rule 5704(b)(1)(B)(i) states that if the investment adviser to an ETF is affiliated with a broker-dealer, such investment adviser will 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 the underlying portfolio. Additionally, personnel who make decisions on the ETF's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable ETF portfolio. Proposed Nasdaq Rule 5704(b)(1)(B)(ii) states that the Reporting Authority that provides the ETF's portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio. Proposed Nasdaq Rule 5704(b)(1)(B)(iii) states that if the index underlying a series of Exchange Traded Fund Shares 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 will be calculated by a third party who is not a broker-dealer or fund adviser. Proposed Nasdaq Rule 5704(b)(1)(B)(iv) states that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

Proposed Nasdaq Rule 5704(b)(1)(C) states that regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Exchange Traded Fund Shares, as specified by Nasdaq. In addition, Nasdaq may designate a series of Exchange Traded Fund Shares for trading during a pre-market session beginning at 4:00 a.m. and/or a post-market session ending at 8:00 p.m.

Proposed Nasdaq Rule 5704(b)(1)(D) states that the minimum price variation for quoting and entry of orders in Exchange Traded Fund Shares is $0.01.

Nasdaq may list and trade a series of Exchange Traded Fund Shares based on one or more foreign or domestic indexes or portfolios. Each series of Exchange Traded Fund Shares based on each particular index or portfolio, or combination thereof, will be designated as a separate series and will be identified by a unique symbol. The components that are included in an index or portfolio on which a series of Exchange Traded Fund Shares is based will be selected by such person, which may be Nasdaq or an agent or wholly-owned subsidiary thereof, as will have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio. Nasdaq will obtain a representation from the ETF that the net asset value per share for each series of Exchange Traded Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

Proposed Nasdaq Rule 5704(b)(2) sets forth the circumstances under which Nasdaq will consider the suspension of trading and removal in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Exchange Traded Fund Shares. These circumstances will include the following: (i) Proposed Nasdaq Rule 5704(b)(2)(A) states that if Nasdaq becomes aware that the series of Exchange Traded Fund Shares is no longer eligible to operate in reliance on Rule 6c–11 or if any of the other requirements set forth in this rule are not continuously maintained; (ii) Proposed Nasdaq Rule 5704(b)(2)(B) states that if, following the initial twelve month period after commencement of trading on Nasdaq of the series of Exchange Traded Fund Shares, there are fewer than 50 beneficial holders; (iii) Proposed Nasdaq Rule 5704(b)(2)(C) states that if Nasdaq files separate proposals under Section 19(b) of the Act, any of the statements or representations regarding (a) the index composition; (b) the description of the portfolio; (c) limitations on portfolio holdings or reference assets; (d) dissemination and availability of the index or intraday indicative values; or (e) the applicability of Nasdaq listing rules specified in such proposals are not continuously maintained as referenced in subsection (h) of this rule; and (iv) Proposed Nasdaq Rule 5704(b)(3)(D) states that if such other event will occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.

An example of such an event as mentioned above in Proposed Nasdaq Rule 5704(b)(3)(D) would include if the value of the index or portfolio of securities on which the series of Exchange Traded Fund Shares is based is no longer calculated or available or an interruption to the dissemination persists past the trading day in which it occurred or the index or portfolio on which the series of Exchange Traded Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 5704(b) for listing either pursuant to Rule 19b–4(e) under the Act (including the filing of a Form 19b–4(e) with the SEC) or by SEC approval of a filing pursuant to Section 19(b) of the Act.

The Exchange will also halt trading if it becomes aware that the net asset value for a series of Exchange Traded Fund Shares is not being disseminated to all market participants at the same time.[15] In addition, as proposed herein, Nasdaq may halt trading in Exchange Traded Fund Shares if trading in the underlying securities compromising the index or portfolio applicable to such series of Exchange Traded Fund Shares has been halted in the primary market(s), or if trading has ceased in securities underlying the index or portfolio, or in the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.[16]

Proposed Nasdaq Rule 5704(c) states that Nasdaq will implement and maintain written surveillance procedures for Exchange Traded Fund Shares. The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Exchange Traded Fund Shares listed on the Exchange in order to ensure compliance with Rule 6c–11 and the 1940 Act on an ongoing basis. Nasdaq believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, Nasdaq's ability to halt trading under the proposed Rule Nasdaq Rule 4120(a)(9), Nasdaq Rule 4120(a)(10), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Nasdaq Rule 5704(b)(2)(B). As previously stated, Nasdaq is proposing to amend Nasdaq Rule 4120(b)(4)(A) to clarify that Exchange Traded Fund Shares are subject to Nasdaq's halt authority.

Nasdaq also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of

[15] *See* Nasdaq Rule 4120(a)(10).

[16] *See* Proposed Nasdaq Rule 4120(a)(9).

Exchange Traded Fund Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional disclosure obligations.[17] The Exchange believes that the combination of these factors will act to keep Exchange Traded Fund Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Exchange Traded Fund Shares on Nasdaq.

The Exchange will monitor for compliance with Rule 6c–11 to ensure that the continued listing standards are being met. The Exchange will also periodically review the website of series of Exchange Traded Fund Shares to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of Nasdaq-listed Exchange Traded Fund Shares to ensure that certain investment requirements and limitations under the 1940 Act are being met. Nasdaq also will employ intraday alerts that will notify Exchange personnel of unusual trading activity throughout the day that could be indicative of unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. The Exchange also notes that Nasdaq Rule 5701(d) would require an issuer of Exchange Traded Fund Shares to notify Nasdaq with prompt notification after the issuer becomes aware of any noncompliance with the requirements of the Nasdaq Rule 5700 Series, which would encompass any failure of the issuer to comply with Rule 6c–11 or the 1940 Act.

Additionally, Nasdaq represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to Nasdaq-listed securities, which are currently applicable to Index Fund Shares and Exchange Traded Fund Shares, among other product types, to monitor trading in Exchange Traded Fund Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in Exchange Traded Fund Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which Nasdaq has in place a comprehensive surveillance sharing agreement (''CSSA'').

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 series of Exchange Traded Fund Shares reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board's (''MSRB'') Electronic Municipal Market Access (''EMMA'') system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange Traded Fund Shares, to the extent that a series of Exchange Traded Fund Shares holds municipal securities. Finally, as noted above, the issuer of a series of Exchange Traded Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Nasdaq Rule 5615(a)(6)(A) and the changes to Nasdaq Rule 5615(a)(6)(B) as proposed herein.

Proposed Nasdaq Rule 5704(d) states that upon termination of an ETF, Nasdaq requires that each series of Exchange Traded Fund Shares issued in connection with such entity be removed from listing.

Proposed Nasdaq Rule 5704(e) states that neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq will have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of a series of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of a series of Exchange Traded Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of a series of Exchange Traded Fund Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

Proposed Nasdaq Rule 5704(f) states that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Nasdaq Rule 5705(b) or Nasdaq Rule 5735(b)(1), or pursuant to an approval of a proposed rule change or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this Rule 5704 if such security is eligible to operate in reliance on Rule 6c–11 under the 1940 Act. At the time of listing of such security under this Rule 5704, the continued listing requirements applicable to such previously-listed securities will be those specified in paragraph (b) of this Rule. Any requirements for listing as specified in Nasdaq Rule 5705(b) or Nasdaq 5735(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change, that differ from the requirements of this Rule 5704 will no longer be applicable to such security.

Amendments to Nasdaq Rule 4120. Limit Up-Limit Down Plan and Trading Halts

The Exchange proposes to amend Nasdaq Rule 4120 to include Exchange Traded Fund Shares in Nasdaq Rule 4120(a)(9) and Nasdaq Rule 4120(a)(10)[18] as these rules apply to trading halts. This will ensure the applicability of trading halts to the trading of Exchange Traded Fund Shares listed on Nasdaq and traded on Nasdaq pursuant to unlisted trading privileges.

Amendments to Nasdaq Rule 5615. Exemptions From Certain Corporate Governance Requirements

The Exchange also proposes to amend the definition of ''Derivative Securities'' in Nasdaq Rule 5615 to incorporate Exchange Traded Fund Shares so Rule 5615 and its exemptions from certain corporate governance requirements are applicable to Exchange Traded Fund Shares. All Nasdaq rules affected by Rule 6c–11 will be conformed so that they comply with Rule 6c–11.

Proposed Discontinuance of Quarterly Reporting Obligation for Managed Fund Shares

On September 23, 2016, the SEC approved Nasdaq Rule 5735(b)(1), adopting generic listing standards for

[17] The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c–11 Release. *See* Adopting Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

[18] The definition of ''Derivative Securities'' found in Nasdaq Rule 4102(b)(4)(A) is referenced in Nasdaq Rule 4120(a)(10) as the applicable definition for that rule.

Managed Fund Shares.[19] In proposing that rule, Nasdaq represented that it would provide the Commission staff with a report each calendar quarter about issues of Managed Fund Shares listed under that rule.[20]

The quarterly reports were initially intended to provide SEC Staff insight into the number and type of funds listed pursuant to Nasdaq Rule 5735(b)(1), as well as highlight any issues regarding the trading of such funds or a funds' compliance with the continued listing standards. Nasdaq believes that since the implementation of this requirement, SEC Staff has received an ample number of reports as to gain sufficient understanding of the products listed pursuant to Nasdaq Rule 5735(b)(1). SEC Staff has now had several years experience monitoring through these reports and has not detected any significant issues involving Managed Fund Shares listed under Nasdaq Rule 5735(b)(1).

Nasdaq also believes such quarterly reports will no longer be necessary because Rule 6c–11 collapses the distinction between Index Fund Shares and Managed Fund Shares, which illustrates that the SEC has reached a sufficient level of comfort with Managed Fund Shares. As a result, the Exchange believes that the quarterly reports no longer serve an ongoing purpose and, therefore, proposes to discontinue such reporting going forward. Rule 6c–11(d) includes specific ongoing reporting requirements for ETFs, such as written agreements between an authorized participant and a fund allowing purchase or redemption of creation units, information regarding the baskets exchanged with authorized participants, and the identity of authorized participants transacting with a fund.[21] This information will be sufficient for the SEC's examination staff to determine compliance with Rule 6c–11 and the applicable federal securities laws.[22]

Nasdaq also believes that for the reasons stated above, as well as that the quarterly reports as currently required are duplicative of the new Rule 6c–11(d) requirements, there is longer a reason to keep this reporting requirement. To avoid unnecessary overlap and potential inconsistency, as well as to avoid unnecessary, duplicative burdens on authorized participants and their firms in providing and maintaining information regarding creation and redemption activity, the Exchange proposes to discontinue the filing of quarterly reports with respect to Managed Fund Shares under Nasdaq Rule 5735(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Exchange Traded Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. The generic listing rules in proposed Nasdaq Rule 5704, as described above, will facilitate efficient procedures for listing ETFs that are permitted to operate in reliance on Rule 6c–11 and are consistent with and will further the SEC's goals in adopting Rule 6c–11. Nasdaq will notify the Commission through the filing of a Form 19b–4(e) when an ETF lists on Nasdaq pursuant to proposed Nasdaq Rule 5704. The Form 19b–4(e) will identify the Nasdaq rule under which the ETF is being filed. The Exchange will retain its right to file a Form 19b–4 to receive SEC approval under Nasdaq Rule 5705(b) and Nasdaq Rule 5735, respectively, for the listing and trading of Index Fund Shares or Managed Fund Shares. Additionally, Nasdaq will also file a Form 19b–4(e) for ETFs that decide to switch from operating under Nasdaq rules other than proposed Nasdaq Rule 5704 to operating in compliance with Rule 6c–11 and in conformity with proposed Nasdaq Rule 5704.

Additionally, by allowing Exchange Traded Fund Shares to be listed and traded on the Exchange without a prior SEC approval order or notice of effectiveness pursuant to Section 19(b) of the Act, proposed Nasdaq Rule 5704 will significantly reduce the time frame and costs associated with bringing Exchange Traded Fund Shares to market, thereby promoting market competition among issuers of these securities, to the benefit of the investors. Also, the proposed change would fulfill the intended objective of Rule 19b–4(e) under the Act by permitting Exchange Traded Fund Shares that satisfy the proposed listing standards to be listed and traded without separate SEC approval.

With respect to both proposed Nasdaq Rule 5704(a)(1)(A), which defines the term ''Exchange Traded Fund'', and proposed Nasdaq Rule 5704(a)(1)(B), which defines the term ''Exchange Traded Fund Share'', the Exchange believes these definitions will increase the clarity to the benefit of investors and the marketplace. Additionally, these terms mirror the definitions as set forth in Rule 6c–11.[25]

With respect to proposed Nasdaq Rule 5704(a)(1)(C), which defines the term ''Reporting Authority'', the Exchange

[19] *See* Exchange Act Release No. 78918 (September 23, 2016), 81 FR 67033 (September 29, 2016) (SR–NASDAQ–2016–104).

[20] *See* Exchange Act Release No. 78616 (August 18, 2016), 81 FR 57968 at 57973 (August 24, 2016) (''the Exchange will provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Rule 5735(b)(1): (1) Trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with Nasdaq Rule 5735'').

[21] Rule 6c–11(d), which sets forth recordkeeping requirements applicable to exchange-traded funds, provides that that the exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place: (1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units; (2) For each basket exchanged with an authorized participant, records setting forth: (i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units; (ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of Rule 6c–11; (iii) Cash balancing amount (if any); and (iv) Identity of authorized participant transacting with the exchange traded fund.

[22] In the Adopting Release, the SEC stated, ''requiring ETFs to maintain records regarding each basket exchanged with authorized participants will provide our examination staff with a basis to understand how baskets are being used by ETFs, particularly with respect to custom baskets. In order to provide our examination staff with detailed information regarding basket composition, however, we have modified rule 6c–11 to require the ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units as part of the basket records, instead of the name and quantities of each position as proposed. We believe that this additional information will better enable our examination staff to evaluate compliance with the rule and other applicable provisions of the federal securities laws.'' *See* Adopting Release at 57195

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Adopting Release at 57178 and at 57234, respectively.

believes that defining the term generally consistent with how it is defined in Nasdaq Rule 5705 [26] and Nasdaq Rule 5735 [27] will increase the clarity to the benefit of investors and the marketplace.

With respect to proposed Nasdaq Rule 5704(b), Exchange Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c–11 [28] and must satisfy the requirements of this Rule 5704 on an initial and continued listing basis. This requirement will ensure that Exchange-listed Exchange Traded Fund Shares continue to operate in a manner that fully complies with the portfolio transparency requirements of Rule 6c–11(c). This will also ensure that Exchange Traded Fund Shares listed and traded on the Exchange in accordance with Nasdaq Rule 5704 on an initial and continued listing basis will serve to perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

With respect to proposed Nasdaq Rule 5704(b)(1) and subparagraphs (A)–(D) thereunder (with the exception that subparagraph (A) only applies on an initial listing basis),[29] the Exchange believes it is to the benefit of investors and the marketplace that Nasdaq may approve an ETF for listing and trading pursuant to Rule 19b–4(e) under the Act. The approval is also contingent on each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c–11 and satisfies the requirements of Rule 5704 on an initial and continued listing basis.

Nasdaq will monitor for compliance with the continued listing requirements as discussed above. If the ETF is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under proposed Nasdaq Rule 5704(b)(3). The Exchange believes that this will help to prevent fraudulent and manipulative acts and practices.

The Exchange believes this also fulfills the intended objective of Rule 19b–4(e) under the Act by allowing Exchange Traded Fund Shares to be listed and traded without requiring separate Commission approval and this will provide investors with additional investment choices that they may choose to invest in.

With respect to proposed Nasdaq Rule 5704(c), the Exchange will implement written surveillance procedures for Exchange Traded Fund Shares and represents that its surveillance procedures are adequate to properly monitor such trading in all trading sessions and to deter and detect violations of Nasdaq rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to securities, which will include Exchange Traded Fund Shares, to monitor trading in the Exchange Traded Fund Shares (additional surveillance processes and procedures are described herein). These surveillance procedures promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms 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 the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Exchange Traded Fund Shares listed on the Exchange in order to ensure compliance with Rule 6c–11 and the 1940 Act on an ongoing basis.

The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of Exchange Traded Fund Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional disclosure obligations.[30] The Exchange believes that the combination of these factors will act to keep Exchange Traded Fund Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Exchange Traded Fund Shares on Nasdaq.

The Exchange will monitor for compliance with Rule 6c–11 to ensure that the continued listing standards are being met. The Exchange will also periodically review the website of series of Exchange Traded Fund Shares to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of Nasdaq-listed Exchange Traded Fund Shares to ensure that certain investment requirements and limitations under the 1940 Act are being met. Nasdaq also will employ intraday alerts that will notify Exchange personnel of unusual trading activity throughout the day that could be indicative of unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. The Exchange also notes that Nasdaq Rule 5701(d) would require an issuer of Exchange Traded Fund Shares to notify Nasdaq with prompt notification after the issuer becomes aware of any noncompliance with the requirements of the Nasdaq Rule 5700 Series, which would encompass any failure of the issuer to comply with Rule 6c–11 or the 1940 Act.

Nasdaq also believes that its surveillance procedures are adequate to properly monitor the trading of the Exchange Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to Nasdaq-listed securities, which are currently applicable to Index Fund Shares and Exchange Traded Fund Shares, among other product types, to monitor trading in Exchange Traded Fund Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Exchange Traded Fund Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which Nasdaq has in place a CSSA.

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 series of Exchange Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange Traded Fund Shares, to the extent that a series of Exchange Traded Fund Shares holds municipal securities. Finally, as noted above, the issuer of a series of Exchange Traded Fund Shares will be required to comply with Rule 10A–3 under the Act for the initial and

[26] *See* Nasdaq Rule 5705(b)(1)(C).

[27] *See* Nasdaq Rule 5735(c)(4),

[28] Rule 6c–11(c) sets forth certain conditions applicable to ETFs, including information required to be disclosed on the ETF's website.

[29] Proposed Nasdaq Rule 5704(b)(1)(A)–(D) covers: (i) Establishing a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq (only applicable on an initial listing basis); (ii) index and portfolio calculation and dissemination, as well as ''fire walls'' and procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the index or portfolio; (iii) regular market session trading; and (iv) the minimum price variation for quoting and entry of orders in Exchange Traded Fund Shares is $0.01.

[30] The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c–11 Release. *See* Adopting Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

continued listing of Exchange-Traded Fund Shares, as provided under Nasdaq Rule 5615(a)(6)(A) and the changes to Nasdaq Rule 5615(a)(6)(B) as proposed herein.

With respect to proposed Nasdaq Rule 5704(d), which states that upon termination of an ETF that Nasdaq will remove from listing the Exchange Traded Fund Shares issued in connection with such entity. The Exchange believes that adopting language similar to language already included in Nasdaq Rule 5705(b)(9)(B)(i) and in Nasdaq Rule 5735(d)(2)(E) makes for consistency among Nasdaq's rules and benefits investors and the marketplace by making clear rules that lessen potential confusion.

With respect to proposed Nasdaq Rule 5704(e), which sets forth the limitation of liability applicable to Nasdaq, the Reporting Authority, or any agent of Nasdaq, the Exchange believes that requiring similar written disclosure to that already required under Nasdaq Rule 5707(b)(11) and Nasdaq Rule 5735(e) makes for consistency among Nasdaq's rules and benefits investors and the marketplace by reducing potential confusion.

With respect to proposed Nasdaq Rule 5704(f), which states that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Nasdaq Rule 5705(b) or Nasdaq Rule 5735(b)(1), or pursuant to an approval of a proposed rule change filed or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this proposed Nasdaq Rule 5704 if the security is permitted to operate in reliance on Rule 6c–11 under the 1940 Act and at the time of listing of such security under this proposed Nasdaq Rule 5704, the continued listing requirements applicable to such security will be those specified in paragraph (b) of this proposed Nasdaq Rule 5704, the Exchange believes makes for consistency among Nasdaq's rules and benefits investors and the marketplace by making clear rules that lessen potential confusion.

The Exchange believes the rest of proposed Nasdaq Rule 5704(f), which states any requirements for listing as specified in Rule 5705(b) or 5735(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of this Rule 5704 will no longer be applicable to such securities will streamline the listing process for such security, consistent with the regulatory framework adopted in Rule 6c–11 under the 1940 Act. Additionally, any security that begins to operate in reliance on Rule 6c–11 under the 1940 Act prior to December 22, 2020, the SEC will rescind the existing approval order for that security at that time.

The Exchange believes that proposed Nasdaq Rule 5704, as well as amendments to Nasdaq Rules 4120 and 5615 will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

Proposed Nasdaq Rule 5704 and related amendments to other Nasdaq rules are also designed to protect investors and the public interest because Exchange Traded Fund Shares listed and traded pursuant to Rule 5704 and that rely on the conditions and requirements of Rule 6c–11 will continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.[31]

Nasdaq believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. The Exchange has in place written surveillance procedures that are adequate to properly monitor trading in the Exchange Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The surveillance procedures for monitoring compliance with Rule 6c–11will be consistent with the manner in which the Exchange conducts its trading surveillance for ETFs. The Exchange will also require that issuers of Exchange Traded Fund Shares listed under proposed Nasdaq Rule 5704 must notify the Exchange regarding instances of non-compliance. Additionally, the Exchange will require periodic certifications from the issuer that it has maintained compliance with Rule 6c–11. Nasdaq will also check the ETF's website on a periodic basis for the inclusion of proper disclosure in compliance with Rule 6c–11. As stated previously, Nasdaq will continue to monitor compliance with the continued listing standards.

The Exchange believes that the proposed rule change seeks to incorporate Rule 6c–11 into Nasdaq's rules will promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest. As the SEC noted in its Adopting Release, Rule 6c–11 may to allow ETFs to operate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act,[32] as well as lead to increased capital formation particularly in the form of an increased demand for ETFs.[33]

The Exchange believes that the discontinuance of quarterly reports currently required for Managed Fund Shares under Nasdaq Rule 5735(b) will no longer be necessary in light of the requirements of Rule 6c–11(d)[34] and the breadth of information that has been submitted to date under this requirement promotes just and equitable principles of trade, removes impediments to, and perfects the mechanisms of, a free and open market and a national market system by eliminating a requirement no longer necessary or of benefit to the Commission.

As discussed above, Rule 6c–11(d) includes specific ongoing reporting requirements for exchange-traded funds, including written agreements between an authorized participant and a fund allowing purchase or redemption of creation units, information regarding the baskets exchanged with authorized participants, and the identity of authorized participants transacting with a fund. The SEC has stated that the information required by Rule 6c–11(d) will provide the SEC's examination staff with information to determine compliance with Rule 6c–11 and applicable federal securities laws.

In addition, and as discussed above, Rule 6c–11 collapses the distinction between Index Fund Shares and Managed Fund Shares. Nasdaq believes that the SEC has reached a level of comfort with Managed Fund Shares that makes the ongoing receipt of the information included in the quarterly reports unnecessary.

In addition and as also discussed above, Nasdaq believes that since the implementation of this requirement, SEC Staff has received an ample number of reports as to gain sufficient understanding Managed Fund Shares and has not detected any significant issues involving Managed Fund Shares listed under Nasdaq Rule 5735(b)(1). The quarterly reports were initially intended to provide SEC Staff insight into the number and type of funds listed pursuant to Nasdaq Rule 5735(b)(1), as well as highlight any issues regarding the trading of such funds or a funds'

[31] *See* note 9 above, Adopting Release at 57171.

[32] *Id.* at 57166.

[33] *Id.* at 57220.

[34] *See* note 21 *supra.*

compliance with the continued listing standards.

As a result, Nasdaq believes it should discontinue the filing of quarterly reports with respect to Managed Fund Shares under Nasdaq Rule 5735(b). This will avoid unnecessary overlap and potential inconsistency between the quarterly reports and the reporting requirements of Rule 6c–11(d). It will also avoid unnecessary, duplicative burdens on authorized participants and their firms in providing and maintaining information regarding creation and redemption activity.

For the above reasons, the Exchange believes that the proposal 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, as amended. Rather, the Exchange believes that the proposed rule change would facilitate the listing and trading of Exchange Traded Fund Shares and result in a significantly more efficient process surrounding the listing and trading of ETFs, which will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that this would reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Exchange Traded Fund Shares more competitive by applying uniform listing standards with respect to Exchange Traded Fund Shares.

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

No written comments were solicited or received.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2019–090, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [35] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[36] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [37]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[38]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 12, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 26, 2020. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[39] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. The Exchange's proposed generic listing requirements require that, for the Exchange to list and trade Exchange Traded Fund Shares, the requirements of Rule 6c–11 must be satisfied on a continued listing basis. The Exchange states that it will monitor for compliance with Rule 6c–11 to ensure that the continued listing standards are being met and will also periodically review the website of series of Exchange Traded Fund Shares to ensure that the disclosure requirements of Rule 6c–11 are being met and to review the portfolio underlying series of Nasdaq-listed Exchange Traded Fund Shares to ensure that certain investment requirements and limitations under the 1940 Act are being met. What are commenters' views on whether the Exchange's surveillance procedures are adequate to monitor for non-compliance with respect to the proposed continued listing requirements? Do commenters believe that the Exchange should adopt other procedures or employ additional measures to ensure that it is capable of adequately monitoring for non-compliance with the proposed listing rule?

2. Under the proposal, the Exchange describes its discretion to halt trading in Exchange Traded Fund Shares. For Exchange Traded Fund Shares that are based on an underlying index, what are commenters' views on whether the Exchange should consider halting trading if there is an interruption or disruption in the calculation and dissemination of the underlying index value? What are commenters' views on whether the Exchange should consider halting trading in the event of an interruption or disruption in the calculation and dissemination of the intraday indicative value, to the extent such value is calculated and publicly disseminated for an Exchange Traded Fund? Do commenters believe there are other circumstances in which the Exchange ought to consider halting trading in Exchange Traded Fund Shares listed under the proposed rule?

3. What are commenters' views on whether the proposed rule change is

[35] 15 U.S.C. 78s(b)(2)(B).

[36] *Id.*

[37] 15 U.S.C. 78f(b)(5).

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

[39] *See supra* note 6.

sufficiently clear regarding Exchange members' obligations with respect to disclosures to Exchange Traded Fund Share purchasers? More generally, what are commenters' views on whether the proposal provides sufficient clarity for members' obligations with respect to transactions in Exchange Traded Fund Shares on the Exchange?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–090 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–2019–090. 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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–090 and should be submitted by March 12, 2020. Rebuttal comments should be submitted by March 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03324 Filed 2–19–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88197; File No. SR–NYSEArca–2019–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Adopt NYSE Arca Rule 8.601–E To Permit the Listing and Trading of Managed Portfolio Securities and To List and Trade Four Series of Managed Portfolio Securities Issued by T. Rowe Price Exchange-Traded Funds, Inc. Under Proposed NYSE Arca Rule 8.601–E

February 13, 2020.

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' 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 (1) adopt proposed NYSE Arca Rule 8.601–E to permit the Exchange to list and trade Managed Portfolio Securities, which are shares of an actively managed exchange-traded fund for which the portfolio is disclosed quarterly; and (2) list and trade the following Managed Portfolio Securities under proposed NYSE Arca Rule 8.601–E: T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, and T. Rowe Price Equity Income ETF. The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 17, 2020. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates April 2, 2020 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR- NYSEArca-2019–92).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2020–03326 Filed 2–19–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 34–88214/February 14, 2020]

In the Matter of the Financial Industry Regulatory Authority, Inc. for an Order Granting the Approval of Proposed Rule Change, as Modified by Amendment No. 2, To Establish a Corporate Bond New Issue Reference Data Service (File No. SR–FINRA–2019–008); Order Granting Petition for Review and Scheduling Filing of Statements

This matter comes before the Securities and Exchange Commission (''Commission'') on petition to review the approval, pursuant to delegated authority, of the Financial Industry Regulatory Authority, Inc. (''FINRA'') proposed rule change to establish a new issue reference data service for corporate bonds.

On April 2, 2019, the Commission issued a notice of filing of the proposed rule change filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2]

[40] 17 CFR 200.30–3(a)(12) & 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87865 (December 30, 2019), 85 FR 380.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.