

Nasdaq Rule 5712 and the Hashdex Nasdaq Crypto Index US ETF Regulatory Framework for Digital Asset Investment Products

Executive Summary

The Nasdaq Stock Market LLC filing SR NASDAQ 2025 016 proposes Rule 5712, a new regulatory framework for listing and trading Commodity- and Digital Asset-Based Investment Interests. This rule enables exchange-traded products (ETPs), such as the Hashdex Nasdaq Crypto Index US ETF (the "Trust"), to hold diversified portfolios of cryptocurrencies like Bitcoin (BTC), Ethereum (ETH), Solana (SOL), and others. The proposal emphasizes compliance with anti-manipulation safeguards, surveillance-sharing agreements, and investor protection mechanisms required under the Securities Exchange Act of 1934.

Regulatory Framework for Digital Assets Under Proposed Rule 5712

Definition of Digital Assets

Proposed Rule 5712(c)(3) defines a digital asset as:

Any digital representation of value recorded on a cryptographically secured, distributed ledger (i.e., blockchain) or similar technology.

This definition encompasses cryptocurrencies, utility tokens, and other blockchain-based assets.

Key Listing Requirements

Initial Listing Criteria :

- A minimum of 40,000 shares must be outstanding at the start of trading.
- 90% Asset Requirement: At least 90% of the Trust's holdings must consist of digital assets or commodities for which Nasdaq can obtain market data via the Intermarket Surveillance Group ISG or Comprehensive Surveillance Sharing Agreements CSSA.
- The remaining 10% may include digital assets without such agreements, provided they meet Nasdaq's due diligence standards.

Continued Listing Standards :

- Minimum market value of \$1 million for outstanding shares.
- Daily publication of the Intraday Indicative Value IIV every 15 seconds.

- Immediate delisting if the Trust violates surveillance-sharing requirements or fails to maintain accurate pricing data.

Structure of the Hashdex Nasdaq Crypto Index US ETF

Portfolio Composition

The Trust tracks the Nasdaq Crypto Settlement Price Index NCIS, which includes:

- Bitcoin (BTC), Ethereum (ETH), Solana (SOL) , XRP, Cardano (ADA), Chainlink (LINK, Avalanche (AVAX) , Dogecoin (DOGE) , and Uniswap (UNI).
- Weightings are adjusted quarterly based on free-float market capitalization.

Custody and Security

- Crypto Custodians: Assets are held by regulated custodians like BitGo, Coinbase, and Gemini, all certified as Core Custodians under Nasdaq's Digital Assets Indexes Guidelines.
- Cold Storage: Over 95% of holdings are stored offline in hardware wallets, with multi-signature protocols for transactions.

Creation/Redemption Process

- Authorized Participants APs create or redeem shares via cash transactions. The Trust uses Prime Execution Agents (e.g., Jane Street Capital) to purchase/sell digital assets on Core Crypto Platforms like Coinbase and Kraken.
- APs bear price risk during the 1 - 3 day settlement window for digital asset trades.

Market Integrity and Manipulation Safeguards

Surveillance Mechanisms

Core Crypto Platforms :

- Must comply with Nasdaq's guidelines, including anti-money laundering (AML) controls, surveillance for manipulative trading, and NYDFS BitLicense compliance.
- Platforms are recertified annually by the Nasdaq Index Management Committee NIMC.

Index Methodology :

- The NCIS uses a volume-weighted median price from Crypto Platforms excluding outliers beyond 2.5 standard deviations.
- Circulating Supply metrics are fixed between quarterly rebalances to prevent gaming.

SEC Precedent:

- The Trust mirrors SEC-approved Bitcoin and Ether ETPs (e.g., Franklin Templeton's ETF) by limiting non-surveilled assets to 10% and relying on CME-regulated futures markets for price discovery.

Regulatory Risks and Mitigation

Key Risks

- Regulatory Classification: Digital assets may be deemed securities under the DAO report framework, subjecting the Trust to additional SEC oversight.
- Custody Vulnerabilities: Cybersecurity threats to Crypto Custodians could disrupt operations
- Market Volatility: Crypto assets are prone to 30%+ intraday price swings, necessitating frequent halts under Nasdaq Rule 4120.

Mitigation Strategies

- CSSA Coverage: 90% of holdings are surveilled via ISG members (e.g., CME, ICE) to detect cross-market manipulation.
- Liquidity Requirements: APs must maintain \$2 million in capital and adhere to Market Maker obligations under Rule 5615.

Conclusion and Implications

The proposed Rule 5712 represents a paradigm shift in mainstream financial markets' acceptance of digital assets. By aligning with SEC precedents and leveraging robust surveillance frameworks, Nasdaq aims to provide investors with diversified crypto exposure while mitigating risks to decentralized markets. If approved, this rule could pave the way for additional multi-asset crypto ETPs, accelerating institutional adoption of blockchain-based investment products.

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