

parties to a comprehensive surveillance sharing agreement with the Exchange.²⁸

(5) 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 for each Fund 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 Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre Market and Post Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Exchange Act.²⁹

(6) For initial and continued listing, each Fund must be in compliance with Rule 10A-3 under the Exchange Act.³⁰

(7) Shares of Closed-End Funds, ETFs, and ETNs held by a Fund will trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(8) The Funds will not invest in derivative instruments.

(9) While the Funds may invest in inverse ETFs and ETNs, the Funds will not invest in leveraged or inverse leveraged ETFs or ETNs.³¹

(10) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser. Each 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 such Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.³²

(12) All statements and representations made in this filing regarding (a) the description of the portfolios, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures 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 Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.³³

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

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act.³⁴

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³⁵ that the proposed rule change (SR-NASDAQ-2016-071), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

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

Robert W. Errett,
Deputy Secretary.

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²⁸ See *id.* at 34411.

²⁹ See *id.* at 34412.

³⁰ The Commission notes that the comment letter, *supra* note 5, does not raise any specific concerns about whether any aspect of the proposed rule change is inconsistent with the Exchange Act.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78653; File No. SR-BatsBZX-2016-30]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Winklevoss Bitcoin Shares Issued by the Winklevoss Bitcoin Trust

August 23, 2016.

On June 30, 2016, Bats BZX Exchange, Inc. ("BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade Winklevoss Bitcoin Shares issued by the Winklevoss Bitcoin Trust under BZX Rule 14.11(e)(4). The proposed rule change was published for comment in the **Federal Register** on July 14, 2016.³ The Commission has received five comment letters on the proposed rule change.⁴

Section 19(b)(2) of the Act⁵ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78262 (Jul. 8, 2016), 81 FR 45554.

⁴ See Letters from Robert D. Miller, VP Technical Services, RKL eSolutions (Jul. 11, 2016); Jorge Stolfi, Full Professor, Institute of Computing UNICAMP (Jul. 13, 2016); Guillaume Lethuillier (Jul. 26, 2016); Michael B. Casey (Jul. 31, 2016); and Erik A. Aronesty, Sr. Software Engineer, Bloomberg LP (Aug. 2, 2016). All comments on the proposed rule change are available on the Commission's Web site at: <https://www.sec.gov/comments/sr-batsbzx-2016-30/batsbzx201630.shtml>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ *Id.*

²⁸ See Notice, *supra* note 4.

²⁹ Additionally, the Information Circular for each Fund will reference that such Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular for each Fund will also disclose the trading hours of the Shares of such Fund and the applicable NAV Calculation Time for the Shares. See *id.*

³⁰ 17 CFR 240.10A-3.

³¹ See notes 11 and 12, *supra*.

designates October 12, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-BatsBZX-2016-30).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78640; File No. SR-BatsBZX-2016-26]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change to BZX Rule 14.11(d) To Add the EURO STOXX 50® Volatility Futures to the Definition of Futures Reference Asset

August 23, 2016.

On June 23, 2016, Bats BZX Exchange, Inc. (“BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to amend BZX Rule 14.11(d) by adding the EURO STOXX 50® Volatility (VSTOXX®) Futures to the definition of Futures Reference Asset. The proposed rule change was published for comment in the *Federal Register* on July 12, 2016.³ The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period. The

Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates October 10, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-BatsBZX-2016-26).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78654; File No. SR-NASDAQ-2016-117]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Elkhorn Commodity Rotation Strategy ETF of the Elkhorn ETF Trust

August 23, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 11, 2016, 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 and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes a rule change relating to the Elkhorn Commodity Rotation Strategy ETF (formerly, the Elkhorn Dorsey Wright Commodity Rotation Portfolio) (the “Fund”) of Elkhorn ETF Trust (the “Trust”), the shares of which have been approved by the Commission for listing and trading under Nasdaq Rule 5735 (“Managed Fund Shares”). The proposed rule change reflects (i) a change to the name

of the Fund, and (ii) a change to the name and ownership of the benchmark index applicable to the Fund. The shares of the Fund are collectively referred to herein as the “Shares.”

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Commission previously approved the listing and trading of the Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.³ However, no Shares are currently listed and traded on the Exchange. The Exchange believes the proposed rule change reflects no significant issues not previously addressed in the Prior Release.

The Fund is an actively managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust, which was organized as a Massachusetts business trust on December 12, 2013. The Trust, which is registered with the Commission as an investment company, has filed a registration statement on Form N-1A (“Registration Statement”) relating to the Fund with the Commission.⁴

³ The Commission approved Nasdaq Rule 5735 (formerly Nasdaq Rule 4420(o)) in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). The Commission previously approved the listing and trading of the Shares of the Fund. See Securities Exchange Act Release No. 77688 (April 22, 2016), 81 FR 25467 (April 28, 2016) (SR-NASDAQ-2016-030) (“Prior Order”). See also Securities Exchange Act Release No. 77338 (March 10, 2016), 81 FR 14142 (March 16, 2016) (SR-NASDAQ-2016-030) (“Prior Notice,” and together with the Prior Order, the “Prior Release”).

⁴ See Registration Statement on Form N-1A for the Trust, dated February 18, 2016 (File Nos. 333-201473 and 811-22926) (the “Registration Statement”). The descriptions of the Shares and the

Continued

⁷ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78236 (Jul. 6, 2016), 81 FR 45185.

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.