rule change does not significantly affect competition, but rather simply seeks to align the Exchange rule with SEC Rule 14a–13 with respect to requirements related to inquiry of brokers in advance of a shareholder meeting.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(6) thereunder. Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act.

All submissions should refer to File Number SR–NYSE–2015–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–07 and should be submitted on or before March 17, 2015.

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

Brent J. Fields,
Secretary.

[FR Doc. 2015–03658 Filed 2–23–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt New Rule 5713 and List Paired Class Shares Issued by AccuShares® Commodities Trust I

February 18, 2015.

I. Introduction

On June 11, 2014, The NASDAQ Stock Market LLC (‘‘NASDAQ’’ or ‘‘Exchange’’) filed with the Securities and Exchange Commission (‘‘Commission’’), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (‘‘Act’’) and Rule 19b–4 thereunder, a proposed rule change to: (1) Adopt listing standards for Paired Class Shares in new Rule 5713; and (2) list and trade Paired Class Shares (‘‘Shares’’) issued by AccuShares® Commodities Trust I (‘‘Trust’’). The proposed rule change relates to the following funds pursuant to new Rule 5713: (a) AccuShares S&P GSCI® Spot Fund; (b) AccuShares S&P GSCI® Agriculture and Livestock Spot Fund; (c) AccuShares S&P GSCI® Industrial Metals Spot Fund; (d) AccuShares S&P GSCI® Crude Oil Spot Fund; (e) AccuShares S&P GSCI® Brent Oil Spot Fund; (f) AccuShares S&P GSCI® Natural Gas Spot Fund; and (g) AccuShares Spot CBOE® VIX Fund (each individually, ‘‘Fund,’’ and, collectively, ‘‘Funds’’).

The proposed rule change was published for comment in the Federal Register on June 23, 2014. On August 6, 2014, pursuant to Section 19(b)(2) of the Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change. On September 18, 2014, the Commission instituted proceedings to determine whether to approve or

disapprove the proposed rule change, and on December 16, 2014, the Commission extended the deadline for Commission action until February 18, 2015. The Commission received six comment letters regarding the proposal, including one from the Exchange and two from AccuShares Investment Management LLC (“Sponsor”), the sponsor of the Funds. On February 10, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change.

This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to adopt new Rule 5713, which permits the listing of Paired Class Shares, and to list and trade Shares of the Funds.

A. General Description of Paired Class Shares

Paired Class Shares will be structured with the objective of providing investors with exposure to changes in an index or other numerical variable (“Underlying Benchmark”). Paired Class Shares will be issued by a trust on behalf of a fund, and each fund will be a segregated series of that trust. Paired Class Shares will have values that are based on an Underlying Benchmark where the value of the underlying benchmark reflects the value of assets, prices, price volatility, or other economic interests (“Reference Asset”).

The trust for each fund of Paired Class Shares will always issue and redeem Paired Class Shares in pairs of shares of opposing classes of each fund: Up Shares and Down Shares. The values of the opposing classes will move in opposite directions as the value of the fund’s Underlying Benchmark varies from its starting level. Up Shares will be positively linked to the fund’s Underlying Benchmark, and Down Shares will be negatively linked to the fund’s Underlying Benchmark. The rate of linkage or leverage of a fund’s Up Shares and Down Shares performance to the performance of the fund’s referenced Underlying Benchmark will be one-to-one. Each fund will use a mathematical formula to calculate the liquidation value attributable to each of its classes of Paired Class Shares (“Class Value”) and to each share of each class (“Class Value per Share”). Each fund will engage in regular distributions and may also engage in special distributions or corrective distributions.

The Exchange states that other economic interests would include, for example, currencies, interest rates, non-investable economic indices, and other measures of financial instrument value. See Notice, supra note 3, 79 FR at 35611, n.11. The Exchange will file separate proposals under Section 19(b) of the Act before listing and trading each series of Paired Class Shares. See Commentary .02 to NASDAQ Rule 5713.

The Exchange represents that the Underlying Benchmarks and Reference Assets, including one from the Exchange and two from AccuShares Investment Management LLC (“Sponsor”), the sponsor of the Funds. On February 10, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change.

This order approves the proposed rule change, as modified by Amendment No. 1 thereto.
national banking association, will serve as the trustee (“Trustee”) and the investment advisor (“Investment Advisor”) for each Fund. The Investment Advisor, which is chosen by the Sponsor, is responsible for investing each Fund’s available cash in bills, bonds, and notes issued and guaranteed by the United States Treasury (“United States Treasury Securities”) with remaining maturities of 90 days or less (“Eligible Treasuries”) and over-night repurchase agreements collateralized by United States Treasury Securities (“Eligible Repos,” and together with Eligible Treasuries, collectively, “Eligible Assets”). State Street Bank and Trust Company (“State Street”), a Massachusetts trust company, will serve as the custodian, administrator, and transfer agent (“Custodian,” “Administrator,” or “Transfer Agent”) for each Fund.23

The Underlying Benchmark of each Fund, other than the AccuShares Spot CBOE VIX Fund (“VIX Fund”), is constructed, calculated, and published by S&P® Dow Jones Indices LLC (“Index Provider”).24 The CBOE VIX Fund is calculated and published by CBOE. According to the Exchange, both the Index Provider and CBOE are unaffiliated with the Trust and the Sponsor.25 To the extent that an Underlying Benchmark is maintained by a broker-dealer or investment advisor, such broker-dealer or investment advisor will erect a “firewall” around personnel who have access to information concerning changes and adjustments to the Underlying Benchmark.26

As described above, the Trust will issue Shares on behalf of each Fund in offsetting pairs, where one constituent of the pair, the Up Shares, is positively linked to the Fund’s Underlying Benchmark, and the other constituent, the Down Shares, is negatively linked to the Fund’s Underlying Benchmark. Once created, a Fund’s Paired Class Shares will trade independently of each other on the Exchange. The cash proceeds from the creation of Paired Class Shares may be held by a Fund only in Eligible Assets designed to preserve capital while earning an investment return that is consistent with the preservation of capital. Upon any redemption of a Fund’s Creation Units by an Authorized Participant, the cash of the Fund will be used to pay the proceeds of the redemption to the redeeming Authorized Participant. Each Fund may make a regular distribution,27 a special distribution,28 a corrective distribution,29 or a net income distribution30 will provide at least three business days’ advance notice (or longer advance notice as may be required by the Exchange)31 of such an event. Each Fund engaging in a share split32 will provide at least ten calendar days’ advance notice (or longer advance notice as may be required by the Exchange) of such an event. In each instance, the Sponsor will notify the Exchange, and post a notice of such event and its details on the Sponsor’s Web site (www.AccuShares.com). For regular distributions that occur on schedule, the Sponsor will cause a press release to be issued identifying the receiving class, the amount of cash, the amount of Paired Class Shares (if any), and any other information the Sponsor deems relevant regarding the distribution and will post this information on the Sponsor’s Web site. With respect to special distributions, corrective distributions, and share splits, the information provided will include the relevant ex-, record, and payment dates for such each event and relevant data concerning each such event. These events will also be reported in press releases, on the Sponsor’s Web site, and in current reports on Form 8-K as material events, as well as in the Fund’s periodic reports.

C. Summary of the Comments

In the OIP, the Commission posed questions regarding the proposed rule change. Commenters responded to those questions and offered other comments as well. The comments are summarized below.

1. The Effect of the Distributions on the Premiums and Discounts Between the Trading Price and Class Value per Share

In response to Commission questions about the effect of the Funds’ distributions on premiums and discounts,33 the Sponsor asserts that the presence of regular, special, and corrective distributions will aid in the reduction of premiums and discounts.34 With regard to both regular and special distributions, the Sponsor asserts that a Fund will make these types of distributions based on the movement of the Underlying Benchmark since the last distribution date, and will then reset the index to the current market level.35 According to the Sponsor, two positive effects relating to potential discounts or premiums from regular and special distributions are: (1) An investor will enjoy an actual distribution relating to the index move rather than having to rely on trading out of an intrinsic gain that could be subject to market lags, frictions, or a lack of realizable trading price responsiveness; and (2) the index reset will re-estimate the intrinsic share prices, having the effect of further highlighting any deviations between trading prices and Class Values, and consequently all investors (not just market professionals) will more clearly observe any premium or discount, and
any investor can execute a trade in response to these deviations.\footnote{See id.}

The Sponsor states its view that almost all premium and discount combinations of the Up Shares and Down Shares of a Fund will be readily cured by conventional arbitrage. According to the Sponsor, the corrective distribution is an investor safety feature, above and beyond conventional arbitrage, designed to remedy those unique scenarios where the material discount amount of one Fund share is exactly equal to the material premium amount of the opposing share.\footnote{See id. at 5.}

The Sponsor states that the corrective distribution is expected to have both a preventative effect and a curative effect relating to premiums and discounts between trading prices and Class Values per Share.\footnote{See id. at 4.} The Sponsor asserts that the possibility of a corrective distribution will disincentivize market participants from buying or selling shares at material premiums or discounts to the Class Values per Share.\footnote{See id.} Relating to the curative impact, the Sponsor states that following the corrective distribution: (1) The discount class holder, potentially stranded by low available bid prices, would have the correct aggregate value (inclusive of index movements) in a 50/50 position in the discount shares and premium shares; and (2) a premium class holder would also have the correct aggregate value (inclusive of index movements) in a 50/50 position in discount shares and premium shares.\footnote{See id. at 5.} The Sponsor asserts that these positions would be unaffected by a single share premium or discount, and would be readily saleable at a stable and readily identifiable price (especially because the Fund is limited to holding cash equivalents).\footnote{See id. at 5.} Authorized Participants, the Sponsor notes, may redeem these positions in sufficient aggregate amount.\footnote{See id.}

One commenter, who recommends that the Commission approve the proposed rule change, asserts that the regular, special, and corrective distributions will help prevent the significant premiums and discounts that have occurred in other ETPs in recent years.\footnote{See Whaley Letter, supra note 8, at 1–2.}

Another commenter expressed concern that the structure of Paired Class Shares will result in persistent premiums and discounts that will fundamentally invalidate the premise of the products in the market, making them misleading to investors.\footnote{See Kassner Letter, supra note 8, at 1.} This commenter states that the arbitrage mechanism will not work to keep each of the products trading closely to its intrinsic value; instead, the commenter argues that the arbitrage mechanisms will, in theory, keep the sum of the discount on one class and the premium on the other at zero. The commenter states its view that it is not economically possible to maintain intrinsic value in the secondary market, and predicts that any attempt to do so will lead to massive speculation in the products until they are pushed to a breaking point, at which point less-sophisticated investors will suffer significant losses.\footnote{See id.} To support these conclusions, the opposing commenter provides a number of hypothetical situations involving the trading relationship between the VIX index, VIX futures, and the proposed VIX Fund.\footnote{See id. at 1–3.}

According to the commenter, the core of the issue is that the products are simply not hedgeable.\footnote{See id. This commenter further states that, while his assertions regarding the possibility of persistent premiums and discounts and the potential failure of an effective arbitrage mechanism for Paired Class Shares focus on the proposed VIX Fund and VIX futures, the commenter points out that the same economic principles apply to any futures. See id.} The commenter predicts that there will be very significant arbitrage pressures attempting to exploit the “economic perversity of the products” and significant activity around prices that reflect a corrective distribution.\footnote{See id. at 1–3.}

The Exchange argued that underlying the opposing commenter’s arguments regarding ineffective arbitrage is the misunderstanding that spot levels and futures levels are equivalent and interchangeable.\footnote{See id. at 2.} The Exchange agrees that global markets will be broadly inter-related, including spot markets, futures markets, stock markets, and bond markets, but argues that, in the case of volatility, and VIX in particular, the spot market is not “‘in line’ and directly comparable with VIX futures prices.”\footnote{See id. at 2.}

To support this assertion, the Exchange cites guidance from the CBOE VIX Primer Basics on the educational section of CBOE’s Web site.\footnote{See id. at 18.} Additionally, the Exchange states that, contrary to the assumptions implicit in the opposing commenter’s numerical examples, the Fund’s creations, redemptions, and other operations are not limited by VIX futures expiration dates.\footnote{See id. at 16, n.28, 18.} The Exchange asserts that, uniquely, the intrinsic Class Values of the Funds are not dependent upon successful trading, rolling, or otherwise rebalancing of securities or futures contracts.\footnote{See id. at 17.}

The Exchange also asserts that one part of the arbitrage process for Paired Class Shares will operate the same way as it does for all exchange-traded funds (“ETFs”); namely, a share trading above or below an intrinsic Class Value can be transacted, hedged, and traded. Paired Class Shares have an additional arbitrage mechanism, according to the Exchange: Intra-fund arbitrage—through the valuation and trading of both Up and Down Shares—limits the discounts, premiums, or any combination thereof of the share classes to a value indicated by the readily determinable net asset value of the Fund’s cash equivalent assets.\footnote{See id. at 16.}

The Exchange argues that arbitrage opportunities are uniquely easy to identify because of the direct observability of the Underlying Benchmark, the direct linkage of the intrinsic Class Values to the Underlying Benchmark, and the simplicity and very limited number of the moving parts in a creation or redemption—I.e., the two Fund Share prices versus the readily determinable value of the Fund’s cash equivalent assets.\footnote{See id.}

2. The Ability of Investors To Understand the Operation of the Funds

The Sponsor asserts that retail investors and other market participants will be able to understand the Fund’s redemption mechanics and the types and timing of distributions.\footnote{See id.} Generally, the Sponsor states that the Fund’s distributions are limited to scheduled dates or the occurrence of large and rare underlying index moves.\footnote{See id. at 18.} The Sponsor asserts that movement in the underlying indexes will be easy to track using public sources and therefore overlying both the spot VIX and VIX futures demonstrates that the market understands the differences between spot VIX and the range of VIX futures prices.\footnote{See id. at 19.}

The Exchange also notes that the Fund’s redemption mechanics and the types and timing of distributions are designed to allow investors to understand the Fund’s operations.\footnote{See id. at 16, n.28, 18.}

The Sponsor asserts that retail investors and other market participants will be able to understand the Fund’s redemption mechanics and the types and timing of distributions.\footnote{See id.} Generally, the Sponsor states that the Fund’s distributions are limited to scheduled dates or the occurrence of large and rare underlying index moves.\footnote{See id.} The Sponsor asserts that movement in the underlying indexes will be easy to track using public sources and therefore overlying both the spot VIX and VIX futures demonstrates that the market understands the differences between spot VIX and the range of VIX futures prices.\footnote{See id. at 19.}

The Exchange also notes that the Fund’s redemption mechanics and the types and timing of distributions are designed to allow investors to understand the Fund’s operations.\footnote{See id. at 16, n.28, 18.}
concludes that investors will have the information necessary to transact in the Shares and respond to distributions. In addition, the Sponsor represents that the consensus of qualified investors and market makers is that the frequency of the Funds’ distributions is consistent with customary review (e.g., monitoring prices and returns) and customary reevaluation of share positions.

The Sponsor states that the prospectus contains detailed examples, and the Funds’ Web site will contain infographics describing each distribution as well as the courses of action available to investors. The Sponsor also states that, except in limited and unanticipated conditions (listed in the prospectus), regular and special distributions will be made to shareholders in cash, and therefore investors will generally be making a straightforward decision with respect to deploying or maintaining received cash. With respect to corrective distributions, the Sponsor states that they are a direct response to retail investor experiences in ETFs where obscure technical forces or market illiquidity have caused both large premiums and large discounts to persist. The Sponsor asserts that these distributions, as a self-policing and self-corrections measure, are an alternative to real-time estimates of indicative portfolio values, which investors may not necessarily consider before transacting in ETP shares.

The Sponsor also states that: (1) Corrective distributions are expected to be rare; (2) without them, retail investors otherwise may be exposed to either paying a material premium relating to a purchase or suffering a material discount relating to a sale of Shares; (3) before receipt of a distribution, investors will see a Form 8-K, a notice from the Exchange, and a notice on the Fund’s Web site; and (4) upon receipt of a corrective distribution, investors may take any of the following actions, all of which the Sponsor asserts are not materially different from the options available to investors upon the receipt of cash or shares from any distribution or corporate action: (a) Sell their entire positions for cash, (b) sell a portion of their positions for cash or a modulated exposure to the Fund index, or (c) sell part of a position and reinvest proceeds to maximize a particular market exposure. According to the Sponsor, prospective investors view the corrective distribution feature as an effective balance of “newness” and “benefit” for the entire range of Fund shareholders. The Sponsor states that the corrective distribution is expected to encourage more active and accurate market making and more liquidity-enhancing position-taking by Authorized Participants, all of which are more likely to actually reduce the likelihood and occurrences of a corrective distribution declaration. The opposing commenter asserts that, because of the persistent premiums and discounts he predicts, investors would have to be extremely diligent in tracking their positions because the Up Shares might frequently turn into both Up Shares and Down Shares, which would result in inattentive investors paying fees to the issuer but not receiving any notional exposure whatsoever. According to the commenter, an investor in the Shares would require extensive knowledge of the financial markets to understand why, when being required to re-enter the market after a distribution to reestablish a position, the product could be trading already at a significant premium or discount. The commenter also states its view that the investor would have to have intimate knowledge of the VIX futures market to understand from where the premium or discount was actually derived. The opposing commenter states that investors would likely receive Shares with the opposite economics for some distributions, and predicts that this would confuse them. The commenter distinguishes regular share distributions, with which the commenter concedes investors are familiar, by stating that Share distributions would include Shares with the opposite economics and different tickers. Further, the opposing commenter asserts that, unlike products that trade at or close to their intrinsic value, an investor in Shares needs to know a considerable amount of information at every point in time when investing in the product, including for example the coefficient of variation and the number of days there has been a premium or discount (in light of the corrective distribution threshold). The opposing commenter also asserts that the investor also must check his or her account every day, to see if there has been a Special Distribution, and on every Distribution Date, to see what is in his or her account (i.e., whether there is cash or a neutral basket, which may be subject to fees).  

3. The Ability of Investors To Understand the Funds’ “Resets” to the Then-Current Reference Index Value

The Sponsor states its view that the Funds are similar to comparable ETPs in the market and that, accordingly, it expects that both retail investors and other market participants will understand the effect of resets (which will occur when regular, special, or corrective distributions are made) on their investments in a Fund. The Sponsor states that in other comparable ETFs and exchange-traded notes (“ETNs”) the impact of resetting comes through the re-trading of futures, options, or other contracts either daily, monthly, or on another cycle, and that this conventional resetting has transaction costs that are often difficult to isolate within the context of overall fund performance. Additionally, according to the Sponsor, because the traditional method of resetting is accomplished through the trading of underlying positions at telegrapped times under prescribed fund rules, ETFs and ETNs can be disadvantaged from having to be a “price taker” in possibly adverse or challenging markets. The Sponsor states that the Funds’ resets allow the Funds to reduce their transaction expenses and eliminate the need to transact in underlying positions. The Sponsor also asserts that individual investors will be able to more easily track and monitor the resets of the Funds than the resetting impact in conventional funds.

A supporting commenter asserts that the Funds would deliver exact holding period returns, which he contrasts to the returns of levered and inverse funds that implicitly rebalance daily and which he
4. The Adequacy of the Exchange’s Suitability Rules

The Sponsor states its view that the Exchange’s rules governing sales practices adequately ensure the suitability of recommendations regarding the Shares and that enhancement is unnecessary.80 The Sponsor states that NASDAQ Rule 2111A requires that an exchange member have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the exchange member to ascertain the customer’s investment profile.81 According to the Sponsor, a customer’s investment profile would, in general, include the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance.82 The Sponsor also states that the rule explicitly covers recommended investment strategies involving securities, including recommendations to “hold” securities.83

The Sponsor also discusses the Exchange’s information circular. Prior to the commencement of trading of Fund shares, the Exchange will inform its members through an information circular of the suitability requirements of NASDAQ Rule 2111A. Specifically, the information circular will remind members that, in recommending transactions in Shares, they must: (1) Have a reasonable basis to believe that the recommendation is suitable for a customer given reasonable inquiry concerning the customer’s investment objectives, financial situation, needs, and any other information known by such member, and (b) the customer can evaluate the special characteristics and is able to bear the financial risks of an investment in the shares; and (2) make reasonable efforts to obtain the following information: (a) The customer’s age; (b) the customer’s other investments; (c) the customer’s financial situation and needs; (d) the customer’s tax status; (e) the customer’s investment objectives, experience, time horizon, liquidity needs and risk tolerance; and (f) such other information used or

considered to be reasonable by such members or registered representatives in making recommendations to the customer.84

5. The Relationship Between the Funds’ Holdings and Their Investment Objective

The Sponsor states its view that investors will understand that the Funds hold cash and cash equivalent securities, and the Cash Values per Share will be directly responsive to changes in the underlying index.85 The Sponsor asserts that ETNs are similar to the Shares in that an ETN does not have identified “portfolio assets” and that this aspect of ETNs has been well understood.86

The Sponsor asserts that the Funds’ structure is appropriate, and will result in certain advantages: (1) Lower fund operating costs, because the Class Value per Share amounts are directly related to an independent and readily observable index and there is no need for a Fund to incur trading costs over assets in an effort to track the index; (2) improved fund performance transparency, because the return of Shareholders will not be impacted by transactions costs that are difficult to observe and underlying assets whose pricing is opaque; (3) a higher certainty of redemption values because the Shares will be readily created and redeemed at a certain and readily determinable value, thereby eliminating the frictions often caused where (a) a potential large number of in-kind securities are challenging to value or (b) a cash creation or redemption is based on trading illiquid securities or trading securities in a fast-moving market; and (4) direct indexing, which the Sponsor states prospective investors believe to be more easily followed through readily observable and free data services.87

6. Other Comments

One commenter recommends that the Commission approve the proposed rule change because, in its view, the AccuShares’ products are simple and transparent, and will provide investors, institutions and retail customers alike with the returns that they want.88 He also recommends approval of the proposed rule change because: (1) The Shares would provide exposure to spot market benchmarks that are popular to large segments of the asset management community; (2) the Up Shares and Down Shares are direct investments that track readily-observable spot market benchmarks, unlike the futures indexes, which he characterizes as complicated dynamic futures trading strategies; (3) changes in the values of the Up Shares and Down Shares would be purely mechanical and would correspond directly to the price changes in the underlying index, which is distinctly different from many current products; (4) unlike ETNs, investors in the Funds would have no credit risk; and (5) actively-managed products add market complexity, and the Paired Class Shares would not be actively-managed.89

Similarly, another commenter asserts that the Funds would be both highly relevant to a wide range of investors and highly approachable to all of them.90 He asserts that indexes underlying the Funds are arguably better for individual investors because they are easier to follow than the indexes that underlie some existing products.91 This commenter also asserts that the market has been clamoring for better spot market proxies since the beginning of the ETF market.92 Further, the commenter recommends approval of the proposed rule change because the “best ETFs also help solve existing structural problems for traders and investors regarding term structure of price and/or volatility, beta to cash prices and tracking errors, and rebalancing inefficiencies . . .”93

The opposing commenter asserts that the premiums and discounts, which he predicts will result in corrective distributions that are more frequent than the Exchange has suggested, will result in high implicit fees and large tracking

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80 See Sponsor Letter, supra note 8, at 1.
81 See id. at 8.
82 See id. at 9.
83 See id.
84 See id. at 8–9. In its comment letter, the Exchange repeated the Sponsor’s statements regarding the Exchange’s rules and information circular. See id. at 13–14.
85 See id. at 9.
86 See id. The Sponsor, however, distinguishes the Shares from ETNs in that, with ETNs, an investor is subject to the performance risk of the obligor and a market maker is subject to ETN creation and redemptions processes which are sometimes less standardized than ETF processes. See id. at 10.
87 See id. at 9–10.
88 See Whaley Letter, supra note 8, at 2.
89 See id. at 1–2.
90 See Allen Letter, supra note 8.
91 See id.
92 See id.
93 Id.
errors. He argues that the products are not suitable for any investor.

In response, the Exchange asserts that the Daily Amount is not a charge, fee, or amount that leaves the Fund, but rather is an amount applied to both share classes. The Exchange characterizes the Daily Amount as “one of the unique structural features of the Funds which leads to complete transparency of intrinsic Class Value entitlements.”

III. Discussion and Commission’s Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

In particular, and as discussed further below, the Commission finds that the proposed rule change is consistent with:

1. The requirements of Section 6(b)(5) of the Act, which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and facilitate transactions in securities; and to protect investors and the public interest; and

2. Section 11A(a)(1)(C)(ii) of the Act, which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Exchange rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, and as discussed further below, the Commission finds that the proposed rule change is consistent with:

1. The requirements of Section 6(b)(5) of the Act, which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and facilitate transactions in securities; and to protect investors and the public interest; and

2. Section 11A(a)(1)(C)(ii) of the Act, which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Exchange stated that trading in Paired Class Shares will be subject to the existing trading surveillances, administered by both the Exchange and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. See Notice, supra note 3, 79 FR at 35621. FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, and the Exchange is responsible for FINRA’s performance under this regulatory services agreement. See Notice, supra note 3, 79 FR at 35621, n.51. The Exchange represented that FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Paired Class Shares and in the securities in which the Fund will invest with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. See Notice, supra note 3, 79 FR at 35621. Additionally, the Exchange represented that FINRA may obtain trading information regarding trading in the Shares from markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. See Notice, supra note 3, 79 FR at 35621. For a list of the current members of ISG, see http://www.isgportal.org/.


Commentary .04 to Rule 5713 states that, prior to a substitute or replacement Underlying Benchmark being selected for the Fund, NASDAQ must file a related proposed rule change pursuant to Rule 19b–4 under the Exchange Act to continue trading the Paired Class Shares.
listing Paired Class Shares whose Class Value per Share becomes no longer available on a daily basis to all market participants at the same time. NASDAQ Rule 5713(f)(ii)(D) permits the Exchange to suspend trading in or remove from listing Paired Class Shares whose Intraday Indicative Value is no longer made available on at least a 15-second delayed basis by a major market vendor during the Exchange’s Regular Market Session. The Commission also notes that NASDAQ Rules 5713(f)(i)(C) and 5713(f)(ii)(E) require the establishment of information barriers concerning changes and adjustments to the Underlying Benchmark.107

Based on the foregoing, the Commission believes that the requirements of NASDAQ Rule 5713, taken together with other NASDAQ Rules regarding the trading of equity securities on the Exchange, are consistent with the requirement of Section 6(b)(5) of the Act that requires that the Exchange’s rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to promote just and equitable principles of trade and to protect investors and the public interest.

B. Issues Raised by the Opposing Commenter

1. Effectiveness of Arbitrage

In the OIP, the Commission asked for commenters’ views on the effect that Paired Class Share distributions would have on premiums and discounts between the trading price of the Paired Class Shares and their respective Class Value per Share.108 The opposing commenter asserts that the structure of Paired Class Shares will result in significant and persistent premiums and discounts because “it is not economically possible to construct a two sided market for spot exposure that does not trade in line with VIX futures prices.”109 This commenter argues that the arbitrage mechanism of the Funds will not work to keep Up Shares and Down Shares trading close to their intrinsic value, but will instead “in theory keep the sum of the premium on one and the discount on the other at zero.”110 To support these conclusions, the opposing commenter provides a number of hypothetical situations involving the trading relationship between the VIX index futures and the proposed VIX Fund.111 Further, the opposing commenter argues that the “daily amount” applied to the VIX Fund—a 15 basis point amount transferred from Up Shares to Down Shares when the VIX is at 30 or below—means that investors in Up Shares will suffer a 4.5% loss over a 30-day period, even if the VIX does not move.112 The opposing commenter also argues that, because the arbitrage mechanism will not work as described by the Exchange, multiple corrective distributions will be required per year, causing investors to incur reinvestment expenses to maintain their desired position.113

The Exchange argues in response that, underlying this commenter’s argument is a mistaken assumption that spot levels and futures levels are equivalent and interchangeable.114 The Exchange agrees that markets such as spot markets, futures markets, stock markets, and bond markets will be broadly interrelated, but argues that, in the case of volatility in general and VIX in particular, the spot market is not “in line” and directly comparable with VIX futures prices. The Exchange cites the willingness of market participants to trade options overlying both the spot VIX and VIX futures as evidence that the market would understand the differences between spot VIX and the range of VIX futures prices. The Exchange notes that the Web site of CBOE, the provider of the VIX, states, “The price of a VIX futures contract can be lower, equal to or higher in the 30-day forward period covered by the VIX futures contract than in the 30-day spot period covered by VIX.”115 The Exchange also notes that, unlike VIX futures, “because the shares of the Fund are both available for creation and redemption daily, the Fund provides for spot VIX positions to be created or redeemed daily, and for returns to be realized on a daily basis.”116

Additionally, the Exchange argues that the existence of the Daily Amount applied to the VIX Fund is disclosed clearly and referenced more than 90 times in the prospectus for the VIX Fund, and the Exchange argues that the amount of the Daily Amount is closely aligned with the estimates of several market experts as to the roll cost incurred by long positions in volatility futures (e.g., VIX futures).117 As a result, the Exchange argues, the expected premiums and discounts encountered by the VIX Fund should be substantially less that the opposing commenter predicts.118 The Exchange also argues that the corrective distribution mechanism is designed to prevent the type of investor losses that occurred when an ETN designed to track the VIX moved substantially away from the value of the VIX.119

The Commission believes that the Exchange has met its burden to demonstrate that its proposal is consistent with the Act. The Exchange has reasonably explained in the Notice, the Exchange’s response letter,120 and, as to the VIX Fund, in the Registration Statement for the VIX Fund,121 the methodology for the calculation of the Underlying Benchmarks and the differences between the value of the Underlying Benchmark indexes and the prices of the relevant near-month futures contracts. In particular the Exchange explains that, with respect to the VIX Fund, the purpose and derivation of the 0.15% Daily Amount by which the Up Shares will be reduced and the Down Shares increased, which, as cited by the Exchange, is consistent with price patterns historically observed when comparing VIX futures and spot prices.122 The Exchange further notes the extent to which the Registration Statement discloses the Daily Amount transfer.123 The Exchange has also reasonably explained the operation of the Funds; the creation and redemption process and procedures; the regular, special, and corrective distributions to be employed by the Funds; and the resulting resetting process.

In addition, with respect to arbitrage in Fund Shares, and, consistent with Section 11A(a)(1)(C)(iii) of the Act,124 which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, the Commission notes that market information regarding the value of the Shares and of the Underlying Benchmarks will be continuously available to market participants.

107 The Commission notes that these provisions are substantively identical to the firewall requirements in NASDAQ Rule 5705(b)(2)(B)(i); which governs the listing and trading of Index Fund Shares.
108 See OIP, supra note 6, 79 FR at 57157.
109 Kassner Letter, supra note 6, at 1. See also supra notes 45–48 and accompanying text.
110 Id.
111 See Kassner Letter, supra note 8.
112 Id.
113 Id. at 2–3.
114 See Exchange Letter, supra note 8, at 17.
115 Id. at 18.
116 Id. at 21.
117 See id. at 20–21.
118 See id. at 21.
119 See id. at 22–23.
120 See Exchange Letter, supra note 8.
121 See Registration Statement, supra note 22.
122 See Exchange Letter, supra note 8, at 22.
123 See id.
Quotation and last-sale information for the Shares will be available via NASDAQ proprietary quote and trade services, as well as in accordance with any UTP plans for a Fund’s Shares. Additionally, 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. Further, 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.

The value of each Fund’s Underlying Benchmark, as well as information about each Fund’s Underlying Benchmark constituents, the weighting of the constituents, the Underlying Benchmark’s methodology, and the Underlying Benchmark’s rules, will be available in the Customer’s Guide to the Exchange, which is available for download on the Exchange’s Web site at www.nasdaq.com or, in the case of the VIX Fund, the CBOE’s Web site at www.cboe.com/. The value of each Fund’s Underlying Benchmark also will be published by one or more major market data vendors on at least a 15-second delayed basis during the Regular Market Session. An Intraday Indicative Value for each Fund will be disseminated and made available by a major market data vendor, and will be updated and widely disseminated and broadly displayed on at least a 15-second delayed basis during the Regular Market Session. Class Values and Class Values per Share of each Fund will be calculated by the Fund’s Custodian at the end of each Regular Market Session. Under NASDAQ Rule 5713(f)(ii)(B), the Exchange will obtain a representation from the Trust on behalf of each Fund that the Class Value per Share of each of its Up Shares and Down Shares will be calculated daily and that these Class Values per Share and information about the assets of the Fund will be made available to all market participants at the same time. In addition, NASDAQ Rule 5713(f)(2)(B) permits the Exchange to suspend trading in or remove from listing Paired Class Shares whose Underlying Benchmark, or a substitute or replacement Underlying Benchmark based on the same Reference Asset, is no longer calculated or available on at least a 15-second delayed basis during the Regular Market Session from a major market data vendor unaffiliated with the sponsor, the custodian, the trustee of the Trust, the Fund or NASDAQ. The Commission believes that, in light of the continuous dissemination of information about the Shares’ current market prices, the Funds’ Underlying Benchmarks, and the Funds’ intraday estimated Class Value per Share, arbitrage opportunities will be readily identifiable to market participants. The Commission also believes that the creation and redemption process, which, under Rule 5713(c), uses a neutral basket of Up Shares and Down Shares, is reasonably designed to allow market participants to arbitrage away premiums and discounts that may develop, as long as the Up Shares and Down Shares do not become locked in a persistent state of approximately equal and opposite premiums or discounts. The Commission acknowledges, however, that the normal arbitrage mechanism of the Funds will not be effective if equal and opposite premiums and discounts persist between the Up Shares and Down Shares of a Fund. Because no existing exchange-traded products use a paired-class structure, the Commission does not have a basis for comparison from which to predict how frequently such conditions are likely to occur. As noted above, however, the funds would provide for a corrective distribution when the magnitude of the equal and opposite premiums and discounts exceeds a certain threshold. The Exchange has represented that, “[e]ven if a corrective distribution is not triggered, the existence of a Fund’s corrective distribution feature is expected to modify investor and Authorized Participant behavior to prevent persistent and material premium and discount conditions for Paired Class Shares from becoming locked.” Based on the Exchange’s representation, the Commission believes that the corrective distribution mechanism is reasonably designed to limit the magnitude of such premiums and discounts and that, when triggered, it will provide investors with a market neutral position that should allow them to exit the affected Fund at Class Value. Further, the underlying value of the Funds and the extent of the premiums and discounts would not be subject to uncertainty, because, as explained above, the Funds’ market prices, Class Values per Share, and reference benchmark values and methodologies would be publicly available in real time. In addition, and significantly, to the extent that equal and opposite premiums and discounts persist within a Fund’s threshold for a corrective distribution, all investors in the affected Fund would be subject to the same pricing conditions, and Authorized Participants would not be able to use the creation and redemption process to trade in the primary market for the shares at prices more favorable than those available to investors trading at market prices on the Exchange. Thus, for the reasons described above, the Commission believes that the Exchange’s rules are reasonably designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

2. Investor Understanding and Suitability

In the OIP, the Commission solicited comments about whether retail investors and other market participants would be able to understand and effectively trade the Funds. The funds would be able to understand and trade the Funds, and the periodic resets of Paired Class Shares’ exposure to their Underlying Benchmarks.

The opposing commenter argues that the operational complexity of Paired Class Shares renders them unsuitable for any investor. As discussed above, this commenter argues that extreme diligence would be required of investors in tracking their positions because the Up Shares might frequently turn into both Up Shares and Down Shares, and that investors would need to know a

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125 See Notice, supra note 3, 79 FR at 35621.
126 See id.
127 See id.
128 See id.
129 See supra note 3, 79 FR at 35622.
130 NASDAQ Rule 5713(f)(ii)(C) is designed to ensure that the Class Values and Class Values per Share of each Fund will be made available to all market participants at the same time.
131 The Commission notes that these requirements are substantively identical to provisions applicable to other exchange-traded derivative securities products, including Managed Fund Shares under NASDAQ Rule 5735(d)(1)(B).
132 See supra note 18.
133 See supra note 3, 79 FR at 35612.
134 See supra text accompanying notes 125–133.
135 See OIP, supra note 6, 79 FR at 57517.
considerable amount of information at every point in time when holding Shares.

The Sponsor asserts that retail investors and other market participants will be able to understand the types and timing of fund distributions. The Sponsor states that the Registration Statement contains detailed examples, and the Funds’ Web site will contain infographics describing each distribution, as well as the courses of action available to investors. According to the Sponsor, distributions will generally be limited to scheduled dates or the occurrence of large and rare underlying index moves, and movements of the underlying indexes will be easy to track using public sources. The Sponsor states that the consensus of qualified investors and market makers to whom it has spoken is that the frequency of the Funds’ distributions is consistent with market makers to whom it has spoken believe that the corrective measure, are a better distributions, as a self-policing and self-

accurate market making and more liquidity-enhancing position-taking. The Sponsor also argues that corrective distributions, as a self-policing and self-correcting measure, are a better alternative to detailed disclosures about premiums and discounts in prospectuses, which investors may not necessarily read and which would require the amount of investor action, and the dissemination of real-time estimates of indicative portfolio values, which investors may not necessarily consider before transacting in other types of ETP shares. Further, the Sponsor states that prospective investors to whom it has spoken believe that the corrective distribution will benefit the entire range of shareholders. With respect to the resets, the Sponsor states that the Funds are similar to comparable ETPs in the market and that it expects that both retail investors and other market participants will understand the effect of Paired Class Share resets on their investments. The Sponsor also asserts that individual investors will be able to more easily track and monitor Paired Class Share resets than the resetting impact in other types of ETPs. The Sponsor also argues that the Exchange’s sales practice rules adequately ensure the suitability of sales recommendations regarding the Funds’ Shares, citing NASDAQ Rule 2111A, which requires an Exchange member a reasonable basis to believe that a recommended transaction or investment strategy is suitable for a given customer, based on information obtained through reasonable diligence. Additionally, the Sponsor notes that, before trading in the Shares begins, the Exchange will inform its members in an information circular of the special characteristics and risks associated with trading Paired Class Shares. The Commission notes that the Exchange’s suitability rule, NASDAQ Rule 2111A, requires that Exchange members and associated persons of a member comply with Financial Industry Regulatory Authority (“FINRA”) Rule 2111, which requires member firms and their associated persons to “have a reasonable basis to believe” that a transaction or investment strategy involving securities that they recommend is suitable for the customer. Specifically, this reasonable belief must be based on the information obtained through the reasonable diligence of the firm or associated person to ascertain the customer’s investment profile. The rule requires firms and associated persons to seek to obtain information about the customer’s age; other investments; financial situation and needs, which might include questions about annual income and liquid net worth status, such as marginal tax rate; investment objectives, which might include generating income, funding retirement, buying a home, preserving wealth, or market speculation; investment experience; investment time horizon, such as the expected time available to achieve a particular financial goal; liquidity needs, which is the customer’s need to convert investments to cash without incurring significant loss in value; and risk tolerance, which is a customer’s willingness to risk losing some or all of the original investment in exchange for greater potential returns.

Additionally, the Commission notes that the Funds will issue specific, public notifications regarding the unique distributions that the Funds would provide. Each Fund engaging in a regular distribution, a special distribution, a corrective distribution, or a net income distribution will provide at least three business days’ advance notice (or longer advance notice as may be required by the Exchange) of such an event. Each Fund engaging in a share split will provide at least ten calendar days’ advance notice (or longer advance

139 See Kassner Letter, supra note 8, at 3–4.

140 Specifically, the Sponsor states that for comparable ETPs that seek commodity or volatility exposure through trading in derivative products, the impact of resetting comes through the “re-trading” of futures, options, or other contracts. These ETPs offer daily, monthly, or on another cycle. This conventional resetting has transaction costs, which are often difficult to isolate within the context of overall fund performance. The Sponsor adds that, since the traditional method of resetting is accomplished through the trading of underlying positions at telegraphed times under prescribed fund rules, ETPs can be disadvantaged from having to be a “price taker” in possibly adverse or challenging markets. The Sponsor asserts that these resetting considerations in these other types of ETPs are well known by retail investors. See Sponsor Letter, supra note 8, at 7–8.

141 See id. at 8–9.

142 The Exchange has represented that the information circular will discuss (a) the procedures for purchases and redemptions of Paired Class Shares; (b) Rule 2111A, which imposes suitability obligations on Exchange members with respect to recommending transactions in Paired Class Shares to customers; (c) how information regarding the Underlying Benchmark and Intraday Indicative Value is disseminated; (d) the risks involved in trading Paired Class Shares during the Pre-Market and Post-Market sessions when an updated Underlying Benchmark and Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Paired Class Shares; (g) trading information; and (h) how information regarding distributions and share splits is disseminated and the requirements of public notification of these events.

143 With respect to regular distributions, the information provided will consist of the schedule of distributions and associated distribution dates, and a notification, as of the record date for such regular distribution, on the Sponsor’s Web site (www.AccuShares.com) as to whether or not the regular distribution will occur. See Notice, supra note 3, 79 FR at 35620. For regular distributions that occur on schedule, the Sponsor will cause a press release to be issued identifying the receiving party, the amount of cash, and a net income distribution will provide at least three business days’ advance notice (or longer advance notice as may be required by the Exchange)

144 With respect to special distributions, corrective distributions, and share splits, the information provided will include the relevant ex-, record, and payment dates for each such event and relevant data concerning each such event. In addition, notice of net income distributions for each class of a Fund, if any, will also be included in the notifications of regular, special, and corrective distributions. See id.

145 The Exchange may determine that longer notice is advisable in some circumstances (e.g., an extended, or unexpected, market break). See id. at 35620, n.46.
notice as may be required by the Exchange.\footnote{146} of such an event. In each instance, the Sponsor will notify the Exchange and post a notice of the event and its details on the Sponsor’s Web site.

The Commission further notes that the prospectus disclosures for the Funds state prominently that the Funds are not suitable for all investors, and include the following disclosures: (1) stating that the funds may not be suitable for all investors; (2) describing the effect of distributions on an investor's exposure; and (3) stating that “Investors who do not intend to actively manage and monitor their Fund investments at least as frequently as each distribution date should not buy shares of the Fund.” (Emphasis in original.)

Based on all of the foregoing, the Commission believes that the Exchange has adequately responded to the opposing commenter’s concerns about investor understanding and suitability, and that the Exchange’s proposal is consistent with the public interest and the protection of investors.

For the foregoing reasons, the Commission finds that the Exchange’s proposal to adopt NASDAQ Rule 5713 and to list and trade the Funds pursuant to that rule is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.\footnote{147}

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,\footnote{148} that the proposed rule change (SR–NASDAQ–2014–065), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

By the Commission.

Brent J. Fields,
Secretary.

\footnote{146} See id.

\footnote{147} This approval order is based on all of the Exchange’s representations, including those set forth above and in the Notice.


SECURITIES AND EXCHANGE COMMISSION


\textbf{Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the iShares U.S. Fixed Income Balanced Risk ETF of the iShares U.S. ETF Trust Under Rule 14.11(i)}

February 18, 2015.

I. Introduction

On December 19, 2014, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,\footnote{2} a proposed rule change to list and trade the shares ("Shares") of the iShares U.S. Fixed Income Balanced Risk ETF ("Fund") under NASDAQ Rule 14.11(i). The proposed rule change was published for comment in the Federal Register on January 6, 2015.\footnote{3} On February 12, 2015, BATS filed Amendment No. 1 to the proposal.\footnote{4} The Commission received no comment on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposed Rule Change

A. The Exchange’s Proposal

The Exchange proposes to list and trade Shares of the Fund under NASDAQ Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the iShares U.S. ETF Trust ("Trust"), a Delaware statutory trust, which is registered with the Commission as an open-end investment company.\footnote{5}

B. The Exchange’s Description of the Fund

The Exchange has made the following additional representations and statements in describing the Fund and its investment strategy, including portfolio holdings and investment restrictions.\footnote{6}

BlackRock Fund Advisors will be the investment adviser ("BFA" or "Adviser") to the Fund.\footnote{7} The Exchange represents that the (i) Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented fire walls with respect to such broker dealer affiliates regarding access to information concerning the composition of or changes to the Fund’s portfolio, and (ii) Adviser personnel who make decisions regarding the Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio.\footnote{8} BlackRock Investments, LLC serves as the distributor of the Fund’s Shares, and State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust.


\footnote{4} In Amendment No. 1, the Exchange amended the proposed rule change to note that all of the exchange listed investment company securities and futures in which the Fund will invest will trade on markets that are a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

\footnote{5} See Registration Statement on Form N–1A for the Trust, dated April 21, 2014 (File Nos. 333–179904 and 811–22649) ("Registration Statement"). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812–13601) ("Exemptive Order").

\footnote{6} BlackRock Fund Advisors is an indirect wholly owned subsidiary of BlackRock, Inc.

\footnote{7} NASDAQ Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, the investment adviser shall erect a firewall between the investment adviser and the broker-dealer with respect to access to information concerning the composition of or changes to the investment company portfolio. In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company’s portfolio composition must be subject to procedures designed to prevent the misuse and dissemination of material nonpublic information regarding the applicable investment company portfolio. The Exchange states that, in the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, such broker-dealer or sub-adviser will implement a firewall with respect to its relevant personnel or such broker-dealer-affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

\footnote{8} The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice, supra note 3, and Registration Statement, supra note 5, respectively.