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SECURITIES AND EXCHANGE COMMISSION
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Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of Listing Standards for Certain Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 20, 2012, 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 adopt rules applicable to the qualification, listing, trading, and delisting of certain securities on NASDAQ (“Listing Rules”). Specifically, NASDAQ proposes to adopt Listing Rules applicable to the following securities: Equity Index-Linked Securities, Commodity-Linked Securities,³ Fixed Income Index-Linked Securities, Futures-Linked Securities, Multifactor Index-Linked Securities; Index-Linked Exchangeable Notes; Equity Gold Shares; Trust Certificates; Commodity-Based Trust Shares; Currency Trust Shares; Commodity

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASDAQ Rules 5710(g) and (h) currently include initial listing standards applicable to Equity Index-Linked Securities and Commodity-Linked Securities. NASDAQ proposes to re-number the existing rule text in Rules 5710(g) and (h), and to adopt continuing listing standards applicable to Equity Index-Linked Securities and Commodity-Linked Securities, in proposed Rules 5710(k)(i) and (ii).

Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Trust Units; Managed Trust Securities; and Currency Warrants.

The proposal would adopt listing standards based on the relevant listing standards of the NYSE Arca, Inc. (“NYSEArca”) Equities Rules, as set forth below. The text of the proposed rule change is available on the Exchange’s website at <http://www.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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to adopt listing standards for each of the products specified above. The Section 5000 series of the NASDAQ rules govern the qualification, listing and delisting of securities on the NASDAQ Stock Market. Section 5000 also sets forth, among other things, definitions,⁴ NASDAQ’s regulatory authority to list and maintain securities,⁵ general procedures and prerequisites for initial and continued listing on the NASDAQ Stock Market,⁶ and, most significantly to the instant proposed rule change, “Other

⁴ See Section 5005 of the NASDAQ Rules.

⁵ See Section 5100 of the NASDAQ Rules.

⁶ See Section 5200 of the NASDAQ Rules.

Securities,”⁷ which govern, without limitation, listing and qualification rules applicable to Exchange Traded Funds, Portfolio Depository Receipts and Index Fund Shares. The proposed amendments to Rule 5710, Securities Linked to the Performance of Indexes and Commodities (Including Currencies), would add continuing listing standards for Equity Index-Linked Securities and Commodity-Linked Securities, and initial and continuing listing standards for fixed income index-linked securities (“Fixed Income Index-Linked Securities”), futures-linked securities (“Futures-Linked Securities”) and multifactor index-linked securities (“Multifactor Index-Linked Securities” and, together with Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities and Futures-Linked Securities, “Linked Securities”) to the rule.

Proposed new Rule 5711, Trading of Certain Derivative Securities, would include listing standards for Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, and Currency Warrants.

The instant proposed rule change is intended to define the specific products (see above) that NASDAQ intends to list and trade, and the listing and qualification requirements for each such product.

Introductory Paragraphs to Rule 5710

The proposed amendments to Rule 5710 would state that NASDAQ will consider for listing and trading the Linked Securities set forth in the introductory paragraphs of the rule.

⁷ See Section 5700 of the NASDAQ Rules.

These paragraphs describe the basis for the payment at maturity of the various securities, which is the performance of “Reference Assets,” as defined below.

Specifically:

- Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or indexes (“Equity Reference Asset”).
- The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (“Commodity Reference Asset”). The terms “Commodity” and “Commodity-Related Security” are defined in Rule 4630.
- The payment at maturity with respect to Fixed Income Index-Linked Securities is based on the performance of one or more indexes or portfolios of notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (“Fixed Income Reference Asset”).
- The payment at maturity with respect to Futures-Linked Securities is based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or

derivatives on the foregoing in this subparagraph (b); or (c) CBOE Volatility Index (VIX) Futures (“Futures Reference Asset”).

- The payment at maturity with respect to Multifactor Index-Linked Securities is based on the performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (“Multifactor Reference Asset,” and together with Equity Reference Assets, Commodity Reference Assets, Fixed Income Reference Assets and Futures Reference Assets, “Reference Assets”). A Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates.

Linked Securities may or may not provide for the repayment of the original principal investment amount. NASDAQ may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth in Rule 5710.

Technical Changes to Rule 5710

NASDAQ is not proposing any amendments to Rules 5710(a) - (f), and such provisions would apply to all Linked Securities.⁸ Additionally, NASDAQ proposes to re-number the

⁸ Current Rules 5710(a) - (f) state:

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

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

(c) The issue must be the non-convertible debt of the Company.

current text of Rule 5710 by deleting current Rules 5710(g) and (h) and moving the text of these two sections into proposed Rules 5710 (k)(i) and (ii).⁹ In addition, NASDAQ is proposing to re-number the remaining existing sections of Rule 5710, and to amend references and defined terms in such sections such that they would apply to all Linked Securities.

Linked Securities

Proposed Rule 5710(k) would adopt listing standards for the various Linked Securities.

Equity Index-Linked Securities

Initial Listing Criteria

Proposed Rule 5710(k)(i)(A) would set forth the initial listing criteria for Equity Index-Linked Securities found in current Rule 5710(g), which would be deleted and replaced in proposed Rule 5710(k)(i)(A). Specifically:

In the case of an Equity Index-Linked Security, each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either: (1) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the

(d) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset.

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

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

⁹ See supra note 3.

conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (2) the index or indexes meet the following criteria:

- each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;
- each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;
- indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least semiannually;
- in the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;
- no underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not

in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

- 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association, provided, however, that an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components; and
- all component securities shall be either (A) securities (other than securities of a foreign issuer and American Depositary Receipts ("ADRs")) that are (i) issued by a 1934 Act reporting company or by an investment company registered under the Investment Company Act of 1940 that, in each case, has securities listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Act), or (B) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with NASDAQ will not in the aggregate represent more than 20% of the dollar weight of the index.

Continued Listing Criteria

Rule 5710(k)(i)(B) would adopt continued listing criteria for Equity Index-Linked Securities. Specifically, NASDAQ will commence delisting or removal proceedings (unless the

Commission has approved the continued trading of the subject Equity Index-Linked Security), if any of the standards set forth above are not continuously maintained, except that:

- the criteria that no single component represent more than 25% of the dollar weight of the index and the five highest dollar weighted components in the index cannot represent more than 50% (or 60% for indexes with less than 25 components) of the dollar weight of the index, need only be satisfied at the time the index is rebalanced; and
- component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 500,000 shares, or minimum global notional volume traded per month of \$12,500,000, averaged over the last six months.

In connection with an Equity Index-Linked Security that is based on an index that has been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, NASDAQ will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

Additionally, NASDAQ will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Equity Index-Linked Security), under any of the following circumstances:

- if the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than \$400,000;
- if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on NASDAQ (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout NASDAQ trading hours; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Equity-Linked Indexes will be rebalanced at least annually.

The proposed rule change relating to Equity-Linked Securities is based on NYSEArca Equities Rule 5.2(j)(6)(B)(I).

Commodity-Linked Securities

Proposed Rule 5710(k)(ii) would adopt the initial listing criteria (found in current Rule 5710(h), which would be deleted and replaced in proposed Rule 5710(k)(ii)(A)) and continued listing criteria for Commodity-Linked Securities.

Initial Listing Criteria

The Reference Asset must meet one of the following criteria:

- the Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or
- the pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an ISG member or affiliate or with which NASDAQ has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either: (1) the generally accepted spot price for the currency exchange rate in question; or (2) derived from a market of which (a) is an ISG member or affiliate or with which NASDAQ has a comprehensive surveillance sharing agreement and (b) is the pricing source for a currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the requirements of subparagraph (2) of the proposed rule; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Reference Asset. The term "Currency," as used in the proposed rule, means one or more currencies, or currency options, futures, or

other currency derivatives, Commodity-Related Securities if their underlying Commodities are currencies or currency derivatives, or a basket or index of any of the foregoing.

Continued Listing Standards

Proposed Rule 5710(k)(ii)(B) would establish continued listing criteria for Commodity-Linked Securities. Specifically, NASDAQ will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained. Additionally, NASDAQ will also commence delisting or removal proceedings under any of the following circumstances:

- if the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than \$400,000;
- if the value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of the proposed rule; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

The proposed rule change relating to Commodity-Linked Securities is based on NYSEArca Equities Rule 5.2(j)(6)(B)(II).

Fixed Income Index-Linked Securities

Proposed Rule 5710(k)(iii) would set forth the listing criteria for Fixed Income Index-Linked Securities.

Initial Listing Standards

Proposed Rule 5710(k)(iii)(A) states that either the Fixed Income Reference Asset to which the security is linked shall have been reviewed and approved for the trading of options, Index Fund Shares, or other derivatives by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied or the issue must meet the following initial listing criteria:

- components of the Fixed Income Reference Asset that in the aggregate account for at least 75% of the weight of the Fixed Income Reference Asset must each have a minimum original principal amount outstanding of \$100 million or more;
- a component of the Fixed Income Reference Asset may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the Fixed Income Reference Asset;
- no component of the Fixed Income Reference Asset (excluding Treasury Securities and GSE Securities) will represent more than 30% of the dollar weight of the Fixed Income Reference Asset, and the five highest dollar weighted components in the Fixed Income Reference Asset will not in the aggregate account for more than 65% of the dollar weight of the Fixed Income Reference Asset;
- an underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
- component securities that in the aggregate account for at least 90% of the dollar weight of the Fixed Income Reference Asset must be from one of the following:

(a) issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; or (b) issuers that have a worldwide market value of outstanding common equity held by non-affiliates of \$700 million or more; or (c) issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; or (d) exempted securities as defined in Section 3(a)(12) of the Act, or (e) issuers that are a government of a foreign country or a political subdivision of a foreign country.

In addition, the value of the Fixed Income Reference Asset must be widely disseminated to the public by one or more major market vendors at least once per business day.

Continued Listing Standards

Proposed Rule 5710(k)(iii)(C) would provide that NASDAQ will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained, and that NASDAQ will also commence delisting or removal proceedings:

- if the aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than \$400,000;
- if the value of the Fixed Income Reference Asset is no longer calculated or available and a new Fixed Income Reference Asset is substituted, unless the new Fixed Income Reference Asset meets the requirements of proposed Rule 5710(k);
or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings inadvisable.

The proposed rule change relating to Fixed-Income Linked Securities is based on NYSEArca Equities Rule 5.2(j)(6)(B)(IV).

Futures-Linked Securities

Proposed Rule 5710(k)(iv) would establish listing standards for Futures-Linked Securities.

Initial Listing Standards

Proposed Rule 5710(k)(iv)(A) states that the issue must meet either of the following the initial listing standards:

- the Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied, or
- the pricing information for components of a Futures Reference Asset must be derived from a market which is an ISG member or affiliate or with which NASDAQ has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the requirements of proposed Rule 5710(k)(iv)(A)(2); provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, the issue must meet both of the following initial listing criteria:

- the value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Regular Market Session, as defined in Rule 4120; and
- in the case of Futures-Linked Securities that are periodically redeemable, the value of a share of each series (“Intraday Indicative Value”) of the subject Futures-Linked Securities must be calculated and widely disseminated by NASDAQ or one or more major market data vendors on at least a 15-second basis during the Regular Market Session (as defined in Rule 4120).

Continued Listing Standards

Proposed Rule 5710(k)(iv)(C) states that NASDAQ will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained, and that NASDAQ will also commence delisting or removal proceedings under any of the following circumstances:

- if the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than \$400,000;
- if the value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of proposed Rule 5710(k); or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

The proposed rule change relating to Futures-Linked Securities is based on NYSEArca Equities Rule 5.2(j)(6)(B)(V).

Multifactor Index-Linked Securities

Proposed Rule 5710(k)(v) would govern the listing standards for Multifactor Index-Linked Securities.

Initial Listing Standards

Proposed Rule 5710(k)(v)(A) states that the issue must meet one of the following initial listing standards:

- each component of the Multifactor Reference Asset to which the security is linked shall have been reviewed and approved for the trading of either options, Index Fund Shares, or other derivatives under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or
- each Reference Asset included in the Multifactor Reference Asset must meet the applicable initial and continued listing criteria set forth in the relevant subsection of proposed Rule 5710(k).

In addition to one of the initial listing standards set forth above, proposed Rule 5710(k)(v)(B) would state that the issue must meet both of the following initial listing criteria:

- the value of the Multifactor Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Multifactor Index-Linked Security trades on NASDAQ; and
- in the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value of the Multifactor Index-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Multifactor Index-Linked Securities trade on NASDAQ.

Continued Listing Criteria

Proposed Rule 5710(k)(v)(C) states that NASDAQ will commence delisting or removal proceedings:

- if any of the initial listing criteria described above are not continuously maintained;
- if the aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than \$400,000;
- if the value of the Multifactor Reference Asset is no longer calculated or available and a new Multifactor Reference Asset is substituted, unless the new Multifactor Reference Asset meets the requirements of proposed Rule 5710(k); or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

The proposed rule change relating to Multifactor Index-Linked Securities is based on NYSEArca Equities Rule 5.2(j)(6)(B)(VI).

Regulatory Requirements for Registered Market Makers in Linked Securities

Commentary .01 to proposed Rule 5710(k) would establish certain regulatory requirements for registered Market Makers in Linked Securities. Specifically, the registered Market Maker in Linked Securities must file with NASDAQ, in a manner prescribed by NASDAQ, and keep current a list identifying all accounts for trading in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, currency or futures underlying a Reference Asset component, which the registered Market Maker may have or over which it may exercise

investment discretion. No registered Market Maker in Linked Securities would be permitted to trade in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, or futures currency underlying a Reference Asset component, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to NASDAQ as required by the proposed Rule.

In addition to the existing obligations under NASDAQ rules regarding the production of books and records,¹⁰ the registered Market Maker in Linked Securities would be required to make available to NASDAQ such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or nonregistered employee affiliated with such entity for its or their own accounts in the Reference Asset components, the commodities, currencies or futures underlying the Reference Asset components, or any derivative instruments based on the Reference Asset or based on any Reference Asset component or any physical commodity, currency or futures underlying a Reference Asset component, as may be requested by NASDAQ.

The proposed rule change relating to regulatory requirements for registered Market Makers in Linked Securities is based on NYSEArca Equities Rule 5.2(j)(6), Commentary .01.

Proposed Rule 5711 - Trading of Certain Derivative Securities

NASDAQ proposes to adopt new Rule 5711, Trading of Certain Derivative Securities, which would set forth listing standards for the securities described below.

Index-Linked Exchangeable Notes

¹⁰ See, e.g., NASDAQ Rule 4625.

Proposed Rule 5711(a) would adopt listing standards for Index-Linked Exchangeable Notes.

Description

Index-Linked Exchangeable Notes are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer, or at maturity for a cash amount (“Cash Value Amount”) based on the reported market prices of the underlying stocks of an underlying index. Each Index-Linked Exchangeable Note is intended to provide investors with an instrument that closely tracks the underlying index. Notwithstanding that the notes are linked to an index, they will trade as a single security.

Initial Listing Standards

Index-Linked Exchangeable Notes will be considered for listing and trading by NASDAQ pursuant to Rule 19b-4(e) under the Act,¹¹ provided:

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

¹¹ 17 CFR 240.19b-4(e).

- The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Rule 5405(b). In the alternative, the issuer will be expected: (A) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 5405(b); and (B) not to have issued Index-Linked Exchangeable Notes where the original issue price of all the issuer's other Index-Linked Exchangeable Note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.
- The index to which an exchangeable-note is linked shall either be (A) indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivatives securities ("Third-Party Index") either by the Commission under Section 19(b)(2) of the Act and rules thereunder or by NASDAQ under rules adopted pursuant to Rule 19b-4(e); or (B) indices which the issuer has created and for which NASDAQ will have obtained approval from either the Commission pursuant to Section 19(b)(2) and rules thereunder or from NASDAQ under rules adopted pursuant to Rule 19b-4(e) ("Issuer Index"). The Issuer Indices and their underlying securities must meet one of the following: (A) the procedures and criteria set forth in NOM Rules, Chapter XIV, Section 6(b) and (c), or (B) the criteria set forth in Rules 5715(b)(3) and (4), the index concentration limits set forth in NOM Rule Chapter XIV, Section 6, and NOM Rule Chapter XIV, Section 6(b)(12) insofar as it relates to NOM Rule Chapter XIV, Section 6(b)(6).

Index-Linked Exchangeable Notes will be treated as equity instruments.

Continued Listing Standards

Beginning twelve months after the initial issuance of a series of Index-Linked Exchangeable Notes, NASDAQ will consider the suspension of trading in or removal from listing of that series of Index-Linked Exchangeable Notes under any of the following circumstances:

- if the series has fewer than 50,000 notes issued and outstanding;
- if the market value of all Index-Linked Exchangeable Notes of that series issued and outstanding is less than \$1,000,000; or
- if such other event shall occur or such other condition exists which in the opinion of NASDAQ makes further dealings of NASDAQ inadvisable.

The proposed rule change relating to Index-Linked Exchangeable Notes is based on NYSEArca Equities Rule 5.2(j)(4).

Equity Gold Shares

Description

Proposed Rule 5711(b) would apply to Equity Gold Shares that represent units of fractional undivided beneficial interest in, and ownership of, the Equity Gold Trust. While Equity Gold Shares are not technically “Index Fund Shares,” and thus are not covered by NASDAQ Rule 5705, all other NASDAQ rules that reference “Index Fund Shares” shall also apply to Equity Gold Shares.

Applicability

Except to the extent that specific provisions in proposed Rule 5711(b) govern, or unless the context otherwise requires, the provisions of all other NASDAQ Rules and policies would be

applicable to the trading of Equity Gold Shares on NASDAQ. The provisions set forth in proposed Rule 5711(d) relating to Commodity-Based Trust Shares would also apply to Equity Gold Shares.

The proposed rule change relating to Equity Gold Shares is based on NYSEArca Equities Rule 5.2(j)(5).

Trust Certificates

Proposed Rule 5711(c) would govern the listing standards applicable to Trust Certificates. NASDAQ will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Certificates.

Description

Trust Certificates represent an interest in a special purpose trust (“Trust”) created pursuant to a trust agreement. The Trust will only issue Trust Certificates. Trust Certificates may or may not provide for the repayment of the original principal investment amount. Trust Certificates pay an amount at maturity which is based upon the performance of specified assets as set forth below:

- an underlying index or indexes of equity securities (“Equity Reference Asset”);
- instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index (“Index Warrants”); or
- a combination of two or more Equity Reference Assets or Index Warrants.

NASDAQ will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Trust Certificates.

Continued Listing Standards

Commentary .01 to proposed Rule 5711(c) would state that NASDAQ will commence delisting or removal proceedings with respect to an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue), under any of the following circumstances:

- if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities; provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the NASDAQ Stock Market (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout NASDAQ trading hours; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Other Provisions

Proposed Commentary .02 to Rule 5711(c) would provide that the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Commentary .03 to Rule 5711(c) would provide that the trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee. No change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Commentary .04 to Rule 5711(c) would provide that voting rights will be as set forth in the applicable Trust prospectus.

Proposed Commentary .05 to Rule 5711(c) would provide that NASDAQ will implement written surveillance procedures for Trust Certificates.

Proposed Commentary .06 to Rule 5711(c) would provide that the Trust Certificates will be subject to NASDAQ's equity trading rules.

Proposed Commentary .07 to Rule 5711(c) would provide that prior to the commencement of trading of a particular Trust Certificates listing pursuant to this Rule, NASDAQ will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to Members providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in Trust Certificates.

Proposed Commentary .08 to Rule 5711(c) would provide that Trust Certificates may be exchangeable at the option of the holder into securities that participate in the return of the

applicable underlying asset. In the event that the Trust Certificates are exchangeable at the option of the holder and contain an Index Warrant, then a Member must ensure that the Member's account is approved for options trading in accordance with the rules of the NASDAQ Options Market ("NOM") in order to exercise such rights.

Proposed Commentary .09 to Rule 5711(c) would provide that Trust Certificates may pass-through periodic payments of interest and principle of the underlying securities.

Proposed Commentary .10 to Rule 5711(c) would provide that the Trust payments may be guaranteed pursuant to a financial guaranty insurance policy which may include swap agreements.

Proposed Commentary .11 to Rule 5711(c) would provide that the Trust Certificates may be subject to early termination or call features.

The proposed rule change relating to Trust Certificates is based on NYSEArca Equities Rule 5.2(j)(7).

Commodity-Based Trust Shares

Proposed Rule 5711(d) would permit the listing and trading, or trading pursuant to unlisted trading privileges, of Commodity-Based Trust Shares on NASDAQ. Proposed Rule 5711(d) would be applicable only to Commodity-Based Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of NASDAQ.

Description

“Commodity-Based Trust Shares,” as defined in proposed Rule 5711(d)(iii)(A), means a security (1) that is issued by a Trust that holds a specified commodity deposited with the Trust; (2) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (3) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity. Proposed Rule 5711(d)(iii)(B) states that the term “commodity” is defined in Section 1(a)(4) of the Commodity Exchange Act.

Proposed Rule 5711(d)(iv) states that NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares based on an underlying commodity. Each issue of a Commodity-Based Trust Share will be designated as a separate series and will be identified by a unique symbol.

Initial Listing Standards

Proposed Rule 5711(d)(v)(A) states that NASDAQ will establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on NASDAQ.

Continued Listing Standards

Proposed Rule 5711(d)(v)(B) provides that following the initial 12 month period following commencement of trading on NASDAQ of Commodity-Based Trust Shares, NASDAQ will consider the suspension of trading in or removal from listing of such series under any of the following circumstances if:

- the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity-Based Trust Shares for 30 or more consecutive trading days;

- the Trust has fewer than 50,000 receipts issued and outstanding;
- the market value of all receipts issued and outstanding is less than \$1,000,000;
- the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or NASDAQ or NASDAQ stops providing a hyperlink on its website to any such unaffiliated commodity value;
- the Intraday Indicative Value¹² is no longer made available on at least a 15-second delayed basis; or
- such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Other Provisions

Upon termination of a Trust, NASDAQ requires that Commodity-Based Trust Shares issued in connection with such entity Trust be removed from NASDAQ listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

Proposed Rule 5711(d)(v)(C) provides that the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 5711(d)(v)(D) would apply the following requirements to the trustee of a Trust:

¹² The Intraday Indicative Value is an estimate, updated at least every 15 seconds, of the value of a share of each series during NASDAQ's Regular Market Session (as defined in Rule 4120(b)(4)(D)). See, e.g., NASDAQ Rules 5705(b)(3)(C) and 5705(b)(6)(A).

- The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
- No change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(d)(v)(E) states that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 5711(d)(vi) and (vii) describe the limitation of NASDAQ liability and requirements for Market Makers in Commodity-Based Trust Shares (see below for a general discussion of these requirements).

Commentary .01 to proposed NASDAQ Rule 5711(d) provides that a Commodity-Based Trust Share is a Trust Issued Receipt that holds a specified commodity deposited with the Trust.

Commentary .02 to proposed NASDAQ Rule 5711(d) provides that NASDAQ requires that Members provide all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-Based Trust Shares.

Commentary .03 to proposed NASDAQ Rule 5711(d) provides that transactions in Commodity-Based Trust Shares will occur during the trading hours specified in Rule 4120.

Commentary .04 to proposed NASDAQ Rule 5711(d) provides that NASDAQ will file separate proposals under Section 19(b) of the Exchange Act before the listing and/or trading of Commodity-Based Trust Shares.

The proposed rule change relating to Commodity-Based Trust Shares is based on NYSEArca Equities Rule 8.201.

Currency Trust Shares

NASDAQ proposes to adopt new NASDAQ Rule 5711(e) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Currency Trust Shares. Proposed Rule 5711(e) would be applicable only to Currency Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Currency Trust Shares are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of NASDAQ.

Description

Proposed Rule 5711(e)(iii) provides that the term “Currency Trust Shares” as used in these proposed rules means, unless the context otherwise requires, a security that:

- is issued by a Trust that holds a specified non-U.S. currency or currencies deposited with the Trust;
- when aggregated in some specified minimum number may be surrendered to the Trust by an Authorized Participant (as defined in the Trust’s prospectus) to receive the specified non-U.S. currency or currencies; and
- pays beneficial owners interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the Trust.

Proposed Rule 5711(e)(iv) states that NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency or

currencies. Each issue of Currency Trust Shares would be designated as a separate series and shall be identified by a unique symbol.

Initial Listing Standards

NASDAQ will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on NASDAQ.

Continued Listing Standards

Proposed Rule 5711(e)(v)(B) provides that, following the initial 12 month period following commencement of trading on NASDAQ of Currency Trust Shares, NASDAQ will consider the suspension of trading in or removal from listing of such series under any of the following circumstances:

- if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days;
- if the Trust has fewer than 50,000 Currency Trust Shares issued and outstanding;
- if the market value of all Currency Trust Shares issued and outstanding is less than \$1,000,000;
- if the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or NASDAQ or NASDAQ stops providing a hyperlink on its website to any such unaffiliated applicable non-U.S. currency value;
- if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or

- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Upon termination of a Trust, NASDAQ would require that Currency Trust Shares issued in connection with such entity Trust be removed from NASDAQ listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

Other

Proposed Rule 5711(e)(v)(C) states that the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 5711(e)(v)(D) states that the following requirements apply to the trustee of a Trust:

- The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
- No change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(e)(v)(E) states that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 5711(e)(vi) and (vii) set forth the requirements respecting limitation of NASDAQ liability and Market Maker Accounts (see below for a general discussion of these requirements).

Proposed Rule 5711(e)(viii) states that NASDAQ may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set forth in Commentary .04 to proposed Rule 5711(e).

Commentary .01 to proposed Rule 5711(e) states that a Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency or currencies deposited with the Trust.

Commentary .02 to proposed Rule 5711(e) states that NASDAQ requires that Members provide all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

Commentary .03 to proposed Rule 5711(e) provides that transactions in Currency Trust Shares will occur during the trading hours specified in NASDAQ Rule 4120.

Commentary .04 to proposed Rule 5711(e) provides that NASDAQ may approve an issue of Currency Trust Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act. Such issue shall satisfy the criteria set forth in the proposed rule, together with the following criteria:

- a minimum of 100,000 shares of a series of Currency Trust Shares is required to be outstanding at commencement of trading (this would not apply to issues trading pursuant to unlisted trading privileges);
- the value of the applicable non-U.S. currency, currencies or currency index must be disseminated by one or more major market data vendors on at least a 15-second delayed basis;

- the Intraday Indicative Value must be calculated and widely disseminated by NASDAQ or one or more major market data vendors on at least a 15-second basis during the Regular Market Session (as defined in NASDAQ Rule 4120; and
- NASDAQ will implement written surveillance procedures applicable to Currency Trust Shares.

Commentary .05 to proposed Rule 5711(e) states that if the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer would be required to erect a “firewall” around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. Additionally, any advisory committee, supervisory board or similar entity that advises an index licensor or administrator or that makes decisions regarding the index or portfolio composition, methodology and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index or portfolio.

Commentary .06 to proposed Rule 5711(e) provides that Currency Trust Shares will be subject to NASDAQ’s equity trading rules.

Trading Halts

Proposed Commentary .07 to Rule 5711(e) states that if the Intraday Indicative Value or the value of the non-U.S. currency or currencies or the currency index applicable to a series of Currency Trust Shares is not being disseminated as required, NASDAQ may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, NASDAQ will halt trading no later than the beginning of the trading day

following the interruption. If NASDAQ becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

The proposed rule change relating to Currency Trust Shares is based on NYSEArca Equities Rule 8.202.

Commodity Index Trust Shares

NASDAQ will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares that meet the criteria of proposed Rule 5711(f).

Proposed Rule 5711(f)(ii) states that proposed Rule 5711(f) would be applicable only to Commodity Index Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Commodity Index Trust Shares are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of NASDAQ.

Description

Proposed Rule 5711(f)(iii) defines the term “Commodity Index Trust Shares” to mean, as used in these proposed Rules (unless the context otherwise requires), a security that (A) is issued by a Trust that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission; and (2) that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions; and (B) when aggregated in some specified minimum number may be surrendered to

the Trust by the beneficial owner to receive positions in futures contracts on a specified index and cash or short term securities. The term “futures contract” is commonly known as a “contract of sale of a commodity for future delivery” set forth in Section 2(a) of the Commodity Exchange Act.

Proposed Rule 5711(f)(iv) states that NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares based on one or more securities. The Commodity Index Trust Shares based on particular securities would be designated as a separate series and would be identified by a unique symbol.

Initial Listing Standards

Proposed Rule 5711(f)(v)(A) states that NASDAQ will establish a minimum number of Commodity Index Trust Shares required to be outstanding at the time of commencement of trading on NASDAQ.

Continued Listing Standards

Under proposed Rule 5711(f)(v)(B), NASDAQ will consider the suspension of trading in or removal from listing of a series of Commodity Index Trust Shares under any of the following circumstances:

- following the initial twelve-month period beginning upon the commencement of trading of the Commodity Index Trust Shares, there are fewer than 50 record and/or beneficial holders of Commodity Index Trust Shares for 30 or more consecutive trading days;
- if the value of the applicable underlying index is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust;

- if the net asset value for the trust is no longer disseminated to all market participants at the same time;
- if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Upon termination of a Trust, NASDAQ would require that Commodity Index Trust Shares issued in connection with such entity Trust be removed from NASDAQ listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

Proposed Rule 5711(f)(v)(C) provides that the stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 5711(f)(v)(D) states that the following requirements apply to the trustee of a Trust:

- The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
- No change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(f)(v)(E) provides that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 5711(f)(vi) and (vii) set forth the requirements respecting limitation of NASDAQ liability and Market Maker Accounts (see below for a general discussion of these requirements).

Commentary .01 to proposed Rule 5711(f) states that a Commodity Index Trust Share is a Trust Issued Receipt that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions, deposited with the Trust.

Commentary .02 to proposed Rule 5711(f) states that NASDAQ requires that Members provide all purchasers of newly issued Commodity Index Trust Shares a prospectus for the series of Commodity Index Trust Shares.

Commentary .03 to proposed Rule 5711(f) states that transactions in Commodity Index Trust Shares will occur during the trading hours specified in Rule 4120.

Commentary .04 to proposed Rule 5711(f) states that NASDAQ will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares.

The proposed rule change relating to Commodity Index Trust Shares is based on NYSEArca Equities Rule 8.202.

Commodity Futures Trust Shares

Proposed Rule 5711(g) governs the listing of Commodity Futures Trust Shares. NASDAQ will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares that meet the criteria of proposed Rule 5711(g).

Proposed Rule 5711(g)(ii) states that proposed Rule 5711(g) would apply only to Commodity Futures Trust Shares. Except to the extent inconsistent with the proposed Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Commodity Futures Trust Shares are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of NASDAQ.

Description

Proposed Rule 5711(g)(iii) states that the term “Commodity Futures Trust Shares” as used in the proposed Rules means, unless the context otherwise requires, a security that: (i) is issued by a Trust that is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions; and (ii) is issued and redeemed daily in specified aggregate amounts at net asset value. The term “futures contract” is a “contract of sale of a commodity for future delivery” set forth in Section 2(a) of the Commodity Exchange Act. The term “commodity” is defined in Section 1(a)(4) of the Commodity Exchange Act.

Designation of an Underlying Commodity Futures Contract

Proposed Rule 5711(g)(iv) states that NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares based on an underlying commodity futures contract. Each issue of Commodity Futures Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.

Initial Listing Standards

Proposed Rule 5711(g)(v)(A) states that NASDAQ will establish a minimum number of Commodity Futures Trust Shares required to be outstanding at the time of commencement of trading on NASDAQ.

Continued Listing Standards

Proposed Rule 5711(g)(v)(B) states that NASDAQ will consider the suspension of trading in or removal from listing of a series of Commodity Futures Trust Shares under any of the following circumstances:

- if, following the initial twelve-month period beginning upon the commencement of trading of the Commodity Futures Trust Shares: (1) the Trust has fewer than 50,000 Commodity Futures Trust Shares issued and outstanding; or (2) the market value of all Commodity Futures Trust Shares issued and outstanding is less than \$1,000,000; or (3) there are fewer than 50 record and/or beneficial holders of Commodity Futures Trust Shares for 30 consecutive trading days;
- if the value of the underlying futures contracts is no longer calculated or available on at least a 15-second delayed basis during NASDAQ's Regular Market Session (as defined in NASDAQ Rule 4120) from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust;
- if the net asset value for the Trust is no longer disseminated to all market participants at the same time;
- if the Intraday Indicative Value is no longer disseminated on at least a 15-second delayed basis during NASDAQ's Regular Market Session (as defined in NASDAQ Rule 4120); or

- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

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

Proposed Rule 5711(g)(v)(C) states that the stated term of the Trust shall be as stated in the prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 5711(g)(v)(D) states that the following requirements apply to the trustee of a Trust:

- The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
- No change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(g)(v)(E) states that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 5711(g)(vi) and (vii) describe the requirements for Market Makers and the limitation of NASDAQ liability in Commodity Futures Trust Shares (see below for a general discussion of these requirements).

Proposed Rule 5711(g)(viii) states that NASDAQ will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Commodity Futures Trust Shares designated on different underlying futures contracts.

Commentary .01 to proposed Rule 5711(g) would require Members trading in Commodity Futures Trust Shares to provide all purchasers of newly issued Commodity Futures Trust Shares a prospectus for the series of Commodity Futures Trust Shares.

Commentary .02 to proposed Rule 5711(g) states that transactions in Commodity Futures Trust Shares will occur during the trading hours specified in Rule 4120.

Commentary .03 to proposed Rule 5711(g) states that if the Intraday Indicative Value or the value of the underlying futures contract is not being disseminated as required, NASDAQ may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the value of the underlying futures contract occurs. If the interruption to the dissemination of the Intraday Indicative Value or the value of the underlying futures contract persists past the trading day in which it occurred, NASDAQ will halt trading no later than the beginning of the trading day following the interruption.

In addition, if NASDAQ becomes aware that the net asset value with respect to a series of Commodity Futures Trust Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

Commentary .04 to proposed Rule 5711(g) states that NASDAQ's rules governing the trading of equity securities apply.

Commentary .05 to proposed Rule 5711(g) states that NASDAQ will implement written surveillance procedures for Commodity Futures Trust Shares.

The proposed rule change relating to Commodity Futures Trust Shares is based on NYSEArca Equities Rule 8.204.

Partnership Units

Proposed Rule 5711(h) would govern the listing of Partnership Units. Under proposed Rule 5711(h)(i), NASDAQ will consider for trading, whether by listing or pursuant to unlisted trading privileges, Partnership Units that meet the criteria of proposed Rule 5711(h).

Description

Under proposed Rule 5711(h)(ii), the following terms as used in the proposed Rule would, unless the context otherwise requires, have the meanings herein specified.

Proposed Rule 5711(h)(ii)(A) states that the term “commodity” is defined in Section 1(a)(4) of the Commodity Exchange Act.

Proposed Rule 5711(h)(ii)(B) defines a Partnership Unit for purposes of the proposed Rule as a security (a) that is issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities and/or securities; and (b) that is issued and redeemed daily in specified aggregate amounts at net asset value.

Proposed Rule 5711(h)(iii) states that NASDAQ may list and trade Partnership Units based on an underlying asset, commodity or security. Each issue of a Partnership Unit would be designated as a separate series and would be identified by a unique symbol.

Initial Listing Standards

Proposed Rule 5711(h)(iv)(A) states that NASDAQ will establish a minimum number of Partnership Units required to be outstanding at the time of commencement of trading on NASDAQ.

Continued Listing Standards

Proposed Rule 5711(h)(iv)(B) provides that NASDAQ will consider removal of Partnership Units from listing under any of the following circumstances:

- if, following the initial twelve month period from the date of commencement of trading of the Partnership Units, (a) the partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Partnership Units for 30 or more consecutive trading days; (b) the partnership has fewer than 50,000 Partnership Units issued and outstanding; or (c) the market value of all Partnership Units issued and outstanding is less than \$1,000,000;
- if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or NASDAQ stops providing a hyperlink on its website to any such investment, commodity or asset value;
- if the Intraday Indicative Value is no longer made available on at least a 15-second delayed basis; or
- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

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

Proposed Rule 5711(h)(iv)(C) provides that the stated term of the partnership shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Partnership prospectus.

Proposed Rule 5711(h)(iv)(D) would adopt the following requirements that apply to the general partner of a partnership:

- The general partner of a partnership must be an entity having substantial capital and surplus and the experience and facilities for handling partnership business. In cases where, for any reason, an individual has been appointed as general partner, a qualified entity must also be appointed as general partner.
- No change is to be made in the general partner of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(h)(iv)(E) states that voting rights shall be as set forth in the applicable partnership prospectus.

Proposed Rule 5711(h)(v) and (vi) describe the limitation of NASDAQ liability and requirements for Market Makers in Partnership Units (see below for a general discussion of these requirements).

Proposed Rule 5711(h)(vii) states that NASDAQ will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Partnership Units designated on different underlying investments, commodities and/or assets.

Commentary .01 to proposed Rule 5711(h) states that NASDAQ requires that Members provide to all purchasers of newly issued Partnership Units a prospectus for the series of Partnership Units.

The proposed rule change relating to Partnership Units is based on NYSEArca Equities Rule 8.300.

Trust Units

NASDAQ proposes to add new Rule 5711(i) in order to permit trading, either by listing or pursuant to unlisted trading privileges, of Trust Units.

Proposed Rule 5711(i)(i) states that the provisions in proposed Rule 5711(i) are applicable only to Trust Units. In addition, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Trust Units are included within the definition of “security,” “securities” and “derivative securities products” as such terms are used in the Rules of NASDAQ.

Description

Proposed Rule 5711(i)(ii) states that the following terms as used in the proposed Rule shall, unless the context otherwise requires, have the meanings herein specified:

- The term “commodity” is defined in Section 1(a)(4) of the Commodity Exchange Act.
- A Trust Unit is a security that is issued by a trust or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.

Proposed Rule 5711(i)(iii) states that NASDAQ may list and trade Trust Units based on an underlying asset, commodity, security or portfolio. Each issue of a Trust Unit shall be designated as a separate series and shall be identified by a unique symbol.

Initial Listing Standards

Proposed Rule 5711(i)(iv)(A) states that NASDAQ will establish a minimum number of Trust Units required to be outstanding at the time of commencement of trading on NASDAQ.

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

Continued Listing Standards

Proposed Rule 5711(i)(iv)(B)(1) states that NASDAQ will remove Trust Units from listing under any of the following circumstances:

- if following the initial twelve month period following the commencement of trading of Trust Units, (i) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Units for 30 or more consecutive trading days; (ii) the trust has fewer than 50,000 Trust Units issued and outstanding; or (iii) the market value of all Trust Units issued and outstanding is less than \$1,000,000; or
- if such other event shall occur or condition exists which in the opinion of the NASDAQ makes further dealings on NASDAQ inadvisable.

Trading Halts

Proposed Rule 5711(i)(iv)(B)(2) states that NASDAQ will halt trading in a series of Trust Units if the circuit breaker parameters in Rule 4120(a)(11) have been reached. In exercising its discretion to halt or suspend trading in a series of Trust Units, NASDAQ may consider any relevant factors. In particular, if the portfolio and net asset value per share are not being disseminated as required, NASDAQ may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings or net asset value per share persists past the trading

day in which it occurred, NASDAQ will halt trading no later than the beginning of the trading day following the interruption.

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

Proposed Rule 5711(i)(iv)(C) provides that the stated term of the trust shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the prospectus.

Proposed Rule 5711(i)(iv)(D) would adopt the following requirements applicable to the trustee of a Trust:

- The trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
- No change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(i)(iv)(E) states that voting rights shall be as set forth in the prospectus.

Proposed Rules 5711(i)(v) and (vi) describe the requirements for Market Makers and the limitation of NASDAQ liability respecting Trust Units (see below for a general discussion of these requirements).

Commentary .01 to proposed Rule 5711(i) states that NASDAQ requires that Members provide to all purchasers of newly issued Trust Units a prospectus for the series of Trust Units.

Commentary .02 to proposed Rule 5711(i) states that transactions in Trust Units will occur during the trading hours specified in NASDAQ Rule 4120.

Commentary .03 to proposed Rule 5711(i) states that NASDAQ will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Trust Units designated on different underlying investments, commodities, assets and/or portfolios.

The proposed rule change relating to Trust Units is based on NYSEArca Equities Rule 8.500.

Managed Trust Securities

Proposed Rule 5711(j) would adopt listing standards for Managed Trust Securities. Under proposed Rule 5711(j)(i), NASDAQ will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Trust Securities that meet the criteria of the proposed Rule. Proposed Rule 5711(j)(ii) states that the proposed Rule would apply only to Managed Trust Securities. Managed Trust Securities are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of NASDAQ.

Description

Proposed Rule 5711(j)(iii)(A) defines the term “Managed Trust Securities” to mean, unless the context otherwise requires, a security that is registered under the Securities Act of 1933, as amended, and which (1) is issued by a Trust that is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and which holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the Trust’s advisor consistent with the Trust’s investment objectives, which

will only include, exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, each as disclosed in the Trust's prospectus as such may be amended from time to time; and (2) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value.

Proposed Rule 5711(j)(iii) also includes the following definitions concerning Managed Trust Securities:

- **Disclosed Portfolio.** Under proposed Rule 5711(j)(iii)(B), the term “Disclosed Portfolio” means the identities and quantities of the securities and other assets held by the Trust that will form the basis for the Trust’s calculation of net asset value at the end of the business day.
- **Intraday Indicative Value.** Under proposed Rule 5711(j)(iii)(C), the term “Intraday Indicative Value” is the estimated indicative value of a Managed Trust Security based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.
- **Reporting Authority.** Under proposed Rule 5711(j)(iii)(D), the term “Reporting Authority” in respect of a particular series of Managed Trust Securities means NASDAQ, an institution, or a reporting or information service designated by NASDAQ or by the Trust or the exchange that lists a particular series of Managed Trust Securities (if NASDAQ is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value; the Disclosed Portfolio; the amount of any cash distribution to holders of Managed

Trust Securities, net asset value, or other information relating to the issuance, redemption or trading of Managed Trust Securities. A series of Managed Trust Securities may have more than one Reporting Authority, each having different functions.

Proposed Rule 5711(j)(iv) states that NASDAQ may trade, either by listing or pursuant to unlisted trading privileges, Managed Trust Securities based on the underlying portfolio of exchange-traded futures and/or certain currency forward contracts described in the related prospectus. Each issue of Managed Trust Securities shall be designated as a separate trust or series and shall be identified by a unique symbol.

Initial Listing Standards

Under proposed Rule 5711(j)(v)(A), Managed Trust Securities will be listed and traded on NASDAQ subject to application of the following initial listing criteria:

- NASDAQ will establish a minimum number of Managed Trust Securities required to be outstanding at the time of commencement of trading on NASDAQ.
- NASDAQ will obtain a representation from the issuer of each series of Managed Trust Securities that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Continued Listing Standards

Under proposed Rule 5711(j)(v)(B), each series of Managed Trust Securities will be listed and traded on NASDAQ subject to application of the following continued listing criteria:

- The Intraday Indicative Value for Managed Trust Securities will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Trust Securities trade on NASDAQ.
- The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.
- The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

Under proposed Rule 5711(j)(v)(B)(3), NASDAQ will consider the suspension of trading in or removal from listing of a series of Managed Trust Securities under any of the following circumstances:

- if, following the initial twelve-month period beginning upon the commencement of trading of the Managed Trust Securities: (A) the Trust has fewer than 50,000 Managed Trust Securities issued and outstanding; (B) the market value of all Managed Trust Securities issued and outstanding is less than \$1,000,000; or (C) there are fewer than 50 record and/or beneficial holders of Managed Trust Securities for 30 consecutive trading days;
- if the Intraday Indicative Value for the Trust is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;
- if the Trust issuing the Managed Trust Securities has failed to file any filings required by the Securities and Exchange Commission or if NASDAQ is aware

that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Trust with respect to the series of Managed Trust Securities; or

- if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.

Trading Halts

Proposed Rule 5711(j)(v)(B)(4) states that, if the Intraday Indicative Value of a series of Managed Trust Securities is not being disseminated as required, NASDAQ may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, NASDAQ will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Trust Securities is trading on NASDAQ pursuant to unlisted trading privileges, NASDAQ will halt trading in that series as specified in Rule 4120(a) or (b) as applicable. In addition, if NASDAQ becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Trust Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

Proposed Rule 5711(j)(v)(B)(5) states that upon termination of a Trust, NASDAQ requires that Managed Trust Securities issued in connection with such Trust be removed from NASDAQ listing. A Trust will terminate in accordance with the provisions of the Trust prospectus.

Proposed Rule 5711(j)(v)(C) states that the term of the Trust shall be as stated in the prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

Proposed Rule 5711(j)(v)(D) would state that the following requirements apply to the trustee of a Trust:

- The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
- No change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ.

Proposed Rule 5711(j)(v)(E) states that voting rights shall be as set forth in the applicable Trust prospectus.

Proposed Rules 5711(j)(vi) and (vii) describe the regulatory requirements for registered Market Makers in Managed Trust Securities, and the limitation of NASDAQ liability respecting Managed Trust Securities (see below for a general discussion of these requirements).

Proposed Rule 5711(j)(viii) states that NASDAQ will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Managed Trust Securities.

In addition to the above, the Commentary to proposed Rule 5711(j) includes the following provisions:

Commentary .01 to proposed Rule 5711(j) states that NASDAQ requires that Members provide all purchasers of newly issued Managed Trust Securities a prospectus for the series of Managed Trust Securities.

Commentary .02 to proposed Rule 5711(j) states that transactions in Managed Trust Securities will occur during the trading hours specified in Rule 4120.

Commentary .03 to proposed Rule 5711(j) states that NASDAQ's rules governing the trading of equity securities apply.

Commentary .04 to proposed Rule 5711(j) states that NASDAQ will implement written surveillance procedures for Managed Trust Securities.

Commentary .05 to proposed Rule 5711(j) states that if the Trust's advisor is affiliated with a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. Personnel who make decisions on the Trust's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Trust portfolio.

The proposed rule change relating to Managed Trust Securities is based on NYSEArca Equities Rule 8.700.

Currency Warrants

Proposed Rule 5711(k) would govern the listing of Currency Warrants. Under proposed Rule 5711(k)(i), the listing of Currency Warrant issues is considered on a case-by-case basis. Currency Warrant issues will be evaluated for listing against the following criteria:

Initial Listing Standards

Proposed Rule 5711(k)(i)(A) requires the warrant issuer to have a minimum tangible net worth in excess of \$250,000,000 and otherwise to exceed substantially the earnings requirements

set forth in Rule 5405(b).¹³ In the alternative, the warrant issuer will be expected to have a minimum tangible net worth of \$150,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5405(b), and not to have issued warrants where the original issue price of all the issuer's currency warrant offerings (combined with currency warrant offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of NASDAQ exceeds 25% of the warrant issuer's net worth.

Proposed Rule 5711(k)(i)(B) states that the term must be one to five years from date of issuance.

Proposed Rule 5711(k)(i)(C) requires that there must be a minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of \$4,000,000. In the alternative, there must be a minimum public distribution of 2,000,000 warrants together with a minimum number of public warrant holders determined on a case by case basis, an aggregate market value of \$12,000,000 and an initial warrant price of \$6.

Under proposed Rule 5711(k)(i)(D), the warrants will be cash settled in U.S. dollars.

Under proposed Rule 5711(k)(i)(E), all currency warrants must include in their terms provisions specifying the time by which all exercise notices must be submitted, and that all unexercised warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by NASDAQ (if such warrant issue has not been listed on another organized securities market in the United States).

Under proposed Rule 5711(k)(ii), NASDAQ will file separate proposals under Section 19(b) of the Act before listing and trading separate and distinct Currency Warrants.

¹³ Rule 5405(b) sets forth initial listing standards for primary equity securities.

Regulatory Matters

Proposed Rule 5711(k)(iii) describes regulatory matters applicable to Currency Warrants.

Specifically:

- No Member shall accept an order from a customer to purchase or sell a Currency Warrant unless the customer's account has been approved for options trading pursuant to NOM Rules Chapter XI, Section 7.
- Suitability. The provisions of NOM Rules Chapter XI, Section 9 shall apply to recommendations in Currency Warrants and the term "option" as used therein shall be deemed for purposes of this Rule to include such warrants.
- Discretionary Accounts. Any account in which a Member exercises discretion to trade in Currency Warrants shall be subject to the provisions of NOM Rules, Chapter XI, Section 10 with respect to such trading. For purposes of this Rule, the terms "option" and "options contract" as used in Chapter XI, Section 10 shall be deemed to include Currency Warrants.
- Supervision of Accounts. NOM Rules, Chapter XI, Section 8 shall apply to all customer accounts of a Member in which transactions in Currency Warrants are effected. The term "option" as used in Chapter XI, Section 8 shall be deemed to include Currency Warrants.
- Public Customer Complaints. NOM Rules, Chapter XI, Section 24 shall apply to all public customer complaints received by a Member regarding Currency Warrants. The term "option" as used in Chapter XI, Section 24 shall be deemed to include such warrants.

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

Trading Halts or Suspensions

Under proposed Rule 5711(k)(iv), trading on NASDAQ in any Currency Warrant will be halted whenever NASDAQ deems such action appropriate in the interests of a fair and orderly market or to protect investors. Trading in Currency Warrants that have been the subject of a halt or suspension by NASDAQ may resume if NASDAQ determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading.

Reporting of Warrant Positions

Proposed Rule 5711(k)(v) would govern reporting of warrant positions. Proposed Rule 5711(k)(v)(A) would require each Member to file with NASDAQ a report with respect to each account in which the Member has an interest, each account of a partner, officer, director, or employee of such Member, and each customer account that has established an aggregate position (whether long or short) of 100,000 warrants covering the same underlying currency, combining for purposes of the proposed Rule: (1) long positions in put warrants and short positions in call warrants, and (2) short positions in put warrants with long positions in call warrants. The report shall be in such form as may be prescribed by NASDAQ and shall be filed no later than the close of business on the next day following the day on which the transaction or transactions requiring the filing of such report occurred.

Proposed Rule 5711(k)(v)(B) states that whenever a report shall be required to be filed with respect to an account pursuant to the proposed Rule, the Member filing the same must file

with NASDAQ such additional periodic reports with respect to such account as NASDAQ may from time to time require.

Proposed Rule 5711(k)(v)(C) states that all reports required by the proposed Rule shall be filed with NASDAQ in such manner and form as prescribed by NASDAQ.

The proposed rule change relating to Currency Warrants is based on NYSEArca Equities Rules 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, and 8.13.

General Provisions

To the extent not specifically addressed in the respective proposed rules, the following general provisions apply to all of the proposed rules and subject securities affected by the proposed rules (“securities”):

Information Circular

Prior to the commencement of trading, NASDAQ will inform its Members in an Information Circular of the special characteristics and risks associated with trading the securities. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of the securities (and/or that the securities are not individually redeemable); (2) NASDAQ Rule 2310, which imposes suitability obligations on NASDAQ Members with respect to recommending transactions in the securities to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that Members deliver a prospectus to investors purchasing newly issued securities prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Information Circular will advise Members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the securities. Members purchasing securities for resale to investors will deliver a prospectus to such investors. The

Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the securities are subject to various fees and expenses described in the registration statement. If applicable, the Information Circular will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Circular will also disclose the trading hours of the securities and, if applicable, the Net Asset Value (“NAV”) calculation time for the securities. The Information Circular will disclose that information about the securities and the corresponding indexes, if applicable, will be publicly available on the website for the securities. The Information Circular will also reference, if applicable, the fact that there is no regulated source of last sale information regarding physical commodities, and that the Commission has no jurisdiction over the trading of physical commodities or futures contracts on which the value of the securities may be based.

The Information Circular will also reference the risks involved in trading the securities during the Opening Process and the Post-Market Session when an updated Intraday Indicative Value will not be calculated or publicly disseminated and, if applicable, the risks involved in trading the securities during the Regular Market Session when the Intraday Indicative Value may be static or based in part on the fluctuation of currency exchange rates when the underlying markets have closed prior to the close of NASDAQ’s Regular Market Session.

Limitation of NASDAQ Liability

Neither NASDAQ, any agent of NASDAQ, nor the Reporting Authority (if applicable), shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable underlying index or asset value; the

current value of the applicable positions or interests required to be deposited to a Trust, if applicable, in connection with issuance of the securities; net asset value; or any other information relating to the purchase, redemption, or trading of the securities, resulting from any negligent act or omission by NASDAQ, any agent of NASDAQ, or the Reporting Authority (if applicable), or any act, condition or cause beyond the reasonable control of NASDAQ, any agent of NASDAQ, or the Reporting Authority (if applicable), including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in the applicable positions or interests.

Market Maker Accounts

A registered Market Maker in the securities described below must file with NASDAQ, in a manner prescribed by NASDAQ, and keep current a list identifying all accounts for trading in:

- in the case of Commodity-Based Trust Shares, the applicable underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Commodities”);
- in the case of Currency Trust Shares, the applicable underlying non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Currencies”);
- in the case of Commodity Index Trust Shares, the applicable physical commodities included in, or options, futures or options on futures on, an index

underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Commodity Index Assets”);

- in the case of Commodity Futures Trust Shares, the applicable underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Commodity Futures”);
- in the case of Partnership Units, the applicable underlying asset or commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Partnership Unit Assets”);
- in the case of Trust Units, the applicable underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion (“Underlying Trust Unit Assets”);
and
- in the case of Managed Trust Securities, the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, which a registered Market Maker may have or over which it may exercise investment discretion (“Underlying Managed Trust Assets”).

No registered Market Maker in the above mentioned securities shall trade in the respective Underlying Commodities, Underlying Currencies, Underlying Commodity Index

Assets, Underlying Commodity Futures, Underlying Partnership Unit Assets, Underlying Trust Unit Assets, and/or the Underlying Managed Trust Assets (collectively, “Underlying Assets”) in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to NASDAQ.

In addition to the existing obligations under NASDAQ rules regarding the production of books and records (see, e.g., Rule 4625), a registered Market Maker in the above mentioned securities is required to make available to NASDAQ such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable Underlying Assets as may be requested by NASDAQ.

Trading Rules

NASDAQ deems the securities to be equity securities, thus rendering trading in the securities subject to NASDAQ’s existing rules governing the trading of equity securities. The securities will trade on NASDAQ from 8:00 a.m. to 8:00 p.m. E.T. NASDAQ has appropriate rules to facilitate transactions in the securities during all trading sessions. The minimum price increment for quoting and entry of orders in equity securities traded on NASDAQ is \$0.01, with the exception of securities that are priced less than \$1.00 for which the minimum price increment for order entry is \$0.0001.¹⁴

¹⁴ See, e.g., Rule 4751.

Regulation NMS Rule 612, Minimum Pricing Increment, provides:

- a. No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than \$1.00 per share.

Surveillance

NASDAQ believes that its surveillance procedures are adequate to address any concerns about the trading of the securities on NASDAQ. Trading of the securities on NASDAQ will be subject to FINRA's surveillance procedures for derivative products.¹⁵ NASDAQ may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.¹⁶

In addition, to the extent that a fund invests in futures contracts, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. NASDAQ has a general policy prohibiting the distribution of material, non-public information by its employees.

As a general matter, NASDAQ has regulatory jurisdiction over its Members and their associated persons, which includes any person or entity controlling a Member, as well as a subsidiary or affiliate of a Member that is in the securities business. A subsidiary or affiliate of a

b. No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.0001 if that bid or offer, order, or indication of interest is priced less than \$1.00 per share.

c. The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

17 CFR 242.612.

¹⁵ FINRA surveils trading on NASDAQ pursuant to a regulatory services agreement. NASDAQ is responsible for FINRA's performance under this regulatory services agreement.

¹⁶ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

Member that does business only in commodities or futures contracts would not be subject to NASDAQ jurisdiction, but NASDAQ could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a Member.

Trading Halts

With respect to trading halts, in addition to the halt requirements in the proposed rules, NASDAQ may consider all relevant factors in exercising its discretion to halt or suspend trading in the securities. Trading in the securities may be halted because of market conditions or for reasons that, in the view of NASDAQ, make trading in the securities inadvisable. These may include: (1) the extent to which trading in the underlying asset or assets is not occurring; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the securities will be subject to trading halts caused by extraordinary market volatility pursuant to NASDAQ's "circuit breaker" Rule 4120(a)(11) or by the halt or suspension of the trading of the current underlying asset or assets.

If the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets (e.g., securities, commodities, currencies, futures contracts, or other assets) is not being disseminated as required, NASDAQ may halt trading during the day in which such interruption to the dissemination occurs. If the interruption to the dissemination of the applicable Intraday Indicative Value, value of the underlying index, or the value of the underlying asset or assets persists past the trading day in which it occurred, NASDAQ will halt trading no later than the beginning of the trading day following the interruption. In addition, if NASDAQ becomes aware that the net asset value with respect to a series of the securities is not

disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

Suitability

Currently, NASDAQ Rule 2310 governs Recommendations to Customers (Suitability), Fair Dealing with Customers, Suitability Obligations to Institutional Customers, and Direct Participation Programs.

Prior to the commencement of trading of any inverse, leveraged, or inverse leveraged securities, NASDAQ will inform its Members of the suitability requirements of NASDAQ Rule 2310 in an Information Circular. Specifically, Members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such Member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In connection with the suitability obligation, the Information Circular will also provide that members must make reasonable efforts to obtain the following information: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such Member or registered representative in making recommendations to the customer.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009) and 09-65 (November 2009) ("FINRA Regulatory Notices").

Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices. The Information Circular will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities.

NASDAQ notes that, for such inverse, leveraged, and inverse leveraged securities, the corresponding funds seek leveraged, inverse, or leveraged inverse returns on a daily basis, and do not seek to achieve their stated investment objective over a period of time greater than one day because compounding prevents the funds from perfectly achieving such results.

Accordingly, results over periods of time greater than one day typically will not be a leveraged multiple (+200%), the inverse (-100%) or a leveraged inverse multiple (-200%) of the period return of the applicable benchmark and may differ significantly from these multiples.

NASDAQ's Information Circular, as well as the applicable registration statement, will provide information regarding the suitability of an investment in such securities.

2. Statutory Basis

The proposed rule change, as amended, is consistent with section 6(b) of the Act,¹⁷ in general, and furthers the objectives of section 6(b)(5),¹⁸ particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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.

Specifically, NASDAQ believes that the proposed rule change should enhance depth and liquidity, and should promote narrower markets in the subject securities. Furthermore,

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

NASDAQ's listing requirements as proposed herein are at least as stringent as those of any other national securities exchange and, consequently, the proposed rule change is consistent with the protection of investors and the public interest.

Additionally, the proposal is designed to prevent fraudulent and manipulative acts and practices, as all of the proposed new products are subject to existing NASDAQ trading rules, together with specific requirements for registered market makers, books and record production, surveillance procedures, suitability and prospectus requirements, and requisite NASDAQ approvals, all set forth above.

The proposal is also designed to promote just and equitable principles of trade by way of initial and continued listing standards which, if not maintained, will result in the discontinuation of trading in the affected products. These requirements, together with the applicable NASDAQ equity trading rules (which apply to the proposed products), ensure that no investor would have an unfair advantage over another respecting the trading of the subject products. On the contrary, all investors will have the same access to, and use of, information concerning the specific products and trading in the specific products, all to the benefit of public customers and the marketplace as a whole.

Furthermore, the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting listing standards that will lead ultimately to the trading of the proposed new products on NASDAQ, just as they are currently traded on other exchanges. NASDAQ believes that individuals and entities permitted to make markets on NASDAQ in the proposed new products should enhance competition within the mechanism of a free and open market and a national market system, and

customers and other investors in the national market system should benefit from more depth and liquidity in the market for the proposed new products.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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 (i) as the Commission may designate up to 90 days of such date 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-013 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2012-013. This file number should be included on the subject line if e-mail 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 Section, 100 F Street, NE, Washington, DC 20549-1090, on official business days between 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; the Commission does not edit personal identifying information from submissions. You should submit only information

that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2012-013 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill
Deputy Secretary

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¹⁹ 17 CFR 200.30-3(a)(12).