



Jurij Trypupenko
ASSOCIATE GENERAL COUNSEL
805 KING FARM BOULEVARD
ROCKVILLE, MD 20850

P: (301) 978-8132

F: (301) 978-8472

E: [REDACTED]

May 13, 2014

Ms. Elizabeth M. Murphy
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Amendment No. 1 (SR-NASDAQ-2014-038)

Dear Ms. Murphy:

NASDAQ OMX LLC (“NASDAQ” or “Exchange”) filed the above-reference filing on May 13, 2014.

Sincerely,

A handwritten signature in black ink, appearing to be the name "Jurij Trypupenko". The signature is stylized with a large initial 'J' and a long horizontal stroke.

Encl. (Amendment No. 1 to SR-NASDAQ-2014-038)

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="71"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2014"/> - * <input type="text" value="038"/> Amendment No. (req. for Amendments *) <input type="text" value="1"/>
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Filing by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" 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 *).

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 * Last Name *
 Title *
 E-mail *
 Telephone * Fax

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 Executive Vice President and General Counsel
 By

(Name *)

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.

Persona Not Validated - 1383935917270,

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 *

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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 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

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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

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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.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”), is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade the shares of the Reality Shares NASDAQ-100 Isolated Dividend Growth Index ETF (the “Fund”) of the Reality Shares ETF Trust (the “Trust”) under Rule 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares).³ The shares of the Fund are collectively referred to herein as the “Shares.”⁴

(b) and (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 Exchange (the “Board”) on July 17, 2013. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Jurij Trypupenko, Associate General Counsel, The NASDAQ OMX Group, Inc., at (301) 978-8132.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved NASDAQ’s Rule 5705, as well as Rule 5735 regarding managed fund shares, in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039).

⁴ This Amendment No. 1 to SR-NASDAQ-2014-038 replaces SR-NASDAQ-2014-038 as originally filed and supersedes such filing in its entirety.

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

a. Purpose

The Exchange proposes to list and trade the Shares of the Fund under NASDAQ Rule 5705(b), which governs the listing and trading of Index Fund Shares⁵ on the Exchange. The Fund is an exchange-traded fund ("ETF") which seeks to track the performance of an underlying index, as discussed herein.⁶ The Shares will be offered by the Trust, which was established as a Delaware statutory trust on March 26, 2013. The Trust will be registered with the Commission as an open-end management investment company.⁷ The Fund is a series of the Trust.

⁵ Index Fund Shares that are issued by an open-end investment company and listed and traded on the Exchange under NASDAQ Rule 5705 seek to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof. See Rule 5705(b)(1)(A).

⁶ 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)) Investment Company Units based on indexes of U.S. exchange listed options. See Securities Exchange Act Release Nos. 68667 (January 16, 2013), 78 FR 4955 (January 23, 2013) (SR-NASDAQ-2012-109) (order approving listing and trading of U.S. Equity High Volatility Put Write Index Fund); and 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR-NYSEArca-2012-108) (order approving listing and trading of NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund). The Exchange believes the proposed rule change does not raise any significant issues not previously addressed in those prior Commission orders.

⁷ The Trust will be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the "1940 Act"). On November 12, 2013, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the "1933 Act") (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-192288 and 811-22911), as amended by Pre-Effective Amendment Number 1, filed with

Reality Shares Advisors, LLC will be the investment adviser (“Adviser”) to the Fund. ALPS Distributors, Inc. (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon (“BNY”) will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

As described in more detail below, the Fund will seek long-term capital appreciation by tracking the Reality Shares NASDAQ-100 Isolated Dividend Growth Index (the “Index”). The Index measures market expectations for dividend growth of the companies included in the NASDAQ-100 Index.⁸ The Index consists of options on the NASDAQ-100 Index and options on ETFs designed to track the NASDAQ-100 Index. All options included in the Index will be listed and traded on a U.S. national securities exchange. The Index will consist of a minimum of 20 components.

Paragraph (b)(5)(A)(i) of Rule 5705 states that if an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index. If the investment adviser to the investment company issuing Index Fund

the Commission on February 6, 2014 (the “Registration Statement”). 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, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30678 August 27, 2013 (the “Exemptive Order”). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

⁸ The NASDAQ-100 Index is an index of 100 of the largest domestic and international securities (based on market capitalization) listed on The NASDAQ Stock Market. The NASDAQ-100 Index includes companies across major industry groups, including computer hardware and software, telecommunications, retail/wholesale trade and biotechnology, and excludes securities of financial companies.

Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.⁹ In addition, paragraph (b)(5)(A)(iii) requires that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority¹⁰ 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 is not affiliated with any broker-dealers. The Index was developed by Reality Shares, Inc., the parent company of the Adviser, in conjunction with The NASDAQ OMX Group, Inc., and is maintained by Reality Shares,

⁹ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

¹⁰ Rule 5705(b)(1)(C).

Inc. (the “Index Provider”).¹¹ The Index Provider is not a broker-dealer and is not affiliated with any broker-dealers.¹² In the event (a) the Adviser, any sub-adviser or the Index Provider becomes registered as a broker-dealer or is newly affiliated with a broker dealer, or (b) any new adviser, sub-adviser or Index Provider is a registered broker-dealer or becomes affiliated with a broker dealer, the Adviser, sub-adviser or Index Provider will implement a fire wall with respect to its relevant personnel and/or such broker dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the “generic” listing requirements of paragraph (b)(3)(A)(i) of Rule 5705 applicable to the listing of Index Fund Shares based upon an index of “US Component Stocks.”¹³ Specifically, Rule 5705 (b)(3)(A)(i) sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. As described in

¹¹ The Index will be calculated by International Data Corporation (“IDC”), which is not affiliated with the Adviser, Index Provider or The NASDAQ OMX Group, and which is not a broker-dealer or fund advisor.

¹² The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index.

¹³ Paragraph (b)(1)(D) of Rule 5705 states that the term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act, or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act. Rule 5705 (b)(1)(D).

more detail herein, the Index will consist primarily of U.S. exchange-listed and traded options on the NASDAQ-100 Index and U.S. exchange-listed and traded options on ETFs that track the NASDAQ-100 Index.¹⁴ The Fund may also invest up to 20% of its total assets in other securities such as over-the-counter (“OTC”) options, futures, and forward contracts on the NASDAQ-100 Index and OTC options, futures and forward contracts on ETFs that track the NASDAQ-100 Index. The Exchange has represented that the Shares will conform to the initial and continued requirements of listing criteria under Rule 5705(b), except to the extent that the Index is comprised of options based on U.S. Component Stocks (*i.e.*, ETFs based on the NASDAQ 100 Index) and options on an index of U.S. Component Stocks (*i.e.*, the NASDAQ-100 Index).

Reality Shares NASDAQ-100 Isolated Dividend Growth Index ETF

Principal Investments

According to the Registration Statement, the Fund will seek long-term capital appreciation and will seek investment results that, before fees and expenses, generally correspond to the performance of the Index. At least 80% of the Fund’s total assets

¹⁴ Paragraph (b)(3)(A)(i) of Rule 5705 states, in relevant part, that upon the initial listing of a series of Index Fund Shares pursuant to 19b-4(e) under the Act, all securities in the index or portfolio shall be U.S. Component Stocks listed on NASDAQ (including The NASDAQ Capital Market) or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. Each component stock of the NASDAQ-100 Index is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Fund and the Index meet all of the requirements of the listing standards for Index Fund Shares in Rule 5705 except the requirements in 5705(b)(3)(A)(i)(a)-(e), as the Index consists of options on U.S. Component Stocks. The NASDAQ-100 Index consists of Component Stocks and satisfies the requirements of Commentary 5705(b)(3)(A)(i)(a)-(e).

(exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index. The Fund will seek a correlation of 0.95 or better between its performance and the performance of its Index. A figure of 1.00 would represent perfect correlation. The Fund generally will use a representative sampling investment strategy.

The Fund will buy (*i.e.*, hold a “long” position in) and sell (*i.e.*, hold a “short” position in) put and call options. The Fund has a strategy of taking both a long position in a security through its ex-dividend date (the last date an investor can own the security and receive dividends paid on the security) and a corresponding short position in the same security immediately thereafter. This is designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid on such security while minimizing its exposure to changes in the trading price of such security.

The Fund will buy and sell U.S. exchange-listed options on the NASDAQ-100 Index and U.S. exchange-listed options on ETFs designed to track the NASDAQ- 100 Index. A put option gives the purchaser of the option the right to sell, and the issuer of the option the obligation to buy, the underlying security or instrument on a specified date or during a specified period of time. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security or instrument on a specified date or during a specified period of time. The Fund will invest in a combination of put and call options designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the NASDAQ-100 Index and options on ETFs tracking the NASDAQ-100 Index, while minimizing the Fund’s exposure to changes in the trading price of such securities.

Index Methodology

The Index will be calculated using a proprietary, rules-based methodology designed to track market expectations for dividend growth conveyed in real-time using the mid-point of the bid-ask spread on NASDAQ-100 Index options and options on ETFs designed to track the NASDAQ-100 Index.¹⁵ All options included in the Index will be listed and traded on a U.S. national securities exchange. The Index will consist of a minimum of 20 components.¹⁶

The prices of index and ETF options reflect the market trading prices of the securities included in the applicable underlying index or ETF, as well as market expectations regarding the level of dividends to be paid on such indexes or ETFs during the term of the option. The Index constituents, and therefore most of the Fund's portfolio holdings, will consist of multiple corresponding near-term and long-term put and call option combinations on the same reference assets (*i.e.*, options on the NASDAQ-100 Index or the NASDAQ-100 ETF) with the same strike price. Because option prices reflect both stock price and dividend expectations, they can be used in combination to isolate either price exposure or dividend expectations. The use of near-term and long-term put and call option combinations on the same reference asset with the same strike price, but with different maturities, is designed to gain exposure to the expected dividends of the securities in the NASDAQ-100 Index while neutralizing the impact of the stock price.

¹⁵ There is no guarantee that either the level of overall dividends paid by such companies will grow over time, or that the Index or Fund's investment strategies will capture such growth. The Fund will include appropriate risk disclosure in its offering documents disclosing these risks, which will be available for free on the SEC's website and on the Fund's website, www.realityshares.com.

¹⁶ Rule 5705(b)(3).

Once established, this portfolio construction of option combinations will accomplish two goals. First, the use of corresponding buy or sell positions on near and long-term options at the same strike price is designed to neutralize underlying stock price movements. In other words, the corresponding “buy” and “sell” positions on the same reference asset are designed to net against each other and eliminate the impact that changes to the stock price of the reference asset would otherwise have on the value of the Index (and Fund). Second, by minimizing the impact of price fluctuations through the construct of the near- and long-term contract combinations, the strategy is designed to isolate market expectations for dividends implied between the expiration dates of the near-term and long-term option contracts. Over time, the Index will increase or decrease in value as the dividend spread between the near-term and long-term option combinations increases or decreases as a result of changing market expectations for dividend growth.

Other Fund Investments

While, as described above, at least 80% of the Fund’s total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index, the Fund may invest up to 20% of the Fund’s total assets in other securities and financial instruments, as described below.

The Fund may invest in U.S. exchange-listed futures contracts on the NASDAQ-100 Index and ETFs designed to track the NASDAQ-100 Index and may invest in forward contracts on the NASDAQ-100 Index and ETFs designed to track the NASDAQ-100 Index. The Fund’s use of exchange-listed futures contracts and forward contracts is designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the NASDAQ-100 Index and options on ETFs

tracking the NASDAQ-100 Index, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund may also buy and sell OTC options on the NASDAQ-100 Index and on ETFs designed to track the NASDAQ-100 Index.

The Fund may enter into dividend and total return swap transactions (including equity swap transactions) based on the NASDAQ-100 Index and ETFs designed to track the NASDAQ-100 Index.¹⁷ In a typical swap transaction, one party agrees to make periodic payments to another party ("counterparty") based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap transactions are usually done on a net basis, the Fund receiving or paying only the net amount of the two payments. In a typical dividend swap transaction, the Fund would pay the swap counterparty a premium and would be entitled to receive the value of the actual dividends paid on the subject index during the term of the swap contract. In a typical total return swap transaction, the Fund might exchange long or short exposures to the return of the underlying securities or index to isolate the value of the dividends paid on the underlying securities or index constituents. The Fund also may engage in interest rate swap transactions. In a typical interest rate swap transaction one stream of future interest payments is exchanged for another. Such transactions often take the form of an exchange of a fixed payment for a variable payment based on a future interest rate. The Fund intends to use interest rate swap transactions to manage or hedge exposure to interest rate fluctuations.

¹⁷ The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund.

The Fund may invest up to 20% of its assets (exclusive of collateral held from securities lending, if any) in exchange-listed equity securities and derivative instruments (specifically, futures contracts, forward contracts and swap transactions)¹⁸ relating to the Index and its component securities that the Adviser believes will help the Fund track the Index. For example, the Fund may buy and sell ETFs and, to a limited extent, individual large-capitalization equity securities listed and traded on a U.S. national securities exchange.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act.

The Fund's short positions and its investments in swaps, futures contracts, forward contracts and options based on the NASDAQ-100 Index and ETFs designed to track the NASDAQ-100 Index will be backed by investments in cash, high-quality, short-term debt securities and money-market instruments in an amount equal to the Fund's maximum liability under the applicable position or contract or will otherwise be offset in accordance with Section 18 of the 1940 Act. Short-term debt securities and money market instruments include shares of fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government Securities (including securities issued or guaranteed by the U.S. government or its authorities, agencies, or

¹⁸ Where practicable, the Fund intends to invest in swaps cleared through a central clearing house ("Cleared Swaps"). Currently, only certain of the interest rate swaps in which the Fund intends to invest are Cleared Swaps, while the dividend and total return swaps (including equity swaps) in which the Fund may invest are currently not Cleared Swaps.

instrumentalities), repurchase agreements¹⁹ and bonds that are rated BBB or higher.

In addition to the investments described above, and in a manner consistent with its investment objective, the Fund may invest a limited portion of its net assets in high-quality, short-term debt securities and money market instruments for cash management purposes.²⁰

The Fund will attempt to limit counterparty risk in non-cleared swap, forward and OTC option contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.²¹

The Fund's investments in swaps, futures contracts, forward contracts and options will be consistent with the Fund's investment objective and with the requirements of the

¹⁹ The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The acquiring fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

²⁰ The Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

²¹ 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 will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

1940 Act.²²

Investment Restrictions

To the extent the Index concentrates (*i.e.*, holds 25% or more of its total assets) in the securities of a particular industry or group of industries, the Fund will concentrate its investments to approximately the same extent as the Index.

The 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, consistent with Commission guidance.²³ The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include

²² To limit the potential risk associated with such transactions, the Fund will segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or " earmark " liquid assets or otherwise cover the transactions that may give rise to such risk.

²³ In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

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.²⁴

The Fund may make secured loans of its portfolio securities; however, securities loans will not be made if, as a result, the aggregate amount of all outstanding securities loans by the Fund exceeds 33 1/3% of its total assets (including the market value of collateral received). To the extent the Fund engages in securities lending, securities loans will be made to broker-dealers that the Adviser believes to be of relatively high credit standing pursuant to agreements requiring that the loans continuously be collateralized by cash, liquid securities, or shares of other investment companies with a value at least equal to the market value of the loaned securities. The Fund will be classified as a “non-diversified” investment company under the 1940 Act.²⁵

The Fund intends to qualify for and to elect treatment as a separate regulated

²⁴ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release Nos. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); and 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release Nos. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

²⁵ The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

investment company (“RIC”) under Subchapter M of the Internal Revenue Code.²⁶

The Fund’s investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

The Shares

According to the Registration Statement, the Fund will issue and redeem Shares only in Creation Units at the net asset value (“NAV”)²⁷ next determined after receipt of an order on a continuous basis every business day. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the Exchange, generally, 4:00 p.m. Eastern Time. Creation Unit sizes will be 25,000 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 Authorized Participant agreement (as referred to 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. Because non-exchange traded

²⁶ 26 U.S.C. 851 et seq.

²⁷ The NAV of the Fund’s Shares generally will be calculated once daily Monday through Friday as of the close of the Regular Market Session on the Exchange, generally 4:00 or 4:15 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.

derivatives and certain listed derivatives are not currently eligible for in-kind transfer, they will be substituted with an amount of cash of equal value (*i.e.*, Deposit Cash) when the Fund processes purchases of Creation Units in-kind. Specifically, the Fund will not accept exchange-traded options, OTC options, exchange-traded futures, forward contracts, dividend swap transactions, total return swap transactions and interest rate swap transactions as Deposit Securities.

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. 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.

A portfolio composition file, to be sent via the National Securities Clearing Corporation (“NSCC”), will be made available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time)²⁸ containing a list of the

²⁸ See NASDAQ Rule 5705(b)(7) (describing the three trading sessions on the Exchange: Regular Market Session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by NASDAQ). In addition, NASDAQ may designate each series of Index Fund Shares for trading during a Pre-Market Session beginning at 4:00 a.m. and/or a Post-Market Session ending at 8:00 p.m.

names and the required amount of each security in the Deposit Securities to be included in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day). In addition, on each business day, the estimated Cash Component, effective through and including the previous business day, will be made available through NSCC.

The Fund Deposit will be applicable for purchases of Creation Units of the Fund until such time as the next-announced Fund Deposit is made available. In accordance with the Exemptive Order, the Fund will reserve the right to accept a non-conforming Fund Deposit. In addition, the composition of the Deposit Securities may change as, among other things, corporate actions and investment decisions by the Adviser are implemented for the Fund's portfolio.

All purchase orders must be placed by or through an Authorized Participant. An Authorized Participant must be either a broker-dealer or other participant in the Continuous Net Settlement System ("Clearing Process") of the NSCC or a participant in The Depository Trust Company ("DTC") with access to the DTC system, and must execute an agreement with the Distributor that governs transactions in the Fund's Creation Units. In-kind portions of purchase orders will be processed through the Clearing Process when it is available.

Fund 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 Distributor and only on a business day. The Fund, through the NSCC, will make available immediately prior to the opening of business on the Exchange on each business day, the list of the names and quantities of the Fund's portfolio securities that will be applicable

(subject to possible amendment or correction) to redemption requests received in proper form on that day (“Fund 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 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”). 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 the in-kind securities representing one or more Fund Securities.²⁹ Because non-exchange traded derivatives and certain listed derivatives are not eligible for in-kind transfer, they will be substituted with an amount of cash of equal value when the Fund processes redemptions of Creation Units in-kind. Specifically, the Fund will transfer the corresponding cash value of exchange-traded options, OTC options, exchange-traded futures, forward contracts, dividend swap transactions, total return swap transactions and interest rate swap transactions in lieu of in-kind securities. In accordance with the Exemptive Order, the Fund also reserves the right to distribute to the Authorized Participant non-conforming Fund Securities.

The right of redemption may be suspended or the date of payment postponed: (i) for

²⁹ The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

any period during which the Exchange is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the Exchange is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

For an order involving a Creation Unit to be effectuated at the Fund's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order ("Order Cut-Off Time"). The Order Cut-Off Time for creation and redemption orders for the Fund will be 4:00 p.m. Eastern time. Orders for creation or redemption of Creation Units for cash generally must be submitted by 4:00 p.m. Eastern time. A standard creation or redemption transaction fee (as applicable) will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Net Asset Value

The Fund will calculate its NAV by: (i) taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares outstanding. The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the Exchange (normally, 4:00 p.m., Eastern Time) as described in its Registration Statement.

In calculating the Fund's NAV per Share, the Fund's investments will be valued in accordance with procedures approved by the Trust's Board of Trustees. These procedures, which may be changed by the Trust's Board of Trustees from time to time, generally require investments to be valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a third-party pricing service, or a major

market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a third-party pricing service, or a major market maker (or dealer) or (iii) based on amortized cost. The Trust may use various third-party pricing services, or discontinue the use of any third-party pricing service, as determined by the Trust's Board of Trustees from time to time.

The Trust will generally value exchange-listed securities (which include common stocks and ETFs), exchange-listed options, and options on the NASDAQ-100 Index or NASDAQ-100 ETFs at market closing prices. Market closing price is generally determined on the basis of last reported sales prices on the applicable exchange, or if no sales are reported, based on the midpoint between the last reported bid and ask. The Trust will generally value exchange-listed futures at the settlement price determined by the applicable exchange. Non-exchange-traded derivatives, including OTC options, swap transactions and forward transactions, will normally be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or major market makers or dealers. Debt securities and money market instruments generally will be valued based on prices provided by third-party pricing services, which may use valuation models or matrix pricing to determine current value. Investment company securities (other than ETFs) will be valued at NAV. The Trust generally will use amortized cost to value fixed income or money market securities that have a remaining maturity of 60 days or less. In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Adviser's Pricing

Committee to determine a security's fair value in accordance with the 1940 Act.³⁰ In determining such value the Adviser's Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators. In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Fund's website (www.realityshares.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),³¹ and a calculation of the premium and discount of the Bid/Ask Price

³⁰ The Valuation Committee of the Trust Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Valuation Committee has delegated day-to-day pricing responsibilities to the Adviser's Pricing Committee, which will be composed of officers of the Adviser. The Pricing Committee will be responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation and revaluation of any portfolio investments.

³¹ 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 such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its 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.³²

On a daily basis, the Adviser, on behalf of 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, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund’s portfolio. The website information will be publicly available at no charge.

³² 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.

In addition, for the Fund, an estimated value, defined in Rule 5705(b)(3)(C) as the “Intraday Indicative Value,” will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,³³ 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 (currently 9:30 a.m. Eastern time). 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

³³ Currently, the NASDAQ OMX Global Index Data Service (“GIDS”) is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

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 security names and 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. 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. The value of the Index will be published by one or more major market data vendors every 15 seconds during the Regular Market Session. Information about the Index constituents, the weighting of the constituents, the Index's methodology and the Index's rules will be available at no charge on the Index Provider's website at www.realityshares.com.

In addition, for the Fund, an estimated value, defined in Rule 5705(b)(3)(C) as the "Intraday Indicative Value," will be disseminated. 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-3³⁴ 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 Rules 5705(b)(1)(B) and 5705(b)(9)(B), which sets forth circumstances under which Shares of the Fund may be halted.

If the IIV, the Index Value or the value of the Index Components 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

³⁴ See 17 CFR 240.10A-3.

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 Rule 4613(a)(2)(I), the minimum quotation increment for quotations of \$1.00 and above in Shares 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.³⁵ 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

³⁵ 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.

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, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts from markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁶ All exchange-listed equity securities, ETFs, futures contracts, and options held by the Fund will be traded on U.S. exchanges, all of which are members of ISG or are exchanges 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.³⁷

³⁶ A list of ISG members, which includes all U.S. national securities exchanges and certain foreign exchanges, and which enables ISG members to share surveillance data regarding trades on the respective member exchanges, is available at www.isgportal.org.

³⁷ All broker/dealers who are FINRA member firms have an obligation to report

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NASDAQ Rule 2111A, which imposes suitability obligations on NASDAQ members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Index Value and Intraday Indicative Value will be 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.

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

transactions in corporate bonds to TRACE.

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.

b. Statutory Basis

NASDAQ believes that the proposal is consistent with Section 6(b) of the Act³⁸ in general and Section 6(b)(5) of the Act³⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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, except that the Index will consist of options based on U.S. Component Stocks (*i.e.*, ETFs based on the NASDAQ-100 Index) and options on an index of U.S. Component Stocks (*i.e.*, the NASDAQ-100 Index), rather than U.S. Component Stocks themselves. 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.

The proposed rule change is designed to promote just and equitable principles of

³⁸ 15 U.S.C. 78f.

³⁹ 15 U.S.C. 78f(b)(5).

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 OMX 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 Distributor's website for the Fund 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), 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 exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded fund 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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any 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

Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASDAQ-2014-038; Amendment No.1)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Proposed Rule Change Relating to the Listing and Trading of the Shares of the Reality Shares NASDAQ-100 Isolated Dividend Growth Index ETF of the Reality Shares ETF Trust Under Rule 5705

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 May 13, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDAQ proposes to list and trade the shares of the Reality Shares NASDAQ-100 Isolated Dividend Growth Index ETF (the “Fund”) of the Reality Shares ETF Trust (the “Trust”) under Rule 5705 (Exchange Traded Funds: Portfolio Depository Receipts and Index Fund Shares).³ The shares of the Fund are collectively referred to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved NASDAQ’s Rule 5705, as well as Rule 5735 regarding managed fund shares, in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039).

herein as the “Shares.”⁴

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

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

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under NASDAQ Rule 5705(b), which governs the listing and trading of Index Fund Shares⁵ on the Exchange. The Fund is an exchange-traded fund (“ETF”) which seeks to track the performance of an underlying index, as discussed herein.⁶ The Shares will be offered by

⁴ This Amendment No. 1 to SR-NASDAQ-2014-038 replaces SR-NASDAQ-2014-038 as originally filed and supersedes such filing in its entirety.

⁵ Index Fund Shares that are issued by an open-end investment company and listed and traded on the Exchange under NASDAQ Rule 5705 seek to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof. See Rule 5705(b)(1)(A).

⁶ 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

the Trust, which was established as a Delaware statutory trust on March 26, 2013. The Trust will be registered with the Commission as an open-end management investment company.⁷ The Fund is a series of the Trust.

Reality Shares Advisors, LLC will be the investment adviser (“Adviser”) to the Fund. ALPS Distributors, Inc. (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon (“BNY”) will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

As described in more detail below, the Fund will seek long-term capital appreciation by tracking the Reality Shares NASDAQ-100 Isolated Dividend Growth Index (the “Index”). The Index measures market expectations for dividend growth of the

Equities Rule 5.2(j)(3) (which is similar to NASDAQ Rule 5705(b)) Investment Company Units based on indexes of U.S. exchange listed options. See Securities Exchange Act Release Nos. 68667 (January 16, 2013), 78 FR 4955 (January 23, 2013) (SR-NASDAQ-2012-109) (order approving listing and trading of U.S. Equity High Volatility Put Write Index Fund); and 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR-NYSEArca-2012-108) (order approving listing and trading of NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund). The Exchange believes the proposed rule change does not raise any significant issues not previously addressed in those prior Commission orders.

⁷ The Trust will be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the “1940 Act”). On November 12, 2013, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the “1933 Act”) (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-192288 and 811-22911), as amended by Pre-Effective Amendment Number 1, filed with the Commission on February 6, 2014 (the “Registration Statement”). 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, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30678 August 27, 2013 (the “Exemptive Order”). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

companies included in the NASDAQ-100 Index.⁸ The Index consists of options on the NASDAQ-100 Index and options on ETFs designed to track the NASDAQ-100 Index. All options included in the Index will be listed and traded on a U.S. national securities exchange. The Index will consist of a minimum of 20 components.

Paragraph (b)(5)(A)(i) of Rule 5705 states that if an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index. If the investment adviser to the investment company issuing Index Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.⁹ In addition, paragraph (b)(5)(A)(iii) requires that any advisory committee,

⁸ The NASDAQ-100 Index is an index of 100 of the largest domestic and international securities (based on market capitalization) listed on The NASDAQ Stock Market. The NASDAQ-100 Index includes companies across major industry groups, including computer hardware and software, telecommunications, retail/wholesale trade and biotechnology, and excludes securities of financial companies.

⁹ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted

supervisory board, or similar entity that advises a Reporting Authority¹⁰ 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 is not affiliated with any broker-dealers. The Index was developed by Reality Shares, Inc., the parent company of the Adviser, in conjunction with The NASDAQ OMX Group, Inc., and is maintained by Reality Shares, Inc. (the “Index Provider”).¹¹ The Index Provider is not a broker-dealer and is not affiliated with any broker-dealers.¹² In the event (a) the Adviser, any sub-adviser or the Index Provider becomes registered as a broker-dealer or is newly affiliated with a broker dealer, or (b) any new adviser, sub-adviser or Index Provider is a registered broker-dealer or becomes affiliated with a broker dealer, the Adviser, sub-adviser or Index Provider will implement a fire wall with respect to its relevant personnel and/or such broker dealer affiliate, as applicable, regarding access to information concerning the composition

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.

¹⁰ Rule 5705(b)(1)(C).

¹¹ The Index will be calculated by International Data Corporation (“IDC”), which is not affiliated with the Adviser, Index Provider or The NASDAQ OMX Group, and which is not a broker-dealer or fund advisor.

¹² The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index.

and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the “generic” listing requirements of paragraph (b)(3)(A)(i) of Rule 5705 applicable to the listing of Index Fund Shares based upon an index of “US Component Stocks.”¹³ Specifically, Rule 5705 (b)(3)(A)(i) sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. As described in more detail herein, the Index will consist primarily of U.S. exchange-listed and traded options on the NASDAQ-100 Index and U.S. exchange-listed and traded options on ETFs that track the NASDAQ-100 Index.¹⁴ The Fund may also invest up to 20% of its total assets in other securities such as over-the-counter (“OTC”) options, futures, and forward

¹³ Paragraph (b)(1)(D) of Rule 5705 states that the term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act, or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act. Rule 5705 (b)(1)(D).

¹⁴ Paragraph (b)(3)(A)(i) of Rule 5705 states, in relevant part, that upon the initial listing of a series of Index Fund Shares pursuant to 19b-4(e) under the Act, all securities in the index or portfolio shall be U.S. Component Stocks listed on NASDAQ (including The NASDAQ Capital Market) or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. Each component stock of the NASDAQ-100 Index is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Fund and the Index meet all of the requirements of the listing standards for Index Fund Shares in Rule 5705 except the requirements in 5705(b)(3)(A)(i)(a)-(e), as the Index consists of options on U.S. Component Stocks. The NASDAQ-100 Index consists of Component Stocks and satisfies the requirements of Commentary 5705(b)(3)(A)(i)(a)-(e).

contracts on the NASDAQ-100 Index and OTC options, futures and forward contracts on ETFs that track the NASDAQ-100 Index. The Exchange has represented that the Shares will conform to the initial and continued requirements of listing criteria under Rule 5705(b), except to the extent that the Index is comprised of options based on U.S. Component Stocks (*i.e.*, ETFs based on the NASDAQ 100 Index) and options on an index of U.S. Component Stocks (*i.e.*, the NASDAQ-100 Index).

Reality Shares NASDAQ-100 Isolated Dividend Growth Index ETF

Principal Investments

According to the Registration Statement, the Fund will seek long-term capital appreciation and will seek investment results that, before fees and expenses, generally correspond to the performance of the Index. At least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index. The Fund will seek a correlation of 0.95 or better between its performance and the performance of its Index. A figure of 1.00 would represent perfect correlation. The Fund generally will use a representative sampling investment strategy.

The Fund will buy (*i.e.*, hold a "long" position in) and sell (*i.e.*, hold a "short" position in) put and call options. The Fund has a strategy of taking both a long position in a security through its ex-dividend date (the last date an investor can own the security and receive dividends paid on the security) and a corresponding short position in the same security immediately thereafter. This is designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid on such security while minimizing its exposure to changes in the trading price of such security.

The Fund will buy and sell U.S. exchange-listed options on the NASDAQ-100 Index and U.S. exchange-listed options on ETFs designed to track the NASDAQ-100 Index. A put option gives the purchaser of the option the right to sell, and the issuer of the option the obligation to buy, the underlying security or instrument on a specified date or during a specified period of time. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security or instrument on a specified date or during a specified period of time. The Fund will invest in a combination of put and call options designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the NASDAQ-100 Index and options on ETFs tracking the NASDAQ-100 Index, while minimizing the Fund's exposure to changes in the trading price of such securities.

Index Methodology

The Index will be calculated using a proprietary, rules-based methodology designed to track market expectations for dividend growth conveyed in real-time using the mid-point of the bid-ask spread on NASDAQ-100 Index options and options on ETFs designed to track the NASDAQ-100 Index.¹⁵ All options included in the Index will be

¹⁵ There is no guarantee that either the level of overall dividends paid by such companies will grow over time, or that the Index or Fund's investment strategies will capture such growth. The Fund will include appropriate risk disclosure in its offering documents disclosing these risks, which will be available for free on the SEC's website and on the Fund's website, www.realityshares.com.

listed and traded on a U.S. national securities exchange. The Index will consist of a minimum of 20 components.¹⁶

The prices of index and ETF options reflect the market trading prices of the securities included in the applicable underlying index or ETF, as well as market expectations regarding the level of dividends to be paid on such indexes or ETFs during the term of the option. The Index constituents, and therefore most of the Fund's portfolio holdings, will consist of multiple corresponding near-term and long-term put and call option combinations on the same reference assets (*i.e.*, options on the NASDAQ-100 Index or the NASDAQ-100 ETF) with the same strike price. Because option prices reflect both stock price and dividend expectations, they can be used in combination to isolate either price exposure or dividend expectations. The use of near-term and long-term put and call option combinations on the same reference asset with the same strike price, but with different maturities, is designed to gain exposure to the expected dividends of the securities in the NASDAQ-100 Index while neutralizing the impact of the stock price.

Once established, this portfolio construction of option combinations will accomplish two goals. First, the use of corresponding buy or sell positions on near and long-term options at the same strike price is designed to neutralize underlying stock price movements. In other words, the corresponding "buy" and "sell" positions on the same reference asset are designed to net against each other and eliminate the impact that changes to the stock price of the reference asset would otherwise have on the value of the Index (and Fund). Second, by minimizing the impact of price fluctuations through the

¹⁶ Rule 5705(b)(3).

construct of the near- and long-term contract combinations, the strategy is designed to isolate market expectations for dividends implied between the expiration dates of the near-term and long-term option contracts. Over time, the Index will increase or decrease in value as the dividend spread between the near-term and long-term option combinations increases or decreases as a result of changing market expectations for dividend growth.

Other Fund Investments

While, as described above, at least 80% of the Fund's total assets (exclusive of collateral held from securities lending, if any) will be invested in the component securities of the Index, the Fund may invest up to 20% of the Fund's total assets in other securities and financial instruments, as described below.

The Fund may invest in U.S. exchange-listed futures contracts on the NASDAQ-100 Index and ETFs designed to track the NASDAQ-100 Index and may invest in forward contracts on the NASDAQ-100 Index and ETFs designed to track the NASDAQ-100 Index. The Fund's use of exchange-listed futures contracts and forward contracts is designed to allow the Fund to isolate its exposure to the growth of the level of expected dividends reflected in options on the NASDAQ-100 Index and options on ETFs tracking the NASDAQ-100 Index, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund may also buy and sell OTC options on the NASDAQ-100 Index and on ETFs designed to track the NASDAQ-100 Index.

The Fund may enter into dividend and total return swap transactions (including equity swap transactions) based on the NASDAQ-100 Index and ETFs designed to track

the NASDAQ-100 Index.¹⁷ In a typical swap transaction, one party agrees to make periodic payments to another party (“counterparty”) based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap transactions are usually done on a net basis, the Fund receiving or paying only the net amount of the two payments. In a typical dividend swap transaction, the Fund would pay the swap counterparty a premium and would be entitled to receive the value of the actual dividends paid on the subject index during the term of the swap contract. In a typical total return swap transaction, the Fund might exchange long or short exposures to the return of the underlying securities or index to isolate the value of the dividends paid on the underlying securities or index constituents. The Fund also may engage in interest rate swap transactions. In a typical interest rate swap transaction one stream of future interest payments is exchanged for another. Such transactions often take the form of an exchange of a fixed payment for a variable payment based on a future interest rate. The Fund intends to use interest rate swap transactions to manage or hedge exposure to interest rate fluctuations.

The Fund may invest up to 20% of its assets (exclusive of collateral held from securities lending, if any) in exchange-listed equity securities and derivative instruments (specifically, futures contracts, forward contracts and swap transactions)¹⁸ relating to the

¹⁷ The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund.

¹⁸ Where practicable, the Fund intends to invest in swaps cleared through a central clearing house (“Cleared Swaps”). Currently, only certain of the interest rate swaps in which the Fund intends to invest are Cleared Swaps, while the dividend

Index and its component securities that the Adviser believes will help the Fund track the Index. For example, the Fund may buy and sell ETFs and, to a limited extent, individual large-capitalization equity securities listed and traded on a U.S. national securities exchange.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act.

The Fund's short positions and its investments in swaps, futures contracts, forward contracts and options based on the NASDAQ-100 Index and ETFs designed to track the NASDAQ-100 Index will be backed by investments in cash, high-quality, short-term debt securities and money-market instruments in an amount equal to the Fund's maximum liability under the applicable position or contract or will otherwise be offset in accordance with Section 18 of the 1940 Act. Short-term debt securities and money market instruments include shares of fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government Securities (including securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities), repurchase agreements¹⁹ and bonds that are rated BBB or higher.

and total return swaps (including equity swaps) in which the Fund may invest are currently not Cleared Swaps.

¹⁹ The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The acquiring fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

In addition to the investments described above, and in a manner consistent with its investment objective, the Fund may invest a limited portion of its net assets in high-quality, short-term debt securities and money market instruments for cash management purposes.²⁰

The Fund will attempt to limit counterparty risk in non-cleared swap, forward and OTC option contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.²¹

The Fund's investments in swaps, futures contracts, forward contracts and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act.²²

²⁰ The Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

²¹ 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 will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

²² To limit the potential risk associated with such transactions, the Fund will segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate

Investment Restrictions

To the extent the Index concentrates (*i.e.*, holds 25% or more of its total assets) in the securities of a particular industry or group of industries, the Fund will concentrate its investments to approximately the same extent as the Index.

The 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, consistent with Commission guidance.²³ The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other

risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or " earmark " liquid assets or otherwise cover the transactions that may give rise to such risk.

²³ In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

instruments that lack readily available markets as determined in accordance with Commission staff guidance.²⁴

The Fund may make secured loans of its portfolio securities; however, securities loans will not be made if, as a result, the aggregate amount of all outstanding securities loans by the Fund exceeds 33 1/3% of its total assets (including the market value of collateral received). To the extent the Fund engages in securities lending, securities loans will be made to broker-dealers that the Adviser believes to be of relatively high credit standing pursuant to agreements requiring that the loans continuously be collateralized by cash, liquid securities, or shares of other investment companies with a value at least equal to the market value of the loaned securities. The Fund will be classified as a “non-diversified” investment company under the 1940 Act.²⁵

The Fund intends to qualify for and to elect treatment as a separate regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code.²⁶

²⁴ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release Nos. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); and 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release Nos. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

²⁵ The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

²⁶ 26 U.S.C. 851 et seq.

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

The Shares

According to the Registration Statement, the Fund will issue and redeem Shares only in Creation Units at the net asset value ("NAV")²⁷ next determined after receipt of an order on a continuous basis every business day. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the Exchange, generally, 4:00 p.m. Eastern Time. Creation Unit sizes will be 25,000 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 Authorized Participant agreement (as referred to 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. Because non-exchange traded derivatives and certain listed derivatives are not currently eligible for in-kind transfer,

²⁷ The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of the Regular Market Session on the Exchange, generally 4:00 or 4:15 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.

they will be substituted with an amount of cash of equal value (*i.e.*, Deposit Cash) when the Fund processes purchases of Creation Units in-kind. Specifically, the Fund will not accept exchange-traded options, OTC options, exchange-traded futures, forward contracts, dividend swap transactions, total return swap transactions and interest rate swap transactions as Deposit Securities.

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. 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.

A portfolio composition file, to be sent via the National Securities Clearing Corporation (“NSCC”), will be made available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time)²⁸ containing a list of the names and the required amount of each security in the Deposit Securities to be included

²⁸ See NASDAQ Rule 5705(b)(7) (describing the three trading sessions on the Exchange: Regular Market Session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by NASDAQ). In addition, NASDAQ may designate each series of Index Fund Shares for trading during a Pre-Market Session beginning at 4:00 a.m. and/or a Post-Market Session ending at 8:00 p.m.

in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day). In addition, on each business day, the estimated Cash Component, effective through and including the previous business day, will be made available through NSCC.

The Fund Deposit will be applicable for purchases of Creation Units of the Fund until such time as the next-announced Fund Deposit is made available. In accordance with the Exemptive Order, the Fund will reserve the right to accept a non-conforming Fund Deposit. In addition, the composition of the Deposit Securities may change as, among other things, corporate actions and investment decisions by the Adviser are implemented for the Fund's portfolio.

All purchase orders must be placed by or through an Authorized Participant. An Authorized Participant must be either a broker-dealer or other participant in the Continuous Net Settlement System ("Clearing Process") of the NSCC or a participant in The Depository Trust Company ("DTC") with access to the DTC system, and must execute an agreement with the Distributor that governs transactions in the Fund's Creation Units. In-kind portions of purchase orders will be processed through the Clearing Process when it is available.

Fund 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 Distributor and only on a business day. The Fund, through the NSCC, will make available immediately prior to the opening of business on the Exchange on each business day, the list of the names and quantities of the Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received

in proper form on that day (“Fund 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 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”). 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 the in-kind securities representing one or more Fund Securities.²⁹ Because non-exchange traded derivatives and certain listed derivatives are not eligible for in-kind transfer, they will be substituted with an amount of cash of equal value when the Fund processes redemptions of Creation Units in-kind. Specifically, the Fund will transfer the corresponding cash value of exchange-traded options, OTC options, exchange-traded futures, forward contracts, dividend swap transactions, total return swap transactions and interest rate swap transactions in lieu of in-kind securities. In accordance with the Exemptive Order, the Fund also reserves the right to distribute to the Authorized Participant non-conforming Fund Securities.

²⁹ The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

The right of redemption may be suspended or the date of payment postponed: (i) for any period during which the Exchange is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the Exchange is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

For an order involving a Creation Unit to be effectuated at the Fund's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order ("Order Cut-Off Time"). The Order Cut-Off Time for creation and redemption orders for the Fund will be 4:00 p.m. Eastern time. Orders for creation or redemption of Creation Units for cash generally must be submitted by 4:00 p.m. Eastern time. A standard creation or redemption transaction fee (as applicable) will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Net Asset Value

The Fund will calculate its NAV by: (i) taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares outstanding. The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the Exchange (normally, 4:00 p.m., Eastern Time) as described in its Registration Statement.

In calculating the Fund's NAV per Share, the Fund's investments will be valued in accordance with procedures approved by the Trust's Board of Trustees. These procedures, which may be changed by the Trust's Board of Trustees from time to time, generally require investments to be valued using market valuations. A market valuation

generally means a valuation (i) obtained from an exchange, a third-party pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a third-party pricing service, or a major market maker (or dealer) or (iii) based on amortized cost. The Trust may use various third-party pricing services, or discontinue the use of any third-party pricing service, as determined by the Trust's Board of Trustees from time to time.

The Trust will generally value exchange-listed securities (which include common stocks and ETFs), exchange-listed options, and options on the NASDAQ-100 Index or NASDAQ-100 ETFs at market closing prices. Market closing price is generally determined on the basis of last reported sales prices on the applicable exchange, or if no sales are reported, based on the midpoint between the last reported bid and ask. The Trust will generally value exchange-listed futures at the settlement price determined by the applicable exchange. Non-exchange-traded derivatives, including OTC options, swap transactions and forward transactions, will normally be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or major market makers or dealers. Debt securities and money market instruments generally will be valued based on prices provided by third-party pricing services, which may use valuation models or matrix pricing to determine current value. Investment company securities (other than ETFs) will be valued at NAV. The Trust generally will use amortized cost to value fixed income or money market securities that have a remaining maturity of 60 days or less. In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Adviser's Pricing Committee to determine a security's fair value in accordance with the

1940 Act.³⁰ In determining such value the Adviser's Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators. In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Fund's website (www.realityshares.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),³¹ 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

³⁰ The Valuation Committee of the Trust Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Valuation Committee has delegated day-to-day pricing responsibilities to the Adviser's Pricing Committee, which will be composed of officers of the Adviser. The Pricing Committee will be responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation and revaluation of any portfolio investments.

³¹ 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 such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its 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.³²

On a daily basis, the Adviser, on behalf of 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, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund’s portfolio. The website information will be publicly available at no charge.

³² 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.

In addition, for the Fund, an estimated value, defined in Rule 5705(b)(3)(C) as the “Intraday Indicative Value,” will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,³³ 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 (currently 9:30 a.m. Eastern time). 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

³³ Currently, the NASDAQ OMX Global Index Data Service (“GIDS”) is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

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 security names and 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. 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. The value of the Index will be published by one or more major market data vendors every 15 seconds during the Regular Market Session. Information about the Index constituents, the weighting of the constituents, the Index's methodology and the Index's rules will be available at no charge on the Index Provider's website at www.realityshares.com.

In addition, for the Fund, an estimated value, defined in Rule 5705(b)(3)(C) as the "Intraday Indicative Value," will be disseminated. 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-3³⁴ 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 Rules 5705(b)(1)(B) and 5705(b)(9)(B), which sets forth circumstances under which Shares of the Fund may be halted.

If the IIV, the Index Value or the value of the Index Components 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

³⁴ See 17 CFR 240.10A-3.

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 Rule 4613(a)(2)(I), the minimum quotation increment for quotations of \$1.00 and above in Shares 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.³⁵ 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

³⁵ 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.

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, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts, and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts from markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁶ All exchange-listed equity securities, ETFs, futures contracts, and options held by the Fund will be traded on U.S. exchanges, all of which are members of ISG or are exchanges 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

³⁶ A list of ISG members, which includes all U.S. national securities exchanges and certain foreign exchanges, and which enables ISG members to share surveillance data regarding trades on the respective member exchanges, is available at www.isgportal.org.

facilitates mandatory reporting of OTC secondary market transactions in eligible fixed income securities.³⁷

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NASDAQ Rule 2111A, which imposes suitability obligations on NASDAQ members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Index Value and Intraday Indicative Value will be 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.

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

³⁷ All broker/dealers who are FINRA member firms have an obligation to report transactions in corporate bonds to TRACE.

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.

2. Statutory Basis

NASDAQ believes that the proposal is consistent with Section 6(b) of the Act³⁸ in general and Section 6(b)(5) of the Act³⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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, except that the Index will consist of options based on U.S. Component Stocks (*i.e.*, ETFs based on the NASDAQ-100 Index) and options on an index of U.S. Component Stocks (*i.e.*, the NASDAQ-100 Index), rather than U.S. Component Stocks themselves.

³⁸ 15 U.S.C. 78f.

³⁹ 15 U.S.C. 78f(b)(5).

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.

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 OMX 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 Distributor's website for the Fund 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), 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 exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (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. Please include File Number SR-NASDAQ-2014-038 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASDAQ-2014-038. 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 website <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 NASDAQ. All comments received will be posted without change; the Commission does not edit

personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2014-038 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.⁴⁰

Kevin M. O'Neill
Deputy Secretary

⁴⁰ 17 CFR 200.30-3(a)(12).