

information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2014-016 and should be submitted on or before September 8, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72813; File No. SR-NASDAQ-2014-053]

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

August 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to list and trade the shares of the iShares Commodities Strategy ETF (the “Fund”) of iShares U.S. ETF Trust (the “Trust”) under Nasdaq Rule 5735 (“Managed Fund Shares”), under Nasdaq Rule 5735 (“Managed Fund Shares”). The shares of the Fund are collectively referred to herein as the “Shares.”

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq’s principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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 Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares<sup>3</sup> on the Exchange.<sup>4</sup> The Fund will be an actively managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust, which was established as a Delaware statutory trust on June 21, 2011.<sup>5</sup> The Trust is registered with the Commission as an

<sup>3</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the “1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>4</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). The Fund would not be the first actively-managed fund listed on the Exchange; see Securities Exchange Act Release No. 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

<sup>5</sup> The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act (the “Exemptive Order”). See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust’s application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

investment company and has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission.<sup>6</sup> The Fund is a series of the Trust. With respect to the futures contracts held indirectly through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (referred to herein as the “Subsidiary”), not more than 10% of the weight<sup>7</sup> of such futures contracts in the aggregate shall consist of 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.

BlackRock Fund Advisors will be the investment adviser (“Adviser”) to the Fund. BlackRock Investments, LLC (“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 (“Custodian”) and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>8</sup> In addition,

<sup>6</sup> See Registration Statement on Form N-1A for the Trust, dated January 24, 2014 (File Nos. 333-179904 and 811-22649). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

<sup>7</sup> To be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary’s futures contracts.

<sup>8</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “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

Continued

<sup>13</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.

paragraph (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. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's (including the Subsidiary's) portfolio. 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, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

#### iShares Commodities Strategy ETF

The Fund's investment objective is to seek total return by providing investors with broad commodity exposure.

#### Principal Investments

##### Fund's Investments

The Fund will be an actively managed ETF that seeks to achieve its investment objective by investing in a combination of exchange-traded commodity futures contracts, exchange-traded options on futures contracts and exchange-cleared swaps (together and as further described below, "Commodity-Linked Investments") and exchange-traded commodity-related equities ("Commodity-Related Equities"), thereby obtaining exposure to the commodities markets.

Commodity-Linked Investments will be comprised of exchange-traded futures

implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

contracts on the 22 commodities that comprise the S&P GSCI Index and index futures linked to commodities. Although the Fund generally holds the same futures contracts as the S&P GSCI Index, 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.

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.

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 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) cash and other cash equivalents. The Fund will use such instruments as investments and to collateralize the Subsidiary's Commodity-Linked

<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 under Rule 2a-7 of the 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 Registration Statement, the Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

Investments exposure on a day-to-day basis.

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>

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.

#### Subsidiary's Investments

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 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,

<sup>11</sup> 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.

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> The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to

investment companies such as the Fund, which limit the ability of investment companies to invest directly in the derivative instruments. The Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it 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 set forth in the following table. The table also provides each instrument's trading hours, exchange and ticker symbol. The table is subject to change.

Contract ticker (Bloomberg generic)	Exchange code (Bloomberg) <sup>16</sup>	Exchange name <sup>17</sup>	Commodity contract	Trading hours (ET)
CO1 .....	ICE .....	ICE Futures Europe .....	BRENT CRUDE FUTR .....	20:00–18:00.
BZA1 .....	NYM .....	New York Mercantile Exchange .....	Brent Fin Last Da .....	18:00–17:15 & 09:00–14:30.
BH1 .....	NYM .....	New York Mercantile Exchange .....	Brt Crude Pen Fin .....	18:00–17:15 & 09:00–14:30.
V61 .....	CME .....	Chicago Mercantile Exchange .....	BUTTER CASH FUTR .....	18:00–17:00.
FC1 .....	CME .....	Chicago Mercantile Exchange .....	CATTLE FEEDER FUT .....	18:00–17:00 & 10:05–14:00.
CC1 .....	NYB .....	ICE Futures US Softs .....	COCOA FUTURE .....	05:45–13:30.
KC1 .....	NYB .....	ICE Futures US Softs .....	COFFEE 'C' FUTURE .....	05:15–13:30.
BQ1 .....	CMX .....	Commodity Exchange, Inc. ....	COMEX miNY GOLD .....	18:00–17:15.
ID1 .....	CMX .....	Commodity Exchange, Inc. ....	COMEX miNY SILVER .....	18:00–17:15.
C 1 .....	CBT .....	Chicago Board of Trade .....	CORN FUTURE .....	20:00–14:15 & 09:30–14:15.
ICR1 .....	NYB .....	ICE Futures US Softs .....	Corn Futures (ICE) .....	20:00–14:30.
CT1 .....	NYB .....	ICE Futures US Softs .....	COTTON NO.2 FUTR .....	21:00–14:20.
AG1 .....	NYM .....	New York Mercantile Exchange .....	CRUDE OIL FINANCL .....	18:00–17:15 & 09:00–14:30.
EC1 .....	NYM .....	New York Mercantile Exchange .....	E-MINI CRUDE OIL .....	18:00–17:15 & 09:00–14:30.
JO1 .....	NYB .....	ICE Futures US Softs .....	FCOJ-A FUTURE .....	08:00–14:00.
QS1 .....	ICE .....	ICE Futures Europe .....	GAS OIL FUT (ICE) .....	20:00–18:00.
XB1 .....	NYM .....	New York Mercantile Exchange .....	GASOLINE RBOB FUT .....	18:00–17:15 & 09:00–14:30.
YZ1 .....	NYM .....	New York Mercantile Exchange .....	GLOBEX HEAT OIL .....	18:00–17:15.
UL1 .....	NYM .....	New York Mercantile Exchange .....	GLOBEX RBOB GASLN .....	18:00–17:15 & 09:00–14:30.
GC1 .....	CMX .....	Commodity Exchange, Inc .....	GOLD 100 OZ FUTR .....	18:00–17:15 & 08:20–13:30.
NV1 .....	ICE .....	ICE Futures Europe .....	HEATING OIL FUT .....	20:00–18:00.
KW1 .....	CBT .....	Chicago Board of Trade .....	KC HRW WHEAT FUT .....	20:00–14:15 & 09:30–14:15.
LH1 .....	CME .....	Chicago Mercantile Exchange .....	LEAN HOGS FUTURE .....	18:00–17:00 & 10:05–14:00.
LC1 .....	CME .....	Chicago Mercantile Exchange .....	LIVE CATTLE FUTR .....	18:00–17:00 & 10:05–14:00.
LP1 .....	LME .....	London Metal Exchange .....	LME COPPER FUTURE .....	16:00–15:45.
LL1 .....	LME .....	London Metal Exchange .....	LME LEAD FUTURE .....	16:00–15:45.
LN1 .....	LME .....	London Metal Exchange .....	LME NICKEL FUTURE .....	16:00–15:45.
LA1 .....	LME .....	London Metal Exchange .....	LME PRI ALUM FUTR .....	16:00–15:45.
LT1 .....	LME .....	London Metal Exchange .....	LME TIN FUTURE .....	16:00–15:45.
LX1 .....	LME .....	London Metal Exchange .....	LME ZINC FUTURE .....	16:00–15:45.
SI1 .....	CMX .....	Commodity Exchange, Inc .....	Mini Silver Futur .....	18:00–17:15.
IW1 .....	NYM .....	New York Mercantile Exchange .....	NAT GAS LAST DAY .....	18:00–17:15 & 09:00–14:30.
NG1 .....	NYM .....	New York Mercantile Exchange .....	NATURAL GAS FUTR .....	18:00–17:15 & 09:00–14:30.
NR1 .....	NYM .....	New York Mercantile Exchange .....	NATURAL GAS SWAP .....	18:00–17:15 & 09:00–14:30.
HO1 .....	NYM .....	New York Mercantile Exchange .....	NY Harb ULSD Fut .....	18:00–17:15 & 09:00–14:30.
TR1 .....	NYM .....	New York Mercantile Exchange .....	NYH ULSD Asia Op .....	18:00–17:15 & 09:00–14:30.
FCO1 .....	NYM .....	New York Mercantile Exchange .....	NYMEX Cocoa Fut .....	18:00–17:15.
FCC1 .....	NYM .....	New York Mercantile Exchange .....	NYMEX Coffee Fut .....	18:00–17:15.
FSB1 .....	NYM .....	New York Mercantile Exchange .....	NYMEX Sugar 11 Fu .....	18:00–17:15.
PL1 .....	NYM .....	New York Mercantile Exchange .....	PLATINUM FUTURE .....	18:00–17:15 & 08:20–13:05.
PG1 .....	ICE .....	ICE Futures Europe .....	RBOB GASOLINE FT .....	20:00–18:00.
SI1 .....	CMX .....	Commodity Exchange, Inc .....	SILVER FUTURE .....	18:00–17:15 & 08:25–13:25.
ISB1 .....	NYB .....	ICE Futures US Softs .....	Soybean Fut (ICE) .....	20:00–14:30.
S 1 .....	CBT .....	Chicago Board of Trade .....	SOYBEAN FUTURE .....	20:00–14:15 & 09:30–14:15.
SM1 .....	CBT .....	Chicago Board of Trade .....	SOYBEAN MEAL FUTR .....	20:00–14:15 & 09:30–14:15.
ISL1 .....	NYB .....	ICE Futures US Softs .....	Soybean Meal(ICE) .....	20:00–14:30.
BO1 .....	CBT .....	Chicago Board of Trade .....	SOYBEAN OIL FUTR .....	20:00–14:15 & 09:30–14:15.
IBO1 .....	NYB .....	ICE Futures US Softs .....	Soybean Oil(ICE) .....	20:00–14:30.
SB1 .....	NYB .....	ICE Futures US Softs .....	SUGAR #11 (WORLD) .....	04:30–13:00.
W 1 .....	CBT .....	Chicago Board of Trade .....	WHEAT FUTURE(CBT) .....	20:00–14:15 & 09:30–14:15.
IWT1 .....	NYB .....	ICE Futures US Softs .....	Wheat Future(ICE) .....	20:00–14:30.
EN1 .....	ICE .....	ICE Futures Europe .....	WTI CRUDE FUTURE .....	20:00–18:00.

<sup>15</sup>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 ("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.

Contract ticker (Bloomberg generic)	Exchange code (Bloomberg) <sup>16</sup>	Exchange name <sup>17</sup>	Commodity contract	Trading hours (ET)
CL1 .....	NYM .....	New York Mercantile Exchange .....	WTI CRUDE FUTURE .....	18:00–17:15 & 09:00–14:30.

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. The list of commodities futures and commodities markets considered for investment can and will change over time.

#### Commodities Regulation

The Commodity Futures Trading Commission (“CFTC”) has recently adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator. As a result of the instruments that will be indirectly held by the Fund, the Adviser has registered as a commodity pool operator<sup>18</sup> and is also a member of the National Futures Association (“NFA”). The Fund and the Subsidiary are subject to regulation by the CFTC and NFA and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools.

#### 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

<sup>16</sup> The exchange codes listed are Bloomberg shorthand codes for the corresponding exchanges. The New York Board of Trade is currently owned by the ICE Futures Exchange; Bloomberg continues to use NYB as its shorthand code for certain contracts formerly traded on the New York Board of Trade.

<sup>17</sup> All of the exchanges are ISG members except for the London Metal Exchange (“LME”). The LME falls under the jurisdiction of the United Kingdom Financial Conduct Authority (“FCA”). The FCA is responsible for ensuring the financial stability of the exchange members’ businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activity, including conducting the arbitration proceedings under the LME arbitration regulations.

<sup>18</sup> As defined in Section 1a(11) of the Commodity Exchange Act.

securities of other investment companies.<sup>19</sup>

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>20</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. 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.<sup>21</sup>

The Fund intends to qualify for and to elect to be treated as a separate

<sup>19</sup> See Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

<sup>20</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>21</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

regulated investment company under SubChapter M of the Internal Revenue Code.<sup>22</sup>

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

#### Net Asset Value

The Fund’s net asset value (“NAV”) will be determined once each business day, generally as of the regularly scheduled close of business of the New York Stock Exchange (“NYSE”) (normally 4:00 p.m., Eastern time) on each day that the NYSE is open for trading, based on prices at the time of closing provided that any Fund assets or liabilities denominated in currencies other than the U.S. dollar will converted into U.S. dollars at the prevailing rates of exchange at such times as may be determined by the Fund from time to time. The NAV may be determined prior to 4:00 p.m. Eastern time on each business day, as described in the Registration Statement. The NAV of the Fund will be calculated by dividing the value of the net assets of the Fund (i.e. the value of its total assets less total liabilities) by the total number of outstanding Shares of the Fund, generally rounded to the nearest cent. The value of the securities and other assets held by the Fund, and its liabilities, 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, when readily available. Equity securities and debt securities, including ETNs, traded on a recognized securities exchange will be valued at market value, which is generally determined using the last

<sup>22</sup> 26 U.S.C. 851.

reported official closing price or last trading price on the exchange or other market on which the 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 settle 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 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.

When market quotations are not readily available or are believed by the Adviser to be unreliable, a Fund's investments will be valued at fair value. Fair value determinations are made by the Adviser in accordance with policies and procedures approved by the Trust's Board and in accordance with the 1940 Act. The Adviser may conclude that a market quotation is not readily available or is unreliable if a security or other asset or liability does not have a price source due to its lack of liquidity, if a market quotation differs significantly from recent price quotations or otherwise no longer appears to reflect fair value, where the security or other asset or liability is thinly traded, or where there is a significant event subsequent to the most recent market quotation. A "significant event" is an event that, in the judgment of the Adviser, is likely to cause a material change to the closing market price of the asset or liability held by a Fund. Non-U.S. securities whose values are affected by volatility that occurs in U.S. markets on a trading day after the close of foreign securities markets may be fair valued.<sup>23</sup>

<sup>23</sup> Fair value represents a good faith approximation of the value of an asset or liability.

#### Creation and Redemption of Shares

The Trust will issue and sell Shares of the Fund only in Creation Unit aggregations on a continuous basis through the Distributor, without a sales load, at a price based on the Fund's NAV next determined after receipt, on any business day, of an order in proper form.

The consideration for purchase of Creation Units generally will consist of the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) that represents the portion of the Fund's investments in Commodity-Related Equities (*i.e.*, the Deposit Securities) and the Cash Component computed (as described below) that represents the portion of the Fund's investments in Commodity-Related Investments, including investments by the Subsidiary, as well as investments in instruments used to collateralize the Subsidiary's Commodity-Linked Investments exposure. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which will be applicable (subject to possible amendment or correction) to creation requests received in proper form. The Fund Deposit represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the "Deposit Amount," which is an amount equal to the market value of the Deposit Securities, and serves to compensate for the difference between the NAV per Creation Unit and the Deposit Amount, including the portion of the NAV per Creation Unit attributable to the Fund's investments in Commodity-Linked Investments and instruments used to collateralize such investments.

The Fund may accept cash in substitution for the Deposit Securities it might otherwise accept as in-kind consideration for the purchase of Creation Units. Although the Trust does not ordinarily permit partial or full cash purchases of Creation Units of iShares funds, when partial or full cash purchases of Creation Units are available or specified, as is the case with

The fair value of an asset or liability held by a Fund is the amount a Fund might reasonably expect to receive from the current sale of that asset or the cost to extinguish that liability in an arm's-length transaction. Valuing a Fund's investments using fair value pricing will result in prices that may differ from current market valuations and that may not be the price at which those investments could have been sold during the period in which the particular fair values were used.

the Fund, they will be effected in essentially the same manner as in-kind purchases thereof. In the case of a partial or full cash purchase, the "Authorized Participant" (a Depository Trust Company ("DTC") participant that has entered into an Authorized Participant agreement with the Distributor) must pay the cash equivalent of the Deposit Securities it would otherwise be required to provide through an in-kind purchase, plus the same Cash Component required to be paid by an in-kind purchaser.<sup>24</sup>

The Adviser, through the National Securities Clearing Corporation ("NSCC"), will make available on each business day, prior to the opening of business of the NYSE (currently 9:30 a.m., E.T.), the list of the names and the required number of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information at the end of the previous business day). Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Fund Deposit is made available.

The identity and number of the Deposit Securities may change pursuant to changes in the composition of the Fund's portfolio and as rebalancing adjustments and corporate actions events are reflected from time to time by the Adviser with a view to the investment objective of the Fund. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the component securities constituting the Fund's portfolio.

The portfolio of securities required for purchase of a Creation Unit may not be identical to the portfolio of securities a Fund will deliver upon redemption of Fund Shares. The Deposit Securities and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond *pro rata* to the securities held by such Fund.

The Fund reserves the right to permit or require the substitution of a "cash in lieu" amount to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through

<sup>24</sup> The Adviser represents that, to the extent the Trust effects the redemption of Shares of a Fund in cash, such transactions will be effected in the same manner, or in an equitable manner, for all Authorized Participants, subject to the best interests of the Fund.

the DTC. The Fund also reserves the right to permit or require a “cash in lieu” amount in certain circumstances, including circumstances in which (i) the delivery of the Deposit Security by the Authorized Participant would be restricted under applicable securities or other local laws or (ii) the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under applicable securities or other local laws, or in certain other situations.

Creation Units may be purchased only by or through an Authorized Participant. Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor in proper form no later than the closing time of the regular market session<sup>25</sup> of the Exchange (normally 4:00 p.m., Eastern time), or earlier as described in the Registration Statement, in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. Orders requesting substitution of a “cash in lieu” amount generally must be received by the Distributor no later than 4:00 p.m., Eastern time, or earlier as described in the Registration Statement. On days when the exchange or other markets close earlier than normal, a Fund may require orders to create Creation Units to be placed earlier in the day. A standard creation transaction fee will be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of the Fund may be redeemed by Authorized Participants only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor or its agent and only on a business day. The Funds will not redeem shares in amounts less than Creation Units. Each Fund generally will redeem Creation Units for Fund Securities, a designated portfolio of securities, plus the Cash Amount, which is an amount equal to the difference between the net asset value of the shares being redeemed, as next determined after the receipt of a redemption request in proper form, and the value of Fund Securities, less a redemption transaction

fee. Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally will consist of Fund Securities plus the Cash Amount.

A standard redemption transaction fee will be imposed to offset transfer and other transaction costs that may be incurred by a Fund.

Redemption requests for Creation Units of a Fund must be submitted to the Distributor by or through an Authorized Participant no later than 4:00 p.m. Eastern time, or earlier as described in the Registration Statement, on any business day, in order to receive that day's NAV. The Authorized Participant must transmit the request for redemption in the form required by a Fund to the Distributor in accordance with procedures set forth in the Authorized Participant agreement.

#### Availability of Information

The Fund's Web site ([www.ishares.com](http://www.ishares.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”)<sup>26</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session 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>27</sup>

<sup>26</sup> The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>27</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

On a daily basis, the Fund will disclose for each portfolio security and other asset of the Fund, including those held by the Subsidiary, the following information on the Funds' Web site (if applicable): Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); 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 holdings in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and quantities required to be delivered in exchange for each Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via NSCC. The basket represents one Creation Unit of the Fund.

In addition, for the Fund, an Indicative Optimized Portfolio Value (“IOPV”)<sup>28</sup>, defined in Rule 5735(c)(3) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio), will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service<sup>29</sup> will be based upon the current value for the components of the Disclosed Portfolio

<sup>28</sup> The IOPV will be based on the current value of the securities and other assets held by the Fund and the Subsidiary using market data converted into U.S. dollars at the current currency rates. The IOPV price 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. Premiums and discounts between the IOPV and the market price may occur. The IOPV will not necessarily reflect the precise composition of the current portfolio of securities and assets held by a Fund at a particular point in time or the best possible valuation of the current portfolio. Therefore, the IOPV should not be viewed as a “real-time” update of a Fund's NAV, which will be calculated only once a day. The quotations of certain Fund holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States.

<sup>29</sup> Currently, the NASDAQ OMX Global Index Data Service (“GIDS”) is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. 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 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

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.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Intra-day, 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. Intra-day, executable price quotations on swaps, money market instruments, and commodity-linked notes, and fixed-income instruments will be available from major broker-dealer firms. Intra-day price information will also be available through subscription services, such as Bloomberg and Reuters. Additionally, the Trade Reporting and Compliance 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.

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site at [www.sec.gov](http://www.sec.gov). Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. 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 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. Quotation and last sale information for any underlying exchange-traded equity will also be available via the quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association

plans. Quotation and last sale information for any underlying exchange-traded options will also be available via the quote and trade service of their respective primary exchanges. Quotation and last sale information for any underlying 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 (<http://us.spindices.com>).

#### Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A-3<sup>30</sup> under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. 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 Halts

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. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These 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. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in

the Shares from 4:00 a.m. until 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is \$0.01.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>31</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading information it can obtain relating to the Shares, other exchange-traded securities and other assets 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 the ISG<sup>32</sup> and FINRA may obtain trading information regarding trading in the Shares, other exchange-traded securities and other assets 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, other exchange-traded securities and other assets held by the Fund and the Subsidiary from

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

<sup>32</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>30</sup> See 17 CFR 240.10A-3.

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 TRACE.

In addition, 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. 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 or are not parties to a comprehensive surveillance sharing agreement with the Exchange. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Circular

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: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how and by whom the information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) 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; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

<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.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund 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.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

#### 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is 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, and to remove impediments to and perfect the mechanism of a free and open market and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 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.

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 Fund will not seek leveraged returns. FINRA may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares, other exchange-traded securities and other assets 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 TRACE. With respect to the futures contracts held indirectly through the Subsidiary, not more than 10% of the weight<sup>34</sup> of such futures contracts in the aggregate shall consist of instruments whose principal trading market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. 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 or are not parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will invest up to 25% of its total assets in the Subsidiary. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will use the fixed-income securities as investments and to collateralize the Subsidiary's commodity exposure on a day-to-day basis. The Fund may also invest directly in ETFs 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.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that 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

<sup>34</sup> To be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts.



participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day. 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, and 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. Intraday price information will be available through subscription services, such as Bloomberg and Reuters.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading information it can obtain relating to the Shares, other exchange-

traded securities and other assets held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares, other exchange-traded securities and other assets 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, other exchange-traded securities and other assets 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. Additionally, FINRA's TRACE will be a source of price information for certain fixed income securities held by the Fund. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-053 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2014-053. 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 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-2014-053 and should be submitted on or before September 8, 2014.

<sup>35</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72814; File No. SR-EDGX-2014-22]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

August 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2014, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. 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 proposes to amend its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGX Rule 15.1(a) and (c) ("Fee Schedule") to harmonize the definitions of Average Daily Trading Volume ("ADV") and Total Consolidated Volume ("TCV") with those contained in the BATS Exchange, Inc. ("BATS") and BATS-Y Exchange, Inc. ("BYX") fee schedules.

The text of the proposed rule change is available on the Exchange's Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

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

<sup>3</sup> The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." See Exchange Rule 1.5(n).

#### 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On January 31, 2014, Direct Edge Holdings LLC ("DE Holdings"), the former parent company of the Exchange, completed its business combination with BATS Global Markets, Inc., the parent company of BATS and BYX.<sup>4</sup> As part of its effort to reduce regulatory duplication and relieve firms that are members of the Exchange, BATS, and BYX of conflicting or unnecessary regulatory burdens, the Exchange is now engaged in the process of reviewing and amending certain Exchange, BATS, and BYX Rules. To conform to comparable BATS and BYX rules for purposes of its harmonization efforts due to its business combination, the Exchange proposes to amend the definitions of ADV and TCV to make each definition similar to those contained in the BATS and BYX fee schedules.

Currently, the Exchange determines the liquidity adding rebate that it will provide to Members based on the Exchange's tiered pricing structure based on the calculation of ADV,<sup>5</sup> and/

<sup>4</sup> See Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGX-2013-43). Upon completion of the combination, DE Holdings and BATS Global Markets, Inc. each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named "BATS Global Markets Holdings, Inc.," changed its name to "BATS Global Markets, Inc."

<sup>5</sup> As provided in the Fee Schedule, "ADV" is currently defined as "the average daily volume of shares that a Member executed on the Exchange for the month in which the fees are calculated. ADV is calculated on a monthly basis, excluding shares on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours ("Exchange System Disruption") and on the last Friday in June (the "Russell Reconstitution Day"). With prior notice to the Exchange, a Member may aggregate ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD)."

or average daily TCV.<sup>6</sup> Like BATS and BYX, the Exchange currently excludes from its definition of ADV and TCV days where its system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours,<sup>7</sup> and the last Friday in June (the "Russell Reconstitution Day"). BATS and BYX also exclude from its definitions of ADV and TCV days with a scheduled early market close.<sup>8</sup> Similarly, the General Notes section of the Exchange's Fee Schedule states that trading activity on days when the market closes early are not counted toward volume tiers.<sup>9</sup> To harmonize the definitions of ADV and TCV with BATS and BYX, the Exchange proposes relocate this exclusion from the General Notes section of the Fee Schedule and include it the definitions of ADV and TCV. The Exchange notes that it is not proposing to modify any of the existing rebates or the percentage thresholds at which a Member may qualify for certain rebates pursuant to the tiered pricing structure. The Exchange proposes to implement these amendments to its Fee Schedule on August 1, 2014.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed rule change will provide greater harmonization between similar Exchange, BATS and BYX rules, resulting in greater uniformity and less burdensome and more consistent standards for common members. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would

<sup>6</sup> As provided in the Fee Schedule, "TCV" is currently defined as "the volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month in which the fees are calculated, excluding volume on any day that the Exchange experiences an Exchange System Disruption" or the Russell Reconstitution Day."

<sup>7</sup> "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time." See Exchange Rule 1.5(y).

<sup>8</sup> See Securities Exchange Act Release Nos. 72590 (July 10, 2014), 79 FR 41605 (July 16, 2014) (SR-BYX-2014-009); and 72589 (July 10, 2014), 79 FR 41618 (July 16, 2014) (SR-BATS-2014-025).

<sup>9</sup> Days with a scheduled early market close are December 24, 2014, the trading day after Thanksgiving, and the trading day before July 4th.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).