

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="56"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2017"/> - * <input type="text" value="118"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by The Nasdaq Stock Market LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposed rule change to list and trade under Nasdaq Rule 5705 the shares of the Horizons Russell 2000 Covered Call ETF, a series of the Horizons ETF Trust I.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Brett"/>	Last Name * <input type="text" value="Kitt"/>
Title * <input type="text" value="Senior Associate General Counsel"/>	
E-mail * <input type="text" value="Brett.Kitt@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8132"/>	Fax <input type="text"/>

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date <input type="text" value="11/01/2017"/>	<input type="text" value="Executive Vice President and General Counsel"/>
By <input type="text" value="Edward S. Knight"/>	<input type="text" value="edward.knight@nasdaq.com"/>

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Will send you the Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to list and trade under Nasdaq Rule 5705 the shares (“Index Fund Shares” or “Shares”) of the Horizons Russell 2000 Covered Call ETF (the “Fund”), a series of the Horizons ETF Trust I (the “Trust”).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of The NASDAQ Stock Market (the “Board”) on September 19, 2017. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Brett M. Kitt  
Senior Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8132

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

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

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

The Exchange proposes to list and trade the Shares of the Fund under Rule 5705, which rule governs the listing and trading of Index Fund Shares<sup>3</sup> on the Exchange.<sup>4</sup> The Shares will be offered by the Fund, which will be a passively managed exchange-traded fund (“ETF”) that seeks to track the performance of the CBOE Russell 2000 30-Delta BuyWrite V2 Index (the “Benchmark Index”).<sup>5</sup> The Fund is a series of the Trust. The Trust was established as a Delaware statutory trust on May 17, 2012. The Trust is registered with the Commission as an open-end management investment company and has filed a post-effective amendment to its

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<sup>3</sup> Rule 5705(b)(1)(A) provides that an “Index Fund Share” is a security (i) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index or combination thereof; (ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above, with a value equal to the next determined net asset value; and (iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof, with a value equal to the next determined net asset value. In contrast, an open-end investment company that issues Managed Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5735, seeks to provide investment results from a portfolio of securities selected by its investment adviser consistent with its investment objective and policies.

<sup>4</sup> The Commission approved Nasdaq Rule 5705 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039).

<sup>5</sup> The Exchange notes that its proposal to list shares of the Fund which tracks the performance of an index of U.S. exchange-listed options is similar to the proposal and resultant order issued to the NYSE ARCA to list and trade under NYSE Arca Equities Rule 5.2(j)(3) (which is similar to Nasdaq Rule 5705(b)). See Securities Exchange Act Release No. 68708 (January 23, 2013) (SR-NYSEArca-2012-131) (order approving listing and trading of shares of the Horizons S&P 500 Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF and Horizons S&P Energy Select Sector Covered Call ETF). The Exchange believes the proposed rule change does not raise any significant issues not previously addressed in this or prior Commission orders.

registration statement on Form N-1A (the “Registration Statement”) with the Commission to register the Fund and its Shares under the 1940 Act and the Securities Act of 1933.<sup>6</sup>

Horizons ETF Management (US), LLC will serve as the investment adviser (the “Adviser”) to the Fund. Foreside Fund Services, LLC will serve as the principal underwriter and distributor of the Fund’s Shares (the “Distributor”). U.S. Bank National Association will act as the custodian for the Fund (the “Custodian”). U.S. Bancorp Fund Services, LLC will serve as the administrator, transfer agent and fund accounting agent for the Fund (the “Administrator”).

Nasdaq Rule 5705(b)(5)(A)(i) provides that, if an index is maintained by a broker-dealer or fund Adviser, the broker-dealer or fund Adviser shall erect a “fire wall” around the personnel who have to access to information concerning changes and adjustments to the Benchmark Index. In addition, Nasdaq Rule 5705(b)(5)(A)(iii) further requires that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

The Adviser is not a broker-dealer and, although it is affiliated with two broker-dealers, neither it nor they maintain the Benchmark Index. In the event (a) the Adviser or any of its affiliated broker-dealers maintains the index, or (b) any new adviser or affiliated broker-dealer maintains the index, each will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information

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<sup>6</sup> See Registration Statement for the Trust, filed on June 22, 2017 (File No. 333-183155). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31961 (Jan. 19, 2016) (File No. 812-14461) (“Exemptive Order”).

concerning the composition and/or changes and adjustments to the Benchmark Index and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

**Horizons Russell 2000 Covered Call ETF.**

**Principal Investments.**

The Fund's investment objective is to seek to track the investment results that correspond (before fees and expenses) generally to the performance of the Benchmark Index provided by FTSE International Limited and Frank Russell Company ("FTSE Russell").<sup>7</sup> The Fund will pursue its objective by investing in U.S. exchange-traded equity securities and by utilizing an "option strategy" consisting of writing (selling) U.S. exchange-traded covered call options on a national securities exchange such as the Cboe Options Exchange ("CBOE"). The component securities of the Benchmark Index meet all requirements of Nasdaq Rule 5705(b)(3)(A)(i) except that the Benchmark Index includes call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.

<sup>7</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 the Advisers Act and Rule 204A-1 thereunder. 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.

In pursuing its investment objective, under normal market conditions,<sup>8</sup> the Fund will seek investment results that, before fees and expenses, generally correspond to the performance of the Benchmark Index. The Fund seeks correlation of 0.90 or better between its performance and the performance of the Benchmark Index. A figure of 1.00 would represent perfect correlation. As described below, the Benchmark Index is comprised of all the equity securities in the Russell 2000 Index and a succession of one-month out-of-the-money Russell 2000 Index covered call options. The Fund will invest at least 80% of its total assets in securities and financial instruments that comprise its Benchmark Index.

The Benchmark Index is a benchmark index that measures the performance of a theoretical portfolio that holds the stocks included in the Russell 2000 Index and “writes” (or sells) a succession of one-month out-of-the-money Russell 2000 Index covered call options. The Russell 2000 Index measures the performance of the small capitalization sector of the U.S. equity market, as defined by FTSE Russell. The Russell 2000 Index is a subset of the Russell 3000 Index, which measures the performance of the broad U.S. equity market, as determined by FTSE Russell. The Russell 2000 Index is a float-adjusted capitalization-weighted index of equity securities issued by the approximately 2000 smallest issuers in the Russell 3000 Index. Preferred and convertible preferred stock, redeemable shares, participating preferred stock, warrants, rights, installment receipts and trust receipts are not included in the Russell 2000 Index.

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<sup>8</sup> The term “under normal market conditions” as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund’s investment objective.

The Benchmark Index for the Fund measures the performance of a hypothetical portfolio that employs a covered call strategy. It consists of long positions in companies in the Russell 2000 Index and sells a monthly out-of-the-money (OTM) Russell 2000 Index call option. The call option written is at the strike nearest to the 30 Delta at 10:00 a.m. CT on the Roll Date.

The Fund will be an index fund that employs a “passive management” investment strategy in seeking to achieve its objective. The Adviser’s strategy will consist of holding an equity portfolio indexed to the Russell 2000 Index and selling a monthly out-of-the-money (OTM) Russell 2000 Index call option. The call option written is the strike nearest to the 30 Delta at 10:00 a.m. CT on the Roll Date. The Benchmark Index provides a benchmark measure of the total return of this hypothetical portfolio. Because a covered call strategy generates income in the form of premiums on the written call options, the Benchmark Index is generally expected to provide higher total returns with lower volatility than the Russell 2000 Index in most market environments, with the exception of when the equity market is rallying rapidly. Each of the succession of single call options in the Benchmark Index will be traded on national securities exchanges such as the CBOE. As of May 12, 2017, the Russell 2000 Index included common stocks of 2026 companies, with a market capitalization range of between approximately \$143 million and \$3.4 billion.

The Fund will generally use a replication methodology, meaning it will invest in all of the securities and the call option comprising the Benchmark Index in proportion to the weightings in Benchmark Index. However, the Fund may, from time-to-time, utilize a sampling methodology under various circumstances where it may not be possible or practicable to purchase all of the equity securities comprising the Benchmark Index.



The equity securities in which the Fund will invest and the option that the Fund will buy and write will be limited to U.S. exchange-traded securities and call options, respectively. They will trade in markets that are members of the Intermarket Surveillance Group (“ISG”), which includes all U.S. national securities exchanges and certain foreign exchanges, or they will be parties to a comprehensive surveillance sharing agreement with the Exchange. A list of ISG members is available at [www.isgportal.org](http://www.isgportal.org).

The equity securities held by the Fund will be periodically rebalanced. The call option portion of the portfolio will generally consist of U.S. exchange-traded one-month covered calls on the Russell 2000 Index that are written by the Fund slightly out-of-the-money. A call option will give the holder the right to buy the securities underlying the call options written at a predetermined strike price from the Fund. The notional value of the covered call options written (including financial instruments described in Other Investments below) will be generally be 100% of the overall Fund.

The Fund will write (sell) call options on the Russell 2000 Index. The Fund will utilize options in accordance with Rule 4.5 of the Commodity Exchange Act (“CEA”). The Trust, on behalf of the Fund, has filed a notice of eligibility for exclusion from the definition of the term “commodity pool operator” in accordance with Rule 4.5 so that the Fund is not subject to registration or regulation as a commodity pool operator under the CEA.

### **Other Investments.**

In addition to the option strategy described in Principal Investments where the Fund will invest in one-month out-of-the-money Russell 2000 Index covered call options, the Fund may invest up to 10% of the market value of its net assets in exchange-traded and OTC hybrid instruments, which combine traditional stocks, bonds, or commodities with options or forward

contracts, total return swaps, credit default swaps<sup>9</sup> and forward contracts (“Derivatives”). The Fund may utilize such Derivatives as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), or to manage cash flows or to preserve capital. The Fund will only enter into transactions in Derivatives with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement. The Fund’s investments in Derivatives will be consistent with the Fund’s investment objectives and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of the Fund’s Benchmark Index.<sup>10</sup>

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and will depend on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

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<sup>9</sup> To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

<sup>10</sup> The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser’s analysis will evaluate each approved counterparty using various methods of analysis and may consider the Adviser’s past experience with the counterparty, its known disciplinary history and its share of market participation.

Short-term debt securities are securities from issuers that have a long-term debt rating of at least A by Standard & Poor's Ratings Group ("S&P Ratings"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch") and have a maturity of one year or less. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are defined to include, without limitation, the following: (1) U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,<sup>11</sup> which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes.

The Fund may only invest in commercial paper rated A-1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F2 or higher by Fitch. The Fund intends to qualify each year as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.

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 monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

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<sup>11</sup> The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust ("Trust Board"). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

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 securities. Illiquid securities 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.

The Fund may concentrate its investments in a particular industry or group of industries to the extent that the Russell 2000 Index concentrates in an industry or group of industries.<sup>12</sup>

The Fund's investments, including investments in Derivatives, will be consistent with the Fund's investment objective and the 1940 Act. These Derivatives may be used to hedge risks, including interest rate risks and credit risks, associated with the Fund's portfolio investments. The Fund's investments in Derivatives will not be used to seek to achieve a multiple or inverse multiple of an index and they will not be used to enhance leverage.

### **The Shares.**

The Fund will issue and redeem Shares only in Creation Units at the net asset value ("NAV")<sup>13</sup> next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the NYSE, which is, generally, 4:00 p.m. Eastern Time. Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell

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<sup>12</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>13</sup> The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the Nasdaq Stock Exchange, generally 4:00 p.m. Eastern time (the "NAV Calculation Time"). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see Registration Statement.

Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the applicable agreement with an Authorized Participant (as defined below).

The consideration for purchase of a Creation Unit generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of all or a portion of the Deposit Securities (“Deposit Cash”) and the “Cash Component,” computed as described below. The Fund may, under certain circumstances, effect a portion of creations and redemptions for cash, rather than in-kind securities, particularly for the put and call options in which the Fund invests.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the “Fund Deposit,” which 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 market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (i.e., the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the Cash Component is a negative number (i.e., the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the

Cash Component. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”) or (ii) a Depository Trust Company (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute an agreement that has been agreed to by the Distributor and the Administrator with respect to purchases and redemptions of Creation Units.

The Administrator, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange’s Regular Market Session (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and/or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day). Such Fund Deposit, subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities and/or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day.

With respect to the Fund, the Administrator, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each

business day, the list of the names and share quantities of the Fund's portfolio securities ("Fund Securities") and/or, if relevant, the required cash value thereof that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day.

Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Administrator on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of one or more Fund Securities.

The creation/redemption order cut off time for the Fund is expected to be 4:00 p.m. Eastern time for purchases of Shares. On days when the Exchange closes earlier than normal and in the case of custom orders, the Fund may require orders for Creation Units to be placed earlier in the day.

**Availability of Information.**

The Fund's website ([www.us.horizonsetfs.com](http://www.us.horizonsetfs.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 website will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) daily trading volume, 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>14</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<sup>15</sup> on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>16</sup>

On a daily basis, the Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol; CUSIP

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<sup>14</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>15</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. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

<sup>16</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.



number or other identifier, if any; a description of the holding (including the type of holding); with respect to holdings in derivatives, the identity of the security, index, or other asset upon which the derivative is based; for options, the option strike price, quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units), and expiration of call option; maturity date, if any; coupon rate; if any; effective date, if any; market value of the holding; percentage weighting of the holding in the Fund's portfolio; and cash equivalents and the amount of cash held. The website information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5705(b)(3)(C) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service,<sup>17</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the assets' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a "real time" update of the NAV per Share of the Fund, which is calculated only once a day.

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.

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<sup>17</sup> Currently, the NASDAQ Global Index Data Service ("GIDS") is the NASDAQ 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 indexes, listed ETFs, or third-party partner indexes and ETFs.

Intra-day, executable price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors. Specifically, the intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including exchange-listed equity securities (which include common stocks and ETFs), exchange-listed futures, and exchange-listed options, will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, and, with respect to OTC options, swaps and forwards, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. Price information regarding investment company securities and ETFs will be available from on-line information services and from the website for the applicable investment company security. The intra-day, closing and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services.

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

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's annual and semi-annual reports (together, "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 website 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.

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 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 and any underlying exchange-traded products. Quotation and last sale information for exchange-listed equity securities (including other ETFs and closed-end funds) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans. Quotation and last sale information for U.S. exchange-listed options will be available via the Options Price Reporting Authority. Pricing information for exchange-listed derivatives (including options on U.S. Treasury securities, options on U.S. Treasury futures contracts, and U.S. Treasury futures contracts), ETFs and closed-end funds will be available from the applicable listing exchange and from major market data vendors. Money market funds and other open-end funds (excluding ETFs) are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund

that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

**Initial and Continued Listing.**

The Shares will be subject to Rule 5705, which sets forth the initial and continued listing criteria applicable to Index Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A-3<sup>18</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 and Trading Pauses.**

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 or pause 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/or the financial instruments constituting the Disclosed Portfolio of the Fund; 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 Nasdaq Rules 5705(b)(1)(B)(iv)(b) and 5705(b)(9)(B), which set forth circumstances under which Shares of the Fund may be halted.

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<sup>18</sup> See 17 CFR 240.10A-3.

If the Intraday Indicative Value, the Index value or the value of the Disclosed Portfolio is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the Fund that the NAV for the Fund will be calculated daily and will be made available to all market participants at the same time.

### **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. Eastern time. 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>19</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.

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<sup>19</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.

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 in the Shares, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options and futures which the Fund will buy and write with other markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>20</sup> FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options and futures from markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange may also obtain information from the Trade Reporting and Compliance Engine (“TRACE”), which is the FINRA developed vehicle that facilitates mandatory reporting of OTC secondary market transactions in eligible fixed income securities.

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.

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<sup>20</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

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 information regarding the Index value and Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Index value and 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. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will 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 Distributor's website.

**Continued Listing Representations.**

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

(b) Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed 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 5705. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on

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

<sup>22</sup> 15 U.S.C. 78f(b)(5).



Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Because the Adviser does not maintain the index and is neither a Broker-Dealer nor affiliated with a broker-dealer that maintains the index, the Adviser is not required by Nasdaq Rule 5705(b)(3)(B)(iii) to implement or maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate. Nevertheless, in accordance with Nasdaq Rule 5705(b)(3)(B)(iii), personnel who make decisions on the open-end fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio.

The equity securities in which the Fund may invest and the options which the Fund may write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The market value of the call options included in the Index will not represent more than 10% of the total weight of the Index. Each call option included in the Index must meet the criteria of the Index methodology, which methodology is publicly available. The Fund seeks a correlation over time of 0.90 or better between the Fund's performance and the performance of its Benchmark Index. A figure of 1.00 would represent perfect correlation.

Under normal circumstances, the Fund will invest primarily in U.S. exchange-traded equity securities. The Fund will also utilize an option strategy consisting writing U.S. exchange-traded covered call options on the Index. The market value of the option strategy may be up to

20% of the Fund's overall net asset value. In addition to such option strategy, the Fund may invest no more than 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps and forward contracts.

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 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 securities. Illiquid securities 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.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

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 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. The Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed 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 the Distributor's website the

Disclosed Portfolio 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 also 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 and any underlying exchange-traded products. Intra-day, executable price quotations of the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The Fund's website 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 or paused 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, and trading in the Shares will be subject to Nasdaq Rule 5705(b)(1)(B)(iv), 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 passively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. 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.

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

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

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

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2017-118)

November \_\_, 2017

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend the Rules of the Exchange to List and Trade under Nasdaq Rule 5705 the shares of the Horizons Russell 2000 Covered Call ETF

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 November 1, 2017, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules of the Exchange to list and trade under Nasdaq Rule 5705 the shares (“Index Fund Shares” or “Shares”) of the Horizons Russell 2000 Covered Call ETF (the “Fund”), a series of the Horizons ETF Trust I (the “Trust”).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

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

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

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Rule 5705, which rule governs the listing and trading of Index Fund Shares<sup>3</sup> on the Exchange.<sup>4</sup> The Shares will be offered by the Fund, which will be a passively managed exchange-traded fund ("ETF") that seeks to track the performance of the CBOE Russell 2000 30-Delta BuyWrite V2 Index (the "Benchmark Index").<sup>5</sup> The Fund is a series of the Trust. The Trust was established as a Delaware statutory trust on May 17, 2012. The Trust is registered with the Commission as an open-end management investment company and

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<sup>3</sup> Rule 5705(b)(1)(A) provides that an "Index Fund Share" is a security (i) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index or combination thereof; (ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above, with a value equal to the next determined net asset value; and (iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof, with a value equal to the next determined net asset value. In contrast, an open-end investment company that issues Managed Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5735, seeks to provide investment results from a portfolio of securities selected by its investment adviser consistent with its investment objective and policies.

<sup>4</sup> The Commission approved Nasdaq Rule 5705 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039).

<sup>5</sup> The Exchange notes that its proposal to list shares of the Fund which tracks the performance of an index of U.S. exchange-listed options is similar to the proposal and resultant order issued to the NYSE ARCA to list and trade under NYSE Arca Equities Rule 5.2(j)(3) (which is similar to Nasdaq Rule 5705(b)). See Securities Exchange Act Release No. 68708 (January 23, 2013) (SR-NYSEArca-2012-131) (order approving listing and trading of shares of the Horizons S&P 500 Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF and Horizons S&P Energy Select Sector Covered Call ETF). The Exchange believes the proposed rule change does not raise any significant issues not previously addressed in this or prior Commission orders.

has filed a post-effective amendment to its registration statement on Form N-1A (the “Registration Statement”) with the Commission to register the Fund and its Shares under the 1940 Act and the Securities Act of 1933.<sup>6</sup>

Horizons ETF Management (US), LLC will serve as the investment adviser (the “Adviser”) to the Fund. Foreside Fund Services, LLC will serve as the principal underwriter and distributor of the Fund’s Shares (the “Distributor”). U.S. Bank National Association will act as the custodian for the Fund (the “Custodian”). U.S. Bancorp Fund Services, LLC will serve as the administrator, transfer agent and fund accounting agent for the Fund (the “Administrator”).

Nasdaq Rule 5705(b)(5)(A)(i) provides that, if an index is maintained by a broker-dealer or fund Adviser, the broker-dealer or fund Adviser shall erect a “fire wall” around the personnel who have to access to information concerning changes and adjustments to the Benchmark Index. In addition, Nasdaq Rule 5705(b)(5)(A)(iii) further requires that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

The Adviser is not a broker-dealer and, although it is affiliated with two broker-dealers, neither it nor they maintain the Benchmark Index. In the event (a) the Adviser or any of its affiliated broker-dealers maintains the index, or (b) any new adviser or

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<sup>6</sup> See Registration Statement for the Trust, filed on June 22, 2017 (File No. 333-183155). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31961 (Jan. 19, 2016) (File No. 812-14461) (“Exemptive Order”).



affiliated broker-dealer maintains the index, each will implement and maintain 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 and adjustments to the Benchmark Index and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

**Horizons Russell 2000 Covered Call ETF.**

**Principal Investments.**

The Fund's investment objective is to seek to track the investment results that correspond (before fees and expenses) generally to the performance of the Benchmark Index provided by FTSE International Limited and Frank Russell Company ("FTSE Russell").<sup>7</sup> The Fund will pursue its objective by investing in U.S. exchange-traded equity securities and by utilizing an "option strategy" consisting of writing (selling) U.S. exchange-traded covered call options on a national securities exchange such as the Cboe Options Exchange ("CBOE"). The component securities of the Benchmark Index meet all requirements of Nasdaq Rule 5705(b)(3)(A)(i) except that the Benchmark Index includes call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.

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<sup>7</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 the Advisers Act and Rule 204A-1 thereunder. 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.

In pursuing its investment objective, under normal market conditions,<sup>8</sup> the Fund will seek investment results that, before fees and expenses, generally correspond to the performance of the Benchmark Index. The Fund seeks correlation of 0.90 or better between its performance and the performance of the Benchmark Index. A figure of 1.00 would represent perfect correlation. As described below, the Benchmark Index is comprised of all the equity securities in the Russell 2000 Index and a succession of one-month out-of-the-money Russell 2000 Index covered call options. The Fund will invest at least 80% of its total assets in securities and financial instruments that comprise its Benchmark Index.

The Benchmark Index is a benchmark index that measures the performance of a theoretical portfolio that holds the stocks included in the Russell 2000 Index and “writes” (or sells) a succession of one-month out-of-the-money Russell 2000 Index covered call options. The Russell 2000 Index measures the performance of the small capitalization sector of the U.S. equity market, as defined by FTSE Russell. The Russell 2000 Index is a subset of the Russell 3000 Index, which measures the performance of the broad U.S. equity market, as determined by FTSE Russell. The Russell 2000 Index is a float-adjusted capitalization-weighted index of equity securities issued by the approximately 2000 smallest issuers in the Russell 3000 Index. Preferred and convertible preferred

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<sup>8</sup> The term “under normal market conditions” as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund’s investment objective.

stock, redeemable shares, participating preferred stock, warrants, rights, installment receipts and trust receipts are not included in the Russell 2000 Index.

The Benchmark Index for the Fund measures the performance of a hypothetical portfolio that employs a covered call strategy. It consists of long positions in companies in the Russell 2000 Index and sells a monthly out-of-the-money (OTM) Russell 2000 Index call option. The call option written is at the strike nearest to the 30 Delta at 10:00 a.m. CT on the Roll Date.

The Fund will be an index fund that employs a “passive management” investment strategy in seeking to achieve its objective. The Adviser’s strategy will consist of holding an equity portfolio indexed to the Russell 2000 Index and selling a monthly out-of-the-money (OTM) Russell 2000 Index call option. The call option written is the strike nearest to the 30 Delta at 10:00 a.m. CT on the Roll Date. The Benchmark Index provides a benchmark measure of the total return of this hypothetical portfolio. Because a covered call strategy generates income in the form of premiums on the written call options, the Benchmark Index is generally expected to provide higher total returns with lower volatility than the Russell 2000 Index in most market environments, with the exception of when the equity market is rallying rapidly. Each of the succession of single call options in the Benchmark Index will be traded on national securities exchanges such as the CBOE. As of May 12, 2017, the Russell 2000 Index included common stocks of 2026 companies, with a market capitalization range of between approximately \$143 million and \$3.4 billion.

The Fund will generally use a replication methodology, meaning it will invest in all of the securities and the call option comprising the Benchmark Index in proportion to

the weightings in Benchmark Index. However, the Fund may, from time-to-time, utilize a sampling methodology under various circumstances where it may not be possible or practicable to purchase all of the equity securities comprising the Benchmark Index.

The equity securities in which the Fund will invest and the option that the Fund will buy and write will be limited to U.S. exchange-traded securities and call options, respectively. They will trade in markets that are members of the Intermarket Surveillance Group (“ISG”), which includes all U.S. national securities exchanges and certain foreign exchanges, or they will be parties to a comprehensive surveillance sharing agreement with the Exchange. A list of ISG members is available at [www.isgportal.org](http://www.isgportal.org).

The equity securities held by the Fund will be periodically rebalanced. The call option portion of the portfolio will generally consist of U.S. exchange-traded one-month covered calls on the Russell 2000 Index that are written by the Fund slightly out-of-the-money. A call option will give the holder the right to buy the securities underlying the call options written at a predetermined strike price from the Fund. The notional value of the covered call options written (including financial instruments described in Other Investments below) will be generally be 100% of the overall Fund.

The Fund will write (sell) call options on the Russell 2000 Index. The Fund will utilize options in accordance with Rule 4.5 of the Commodity Exchange Act (“CEA”). The Trust, on behalf of the Fund, has filed a notice of eligibility for exclusion from the definition of the term “commodity pool operator” in accordance with Rule 4.5 so that the Fund is not subject to registration or regulation as a commodity pool operator under the CEA.

**Other Investments.**

In addition to the option strategy described in Principal Investments where the Fund will invest in one-month out-of-the-money Russell 2000 Index covered call options, the Fund may invest up to 10% of the market value of its net assets in exchange-traded and OTC hybrid instruments, which combine traditional stocks, bonds, or commodities with options or forward contracts, total return swaps, credit default swaps<sup>9</sup> and forward contracts (“Derivatives”). The Fund may utilize such Derivatives as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), or to manage cash flows or to preserve capital. The Fund will only enter into transactions in Derivatives with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement. The Fund’s investments in Derivatives will be consistent with the Fund’s investment objectives and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of the Fund’s Benchmark Index.<sup>10</sup>

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and will depend on several factors, including market conditions. For temporary defensive purposes and during periods of high cash

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<sup>9</sup> To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

<sup>10</sup> The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser’s analysis will evaluate each approved counterparty using various methods of analysis and may consider the Adviser’s past experience with the counterparty, its known disciplinary history and its share of market participation.

inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

Short-term debt securities are securities from issuers that have a long-term debt rating of at least A by Standard & Poor's Ratings Group ("S&P Ratings"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch") and have a maturity of one year or less. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are defined to include, without limitation, the following: (1) U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,<sup>11</sup> which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes.

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<sup>11</sup> The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust ("Trust Board"). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

The Fund may only invest in commercial paper rated A-1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F2 or higher by Fitch. The Fund intends to qualify each year as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.

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 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 securities. Illiquid securities 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.

The Fund may concentrate its investments in a particular industry or group of industries to the extent that the Russell 2000 Index concentrates in an industry or group of industries.<sup>12</sup>

The Fund's investments, including investments in Derivatives, will be consistent with the Fund's investment objective and the 1940 Act. These Derivatives may be used to hedge risks, including interest rate risks and credit risks, associated with the Fund's portfolio investments. The Fund's investments in Derivatives will not be used to seek to achieve a multiple or inverse multiple of an index and they will not be used to enhance leverage.

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<sup>12</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).

**The Shares.**

The Fund will issue and redeem Shares only in Creation Units at the net asset value (“NAV”)<sup>13</sup> next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the NYSE, which is, generally, 4:00 p.m. Eastern Time. Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the applicable agreement with an Authorized Participant (as defined below).

The consideration for purchase of a Creation Unit generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of all or a portion of the Deposit Securities (“Deposit Cash”) and the “Cash Component,” computed as described below. The Fund may, under certain circumstances, effect a portion of creations and redemptions for cash, rather than in-kind securities, particularly for the put and call options in which the Fund invests.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or

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<sup>13</sup> The NAV of the Fund’s Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the Nasdaq Stock Exchange, generally 4:00 p.m. Eastern time (the “NAV Calculation Time”). NAV per Share will be calculated by dividing the Fund’s net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund’s NAV, see Registration Statement.



Deposit Cash, as applicable, and the Cash Component will constitute the “Fund Deposit,” which 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 market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (i.e., the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the Cash Component is a negative number (i.e., the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”) or (ii) a Depository Trust Company (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute an agreement that has been agreed to by the Distributor and the Administrator with respect to purchases and redemptions of Creation Units.

The Administrator, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange’s Regular Market Session

(currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and/or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day). Such Fund Deposit, subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities and/or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day.

With respect to the Fund, the Administrator, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund's portfolio securities ("Fund Securities") and/or, if relevant, the required cash value thereof that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Administrator on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper

form, and the value of the Fund Securities (the “Cash Redemption Amount”), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust’s discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of one or more Fund Securities.

The creation/redemption order cut off time for the Fund is expected to be 4:00 p.m. Eastern time for purchases of Shares. On days when the Exchange closes earlier than normal and in the case of custom orders, the Fund may require orders for Creation Units to be placed earlier in the day.

**Availability of Information.**

The Fund’s website ([www.us.horizonsetfs.com](http://www.us.horizonsetfs.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 website will include the Shares’ ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) daily trading volume, 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>14</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

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<sup>14</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.

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<sup>15</sup> on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (the “Disclosed Portfolio”) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>16</sup>

On a daily basis, the Fund will disclose on the Fund’s website 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); with respect to holdings in derivatives, the identity of the security, index, or other asset upon which the derivative is based; for options, the option strike price, quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units), and expiration of call option; maturity date, if any; coupon rate; if any; effective date, if any; market value of the holding; percentage weighting of the holding in the Fund’s portfolio; and cash equivalents and the amount of cash held. The website information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5705(b)(3)(C) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s

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<sup>15</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. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

<sup>16</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.

portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service,<sup>17</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the assets' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a "real time" update of the NAV per Share of the Fund, which is calculated only once a day.

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 securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors. Specifically, the intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including exchange-listed equity securities (which include common stocks and ETFs), exchange-listed futures, and exchange-listed options, will be readily available from the

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<sup>17</sup> Currently, the NASDAQ Global Index Data Service ("GIDS") is the NASDAQ 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 indexes, listed ETFs, or third-party partner indexes and ETFs.

national securities exchanges trading such securities, automated quotation systems, published or other public sources, and, with respect to OTC options, swaps and forwards, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. Price information regarding investment company securities and ETFs will be available from on-line information services and from the website for the applicable investment company security. The intra-day, closing and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services.

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

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's annual and semi-annual reports (together, "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 website 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.

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 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 and any underlying exchange-traded products. Quotation and last sale information for exchange-listed equity securities (including other ETFs and closed-end funds) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans. Quotation and last sale information for U.S. exchange-listed options will be available via the Options Price Reporting Authority. Pricing information for exchange-listed derivatives (including options on U.S. Treasury securities, options on U.S. Treasury futures contracts, and U.S. Treasury futures contracts), ETFs and closed-end funds will be available from the applicable listing exchange and from major market data vendors. Money market funds and other open-end funds (excluding ETFs) are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

**Initial and Continued Listing.**

The Shares will be subject to Rule 5705, which sets forth the initial and continued listing criteria applicable to Index Fund Shares. The Exchange represents that, for initial

and/or continued listing, the Fund must be in compliance with Rule 10A-3<sup>18</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 and Trading Pauses.**

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 or pause 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/or the financial instruments constituting the Disclosed Portfolio of the Fund; 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 Nasdaq Rules 5705(b)(1)(B)(iv)(b) and 5705(b)(9)(B), which set forth circumstances under which Shares of the Fund may be halted.

If the Intraday Indicative Value, the Index value or the value of the Disclosed Portfolio is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the Fund that

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<sup>18</sup> See 17 CFR 240.10A-3.



the NAV for the Fund will be calculated daily and will be made available to all market participants at the same time.

**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. Eastern time. 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>19</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.

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<sup>19</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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options and futures which the Fund will buy and write with other markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>20</sup> FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options and futures from markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange may also obtain information from the Trade Reporting and Compliance Engine (“TRACE”), which is the FINRA developed vehicle that facilitates mandatory reporting of OTC secondary market transactions in eligible fixed income securities.

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

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<sup>20</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

to customers; (3) how information regarding the Index value and Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Index value and 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. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will 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 Distributor's website.

**Continued Listing Representations.**

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability

of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed 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 5705. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Because the Adviser does not maintain the index and is neither a Broker-Dealer nor affiliated with a broker-dealer that maintains the index, the Adviser is not required by

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

<sup>22</sup> 15 U.S.C. 78f(b)(5).

Nasdaq Rule 5705(b)(3)(B)(iii) to implement or maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate. Nevertheless, in accordance with Nasdaq Rule 5705(b)(3)(B)(iii), personnel who make decisions on the open-end fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio.

The equity securities in which the Fund may invest and the options which the Fund may write will be limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The market value of the call options included in the Index will not represent more than 10% of the total weight of the Index. Each call option included in the Index must meet the criteria of the Index methodology, which methodology is publicly available. The Fund seeks a correlation over time of 0.90 or better between the Fund's performance and the performance of its Benchmark Index. A figure of 1.00 would represent perfect correlation.

Under normal circumstances, the Fund will invest primarily in U.S. exchange-traded equity securities. The Fund will also utilize an option strategy consisting writing U.S. exchange-traded covered call options on the Index. The market value of the option strategy may be up to 20% of the Fund's overall net asset value. In addition to such

option strategy, the Fund may invest no more than 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps and forward contracts.

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 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 securities. Illiquid securities 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.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

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 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. The Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed 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 the Distributor's website the Disclosed Portfolio 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 also 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 and any underlying exchange-traded products. Intra-day, executable price quotations of the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The Fund's website 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 or paused 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, and trading in the Shares will be subject to Nasdaq Rule 5705(b)(1)(B)(iv), 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 passively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. 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.

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 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 passively-managed ETF 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

No written comments were either solicited or received.



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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-118 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-2017-118. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-2017-118 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).