

brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>30</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2014-042 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-BATS-2014-042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-BATS-2014-042, and should be submitted on or before October 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 73233; File No. SR-NASDAQ-2014-053]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the iShares Commodities Strategy ETF iShares of U.S. ETF Trust

September 26, 2014.

#### I. Introduction

On July 31, 2014, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares ("Shares") of the iShares Commodities Strategy ETF ("Fund") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on August 18, 2014.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of Proposed Rule Change

The Exchange proposes to list and trade the Shares pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the iShares U.S. ETF Trust ("Trust"), which was established as a Delaware statutory trust on June 21, 2011.<sup>4</sup> The Fund is a series of the Trust.

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 72813 (Aug. 12, 2014), 79 FR 48787 ("Notice").

<sup>4</sup> According to the Exchange, the Trust is registered with the Commission as an investment company and has filed a registration statement on

BlackRock Fund Advisors will be the investment adviser ("Adviser") to the Fund.<sup>5</sup> BlackRock Investments, LCC ("Distributor") will be the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

The Exchange has made the following representations and statements in describing the Fund and its principal investments (including those of the Subsidiary, as defined herein), other investments, and investment restrictions.<sup>6</sup>

#### *Principal Investments of the Fund*

According to the Exchange, the investment objective of the Fund will be to seek total return by providing investors with broad commodity exposure. The Fund will be an actively managed exchange-traded fund ("ETF") that seeks to achieve its investment objective by investing in a combination of exchange-traded commodity futures contracts, exchange-traded options on

Form N-1A ("Registration Statement") with the Commission. See Registration Statement on Form N-1A for the Trust, dated January 24, 2014 (File Nos. 333-179904 and 811-22649). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601).

<sup>5</sup> The Exchange states that, while the Adviser is not a broker-dealer, the Adviser is affiliated with the Distributor, which is a broker-dealer. The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and changes to the Fund's portfolio. Nasdaq Rule 5735(g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio (including the portfolio of the Subsidiary, as defined herein). In addition, the Exchange represents that in the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and changes to the portfolio, and the Adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange also states that the Fund does not currently intend to use a sub-adviser.

<sup>6</sup> The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value ("NAV"), fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice and Registration Statement, as applicable. See *supra* notes 3 and 4, respectively.

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii).

futures contracts, and exchange-cleared swaps (collectively, “Commodity-Linked Investments”)<sup>7</sup> and exchange-traded commodity-related equities (“Commodity-Related Equities”),<sup>8</sup> thereby obtaining exposure to the commodities markets. The Fund will seek to gain exposure to Commodity-Linked Investments through investments in a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (“Subsidiary”), and will invest directly in Commodity-Related Equities. The Fund’s investment in the Subsidiary may not exceed 25% of the Fund’s total assets.

The remainder of the Fund’s assets will be invested, either directly by the Fund or through the Subsidiary, in: (1) Short-term, investment grade fixed income securities that include U.S. government and agency securities,<sup>9</sup> treasury inflation-protected securities, sovereign debt obligations of non-U.S. countries, and repurchase agreements; (2) money market instruments;<sup>10</sup> and (3)

<sup>7</sup> “Commodity-Linked Investments” will be comprised of exchange-traded futures contracts on the 22 commodities that comprise the S&P GSCI Index and index futures linked to commodities. However, the Fund is not obligated to invest in such futures contracts and does not seek to track the performance of the S&P GSCI Index. Commodity-Linked Investments will also be comprised of exchange-cleared swaps on commodities and exchange-traded options on futures that provide exposure to the investment returns of the commodities markets, without investing directly in physical commodities. According to the Exchange, with respect to the futures contracts and options on futures contracts held indirectly through the Subsidiary, not more than 10% of the weight of such futures contracts and options on futures contracts, in the aggregate, shall consist of such instruments whose principal trading market is not a member of the Intermarket Surveillance Group (“ISG”) or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Nasdaq states that this 10% limitation will be calculated using the value of the contract divided by the total absolute notional value of the Subsidiary’s futures contracts.

<sup>8</sup> “Commodity-Related Equities” will be comprised of exchange-traded common stocks of companies that operate in commodities, natural resources and energy businesses, and in associated businesses, as well as companies that provide services or have exposure to such businesses.

<sup>9</sup> Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the “full faith and credit” of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

<sup>10</sup> For the Fund’s purposes, money market instruments will include: Short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements of Rule 2a-7 under the

cash and other cash equivalents. The Fund will use such instruments as investments and to collateralize the Subsidiary’s Commodity-Linked Investments exposure on a day-to-day basis.

The Exchange notes that the Fund will not invest directly in physical commodities. The Fund may invest directly in exchange-traded notes (“ETNs”),<sup>11</sup> commodity-linked notes,<sup>12</sup> ETFs<sup>13</sup> and other investment companies, including exchange-traded closed-end funds that provide exposure to commodities, equity securities, and fixed income securities to the extent permitted under the 1940 Act.<sup>14</sup>

According to the Exchange, the Fund’s investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies.

#### *Investments of the Subsidiary*

The Subsidiary will seek to make investments generally in Commodity-Linked Investments. The Adviser will use its discretion to determine the percentage of the Fund’s assets allocated to the Commodity-Linked Investments held by the Subsidiary and the Commodity-Related Equities portion of

1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. As a related matter, according to the Exchange, the Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

<sup>11</sup> According to the Exchange, ETNs are exchange-traded notes as would be listed under Nasdaq Rule 5710.

<sup>12</sup> Such commodity-linked notes will not be exchange-traded. The Fund’s investments in such commodity-linked notes will generally be limited to circumstances in which the Fund reaches position limits, accountability levels, or price limits on one or more exchange-traded futures contracts or index futures in which the Fund invests.

<sup>13</sup> An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country, and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735).

<sup>14</sup> Not more than 10% of the equity securities (including shares of ETFs and closed-end funds) and ETNs in which the Fund may invest will be invested in securities that trade in markets that are not members of the ISG, which includes all U.S. national securities exchanges, or are not parties to a comprehensive surveillance sharing agreement with the Exchange.

the Fund’s portfolio. Generally, the Adviser will take various factors into account on a periodic basis in allocating the assets of the Fund, including, but not limited to, the results of proprietary models developed by the Adviser, the performance of index benchmarks for the Commodity-Linked Investments and Commodity-Related Equities relative to each other, relative price differentials for a range of commodity futures for current delivery as compared to similar commodity futures for future delivery, and other market conditions. The weightings of the Fund’s portfolio will be reviewed and updated at least annually.

The Subsidiary will be advised by the Adviser<sup>15</sup> and will have the same investment objective as the Fund. However, unlike the Fund, the Subsidiary may invest without limitation in Commodity-Linked Investments. The Subsidiary’s investments will provide the Fund with exposure to domestic and international markets. The Subsidiary will initially consider investing in futures contracts based on the table outlined in the Notice.<sup>16</sup> The Exchange notes that the list of commodities futures and commodities markets considered for investment can and will change over time.

The Fund and the Subsidiary are subject to regulation by the Commodity Futures Trading Commission and National Futures Association (“NFA”) and additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.<sup>17</sup>

<sup>15</sup> The Exchange states that the Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary will be wholly-owned and controlled by the Fund and will be advised by the Adviser. Therefore, the Fund’s ownership and control of the Subsidiary will prevent the Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Trust’s board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund’s role as the sole shareholder of the Subsidiary. The Adviser will receive no additional compensation for managing the assets of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

<sup>16</sup> See Notice, *supra* note 3, 79 FR at 48789–48790. In the Notice, the Exchange states that as U.S. and London exchanges list additional contracts, as currently listed contracts on those exchanges gain sufficient liquidity, or as other exchanges list sufficiently liquid contracts, the Adviser will include those contracts in the list of possible investments of the Subsidiary.

<sup>17</sup> As a result of the instruments that will be indirectly held by the Fund, the Exchange represents that the Adviser has registered as a

### Investment Restrictions

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries other than certain industries described in the Registration Statement. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.

The Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment).<sup>18</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.<sup>19</sup>

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under SubChapter M of the Internal Revenue Code.

Under the 1940 Act, the Fund's investment in investment companies will be limited to, subject to certain exceptions: (i) 3% of the total outstanding voting stock of any one investment company; (ii) 5% of the Fund's total assets with respect to any one investment company; and (iii) 10% of the Fund's total assets with respect to investment companies in the aggregate.

The Fund's and the Subsidiary's investments will be consistent with the Fund's investment objective, and, although certain investments will have a leveraging effect on the Fund, the

commodity pool operator and is also a member of the NFA.

<sup>18</sup>In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>19</sup>Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Fund will not seek leveraged returns (e.g., 2X or -3X).

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>22</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. In addition, an Indicative Optimized Portfolio Value, defined in Nasdaq Rule 5735(c)(3) as the "Intraday Indicative Value,"<sup>23</sup> will be available on the

<sup>20</sup>In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup>15 U.S.C. 78f(b)(5).

<sup>22</sup>15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>23</sup>According to the Exchange, the Intraday Indicative Value will reflect an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio) and will be based upon the current value for the components of a Disclosed Portfolio. The Exchange states that the Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close, that premiums and discounts between the Intraday Indicative Value and the market price may occur, and that the Intraday Indicative Value should not be viewed as a "real

NASDAQ OMX Information LLC proprietary index data service, and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.<sup>24</sup> On each business day, before commencement of trading in Shares in the Regular Market Session<sup>25</sup> on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in Nasdaq Rule 5735(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>26</sup> The Adviser, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the New York Stock Exchange, the list of the names and quantities of the instruments, as well as the estimated amount of cash (if any), constituting the creation basket for the Fund for that day. The NAV of the Fund will be determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the New York Stock Exchange is open for business.<sup>27</sup>

time" update of the NAV per Share of the Fund, which is calculated only once a day.

<sup>24</sup>Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service. The Exchange represents that GIDS offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs, and that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

<sup>25</sup>See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m., Eastern Time).

<sup>26</sup>On a daily basis, the Fund will disclose the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

<sup>27</sup>NAV per Share will be calculated for the Fund by taking the market price of the Fund's total assets, less all liabilities, dividing such amount by the total number of Shares outstanding, and rounding to the nearest cent. The value of the securities, other assets, and liabilities held by the Fund will be determined pursuant to valuation policies and procedures approved by the Trust's Board. The Fund's assets and liabilities will be valued primarily on the basis of market quotations. Equity securities and debt securities, including ETNs, traded on a recognized securities exchange will be valued at market value, which is determined using the last reported official closing price or last trading price on the exchange or other market on which the

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for any underlying exchange-traded equity will be available via the CTA high-speed line, and will be available from the national securities exchange on which they are listed. Quotation and last-sale information for any underlying exchange-traded options or exchange-traded futures contracts will be available via the quote and trade service of their respective primary exchanges. Information on the S&P GSCI Index will be available on the S&P Dow Jones Indices Web site. The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. The Exchange further notes that intraday, executable price quotations on the exchange-traded assets held by the Fund and the Subsidiary, including the Commodity-Related Equities, futures contracts, options on futures contracts, index futures, ETNs, ETFs, and other investment companies, including closed-end funds, will be available on the exchange on which they are traded. Intraday, executable price quotations on swaps, money market instruments, commodity-linked notes, and fixed-income instruments will be available from major broker-dealer firms. Intraday price information will also be available through subscription services, such as Bloomberg and Reuters. Additionally, the Trade Reporting and Compliance

security is primarily traded at the time of valuation. Fixed income securities, including money market securities and U.S. government securities, for which market quotations are readily available are generally valued using such securities' most recent bid prices provided directly from one or more broker-dealers, market makers, or independent third-party pricing services, each of whom may use matrix pricing and valuation models, as well as recent market transactions. Short-term investments that mature in less than 60 days when purchased will be valued at amortized cost. Exchange-traded futures contracts, options on futures contracts, and index futures will be valued at their settled price as of the close of such exchanges. Exchange-cleared swap agreements and commodity-linked notes are generally valued daily based on quotations from market makers or by a pricing service in accordance with valuation procedures adopted by the Trust's board. Shares of underlying ETFs and other investment companies, including closed-end funds, will be valued at their most recent closing price on the exchange on which they are traded. Shares of underlying money market funds will be valued at their NAV.

Engine ("TRACE") of the Financial Industry Regulatory Authority ("FINRA") will be a source of price information for certain fixed income securities held by the Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pause provisions under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,<sup>28</sup> and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth additional circumstances under which trading in Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority, as defined in Nasdaq Rule 5735(c)(4), 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.<sup>29</sup> In addition, the Exchange states that, while the Adviser is not registered as a broker-dealer, the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to that broker-dealer regarding access to information concerning the composition of, or changes to, the portfolio, and that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of

<sup>28</sup> These reasons may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolio of the Fund and the Subsidiary; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

<sup>29</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

material non-public information regarding the Fund's portfolio.<sup>30</sup>

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>31</sup> Prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of

<sup>30</sup> See *supra* note 5. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>31</sup> The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund and the Subsidiary, which include exchange-traded Commodity-Related Equities, exchange-traded or exchange-cleared Commodity-Linked Investments (with the exception of exchange-cleared swaps), ETNs, ETFs and other exchange-traded investment companies, with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how and by whom information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund and the Subsidiary must be in

compliance with Rule 10A-3 under the Act.<sup>32</sup>

(6) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(7) The Fund will invest directly in Commodity-Related Equities and will seek to gain exposure to Commodity-Linked Investments through investments in the Subsidiary. The Fund's investment in the Subsidiary will not exceed 25% of the Fund's total assets.

(8) The Fund will not invest in directly in physical commodities and may invest directly in ETNs, commodity-linked notes, ETFs, and other investment companies.

(9) The Subsidiary will seek to make investments in Commodity-Linked Investments. The Subsidiary will initially consider investing in futures contracts as outlined in the table in the Notice, though the table is subject to change.

(10) The Fund and the Subsidiary's investments will be consistent with the Fund's investment objectives and although certain investments will have a leveraging effect on the Fund, the Fund will not seek leveraged returns.

(11) With respect to the exchange-traded futures contracts and options on futures contracts held indirectly through the Subsidiary, not more than 10% of the weight<sup>33</sup> of such futures contracts and options on futures contracts in the aggregate shall consist of instruments 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. In addition, not more than 10% of the equity securities (including shares of ETFs and closed-end funds) and ETNs in which the Fund may invest will be invested in securities that trade in markets that are not members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(12) A minimum of 100,000 Shares will be outstanding at the

<sup>32</sup> See 17 CFR 240.10A-3.

<sup>33</sup> To be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts.

commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>34</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> that the proposed rule change (SR-NASDAQ-2014-053), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73230; File No. SR-FINRA-2014-036]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Composition of Hearing Panels and Extended Hearing Panels in Disciplinary Proceedings

September 26, 2014.

#### I. Introduction

On August 7, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to expand the pool of persons eligible to serve as Panelists on a Hearing Panel or an Extended Hearing Panel. The proposed rule change was published for comment in the **Federal Register** on August 21, 2014.<sup>3</sup> The Commission received no comments on the proposed rule change. The

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> 15 U.S.C. 78s(b)(2).

<sup>36</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 72854 (August 15, 2014), 79 FR 49549.