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Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: File No. SR-NASDAQ-2014-065; Release No. 34-73142

Dear Mr. Fields:

This letter responds to comments received in connection with the Securities and Exchange Commission's (the "SEC" or "Commission") order instituting proceedings with respect to rule filing SR-NASDAQ-2014-065 (the "Filing"), as amended¹ ("Response"). The proposal by NASDAQ OMX LLC ("NASDAQ" or "Exchange") at SR-NASDAQ-2014-065 (the "Proposal"), which was promulgated pursuant to the Securities Exchange Act of 1934 ("Act" or

¹ Securities Exchange Act Release No. 72412 (June 17, 2014), 79 FR 35610 (June 23, 2014)(SR-NASDAQ-2014-065)(Notice of Filing of Proposed Rule Change To Adopt New Rule 5713 and List Paired Class Shares Issued by AccuShares(R) Commodities Trust I)("Notice"). The Commission extended until September 19, 2014, the time within which it may approve or disapprove the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved. Securities Exchange Act Release No. 72779 (August 6, 2014), 79 FR 47162 (August 12, 2014)(the "extended period"). The Commission issued an order instituting proceedings to determine whether to approve or disapprove the proposal at SR-NASDAQ-2014-065. Securities Exchange Act Release No. 73142 (September 18, 2014), 77 FR 42052 (September 24, 2014)(File Nos. SR-NASDAQ-065)(Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Adopt New Rule 5713 and List Paired Class Shares Issued by AccuShares(R) Commodities Trust I)("Order Instituting Proceedings").

“Exchange Act”), would: (1) adopt listing standards for Paired Class Shares in new Rule 5713; and (2) list and trade Paired Class Shares (“Shares”) issued by AccuShares® Commodities Trust I (“Trust”) relating to the following funds pursuant to new Rule 5713: (a) AccuShares S&P GSCI® Spot Fund; (b) AccuShares S&P GSCI® Agriculture and Livestock Spot Fund; (c) AccuShares S&P GSCI® Industrial Metals Spot Fund; (d) AccuShares S&P GSCI® Crude Oil Spot Fund; (e) AccuShares S&P GSCI® Brent Oil Spot Fund; (f) AccuShares S&P GSCI® Natural Gas Spot Fund; and (g) AccuShares Spot CBOE® VIX® Fund (each individually, “Fund” or “AccuShares Fund”, and collectively, “Funds” or “AccuShares Funds”).²

There is a vital need for innovative offerings like the series of Funds proposed by AccuShares. There are currently no similar products in the exchange trade funds (“ETF”) space, and as noted in the Notice and herein, Paired Class Shares offer numerous benefits to market participants. A review of the comment letters makes this clear. A total of four comment letters were submitted. Three insightful and reasoned comment letters by an academician, a professional market maker and trader, and an ETF executive are in favor of the Proposal and urge its approval.³ Only one comment letter, which attempts to instill spurious issues, as discussed below, opposes the Proposal.⁴

² AccuShares® is a registered trademark of AccuShares Holdings LLC. S&P®, S&P GSCI®, S&P 500® and Standard & Poor’s® are registered trademarks of Standard & Poor’s® Financial Services LLC. CBOE®, Chicago Board Options Exchange®, CBOE Volatility Index® and VIX® are registered trademarks of Chicago Board Options Exchange®, Incorporated (“CBOE”). Dow Jones® is a registered trademark of Dow Jones® Trademark Holdings LLC.

³ Letter from Robert E. Whaley, Ph.D., Valere Blair Potter Professor of Finance, and Director, Financial Markets Research Center, Vanderbilt Owen Graduate School of Management, dated October 8, 2014. Letter from David B. Allen, equity options market maker and derivatives trader, dated October 11, 2014. Letter from Jack Fonss, CEO and co-founder of AccuShares Investment Management LLC, dated September 25, 2014. The letters are posted on <http://www.sec.gov/comments/sr-nasdaq-2014-065/nasdaq2014065.shtml>.

⁴ Letter from Mark Kassner, Esq., dated October 13, 2014. Ned Cataldo, Chief Operating Officer of AccuShares Investment Management LLC, noted in a letter dated October 24, 2014, that he was informed by an officer of Velocity Shares, a competitor, that the negative comment letter attributed to Mark Kassner, Esq. was in fact the work of Velocity Shares. The letters are posted on <http://www.sec.gov/comments/sr-nasdaq-2014-065/nasdaq2014065.shtml>.

Paired Class Shares – A Short Background⁵

As discussed in the Notice⁶ and proposed Rule 5713, Paired Class Shares will be issued by a Trust on behalf of a segregated series of the Trust.⁷ Paired Class Shares will have values that are based on an index or other numerical variable (“Underlying Benchmark”) whose value reflects the value of assets, prices, price volatility or other economic interests (“Reference Asset”).⁸ The Trust will always issue Paired Class Shares in pairs of shares of opposing classes of each Fund. The values of the opposing classes will move in opposite directions as the value of the Fund’s Underlying Benchmark varies from its starting level, where one constituent of the pair is positively linked to the Fund’s Underlying Benchmark (“Up Shares”) and the other constituent is negatively linked to the Fund’s Underlying Benchmark (“Down Shares”). The rate of linkage or leverage of a Fund’s Up Shares and Down Shares performance to the performance of the Fund’s referenced Underlying Benchmark will be one-to-one. The calculation of the liquidation value of a Fund attributable to each of its classes of Paired Class Shares (“Class Value”), and each Share of such class’ pro rata portion of Class Value (“Class Value per Share”), will be determined according to a mathematical formula.⁹

Each Fund will engage in (1) scheduled “regular distributions,” (2) “special distributions” that are automatically triggered upon the Underlying Benchmark exceeding a fixed rate of change since the Fund’s prior regular or special distribution date or inception date in the case of the first such distribution (each a “prior distribution date”), and (3) “corrective distributions” that are automatically triggered when the trading price of a Paired Class Share deviates by a specified amount from its Class Value per Share for a specified period of time. Immediately after each regular, special and corrective distribution, the Fund’s Underlying Benchmark participation or exposure will be reset and the Fund’s Class Value per Share for each of its classes will be set to

⁵ Terms not specifically identified in this Response will be the same as in the Notice.

⁶ Notice, pp 66-70 of 121. The Notice contains extensive additional detail and discussion regarding Rule 5713, Paired Class Shares, and the proposed listing and trading of Funds.

⁷ Separately, the Trust and its counsel have engaged Commission staff in other regulatory efforts such as, for example, drafting Exemptive, Interpretive and No-Action Relief from, or Advice Regarding Rule 10b-17 promulgated under the Act. For purposes of brevity we are not, in this Response, discussing such regulatory efforts.

⁸ Other economic interest would include, for example, currencies, interest rates, non-investible economic indices and other measures of financial instrument value.

⁹ The mathematical formula is based on the following factors: (1) the value of Fund assets, (2) the allocation of such value based on changes in the level of the Fund’s Underlying Benchmark which may be limited, reduced, capped or otherwise modified according to formula or pre-set parameters, and (3) the daily accrual of gain and income or loss on the assets of the Fund, less the liabilities of the Fund, as such gains, income losses and liabilities are allocated to each class of the Fund.

equal the lowest Class Value per Share of the two classes of Paired Class Shares. To the extent any class of Paired Class Shares of a Fund has a positive net income from income or gain on class assets, after deduction of class liabilities, on a regular or special distribution date as measured from the prior distribution date, such class of Paired Class Shares will receive a distribution in cash equal to such positive net income regardless as to whether such class is entitled to a regular or special distribution on such date.

The structure of Paired Class Shares is designed to be a passive unmanaged investment vehicle with the objective to provide investors with exposure to changes in an Underlying Benchmark. Paired Class Shares are expected to provide retail investors with a simple, liquid and cost effective means of simulating an investment in an Underlying Benchmark. Paired Class Shares provide distinct benefits that seek to remedy the perceived failings of a former product that is no longer traded, Paired Trust Shares (“PTS”),¹⁰ and make Paired Class Shares a unique product that would be beneficial to market participants.

First, a Trust issuing Paired Class Shares on behalf of a Fund actively monitors deviations of trading price to Class Value per Share. To the extent there is a material and persistent deviation of a Paired Class Share trading price from such Paired Class Share’s Class Value per Share according to pre-set thresholds, a Trust issuing the Paired Class Shares will distribute, to holders of each class of shares, shares of the opposing class, which would leave each holder with an equal number of Up Shares and Down Shares. As each holder would own both Up Shares and Down Shares, each holder could redeem their shares through an authorized participant (“Authorized Participant”)¹¹ for cash at their respective Class Values per Share, which would eliminate the premium or discount. Even if a corrective distribution is not triggered, the existence of a Fund’s corrective distribution feature is expected to modify investor and Authorized Participant behavior to prevent persistent and material premium and discount conditions for Paired Class Shares from becoming locked. PTS had no similar mechanism and did in fact trade at significant discounts from and premiums to NAV in a locked fashion. Furthermore, regular and special distributions have the effect of delivering changes in Class

¹⁰ Subsequent to the initial listing of PTS on Arca in 2007, see Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007)(SR-NYSEArca-2006-75), variants of the original PTS were listed until 2009. It became evident, however, that PTS, unlike Paired Class Shares, had inherent design issues that led to severely diminished use of the product. PTS are not currently listed and have not been listed and traded for more than four years.

¹¹ An Authorized Participant may place orders to create or redeem one or more Creation Units, and must be (1) a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, (2) a direct participant in The Depository Trust Company, and (3) a party to an Authorized Participant Agreement with the Sponsor setting forth the procedures for the creation and redemption of Creation Units in an AccuShares Fund.

Value per Share to each class of the Paired Class Shares either directly through the distribution or indirectly through the dilution caused by the distribution. Thus, market expectation of regular and special distributions will cause the trading prices of a Fund's Paired Class Shares to experience less pronounced conditions of premium or discount to Class Value per Share than PTS experienced with respect to NAV per share. PTS lacked these mechanisms and experienced significant premium or discount conditions as well as locked premium and discount conditions.

Second, a Trust issuing Paired Class Shares on behalf of a Fund makes regular and special distributions and resets the Fund's exposure or participation in its Underlying Benchmark to avoid depleting all of the capital of one class of shares. PTS had no similar mechanism and did in fact liquidate when its underlying benchmarks or index moved more than 80%, which occurred on numerous occasions.

Third, for regular distributions Paired Class Shares reset their Underlying Benchmark participation on regularly scheduled dates, and for special distributions reset whenever their Underlying Benchmark changes by a set percentage since the prior distribution date. Thus, on each such date, a percentage change in the Underlying Benchmark generally corresponds to a percentage change in the Class Value per Share of the shares and leverage drift is minimized. PTS never reset its index or benchmark participation and did in fact experience significant misalignment of percentage returns due to leverage drift.

Market participants will, in addition to extensive information about each of the Funds, receive clear notification regarding distributions. Each AccuShares Fund engaging in a regular distribution, a special distribution, a corrective distribution or a net income distribution will provide at least three business days' advance notice (or longer advance notice as may be required by the Exchange) of such an event.¹² Each AccuShares Fund engaging in a share split will provide at least ten calendar days' advance notice (or longer advance notice as may be required by the Exchange)¹³ of such an event. In each instance, the Sponsor¹⁴ of an AccuShares Fund will notify the Exchange, and post a notice of such event and its details on the Sponsor's website (www.AccuShares.com).

With respect to regular distributions, the information provided will consist of the schedule of distributions and associated distribution dates, and a notification, as of the record date for such regular distribution, on the Sponsor's website (www.AccuShares.com) as to whether or not the regular distribution will occur. For regular distributions that occur on schedule, the Sponsor will cause a press release to be issued identifying the receiving class, the amount of cash, the amount of Paired Class Shares (if any), and any other information the

¹² Notice, pp. 103-104 of 121. The Exchange may determine that longer notice is advisable in some circumstances (e.g. an extended, or unexpected, market break).

¹³ Id.

¹⁴ The Sponsor is, as discussed in the Notice, AccuShares Investment Management, LLC, a Delaware limited liability company.

Sponsor deems relevant regarding the distribution and post such information on the Sponsor's website. This information will also be contained in the AccuShares Fund's quarterly and annual reports on Forms 10-Q and 10-K and annual reports to shareholders.

With respect to special distributions, corrective distributions and share splits, the information provided will include the relevant ex-, record and payment dates for each such event and relevant data concerning each such event. These events will also be reported in press releases, on the Sponsor's website (www.AccuShares.com) and under current reports on Form 8-K as material events as well as the AccuShares Fund's periodic reports.

Notice of net income distributions for each class of an AccuShares Fund, if any, will also be included in the notifications of regular, special and corrective distributions. In addition, information about the Trust, the AccuShares Funds and Shares will appear in the AccuShares Fund prospectus(es) ("Prospectus" or "Prospectuses")¹⁵ as well as in periodic and current reports by the Trust under the Exchange Act. Information about the Trust, the AccuShares Funds and the Shares will also be available from the website www.AccuShares.com.

We now discuss the comment letters that were submitted pursuant to the Order Instituting Proceedings.¹⁶

The Comment Letters Urging Approval of the Proposal

Robert E. Whaley, Ph.D., Letter – In Favor of Approval

Professor Robert Whaley of Vanderbilt University is an accomplished persona in the securities industry and academia, with past teaching positions that include Duke University, the University of Chicago, and the University of Alberta. Professor Whaley has published several books, including the recent *Derivatives: Markets, Valuation, and Risk Management* by John Wiley & Sons, Inc. The professor holds a number of editorial positions including Associate Editor of *Journal of Futures Markets*, *Journal of Derivatives*, *Pacific-Basin Journal of Finance*, and *Advances in Futures and Options Research*, and previously *Review of Futures Markets*, *Journal of Finance*, and *Journal of Financial Economics*. Professor Whaley, a partner and strategic advisor to AccuShares, is an established expert in derivative contract valuation and risk management, and market operation. He developed the CBOE Market Volatility Index (i.e., the "VIX") for the Chicago Board Options Exchange in 1993, the NASDAQ Market Volatility Index (i.e., the "VXN") in 2000, and the BuyWrite Monthly Index (i.e., the "BXM") in 2001. He also co-developed the NASDAQ OMX Alpha Indexes.

¹⁵ The Prospectus for "AccuShares Commodities Trust I" can be found on the Commission's EDGAR website.

¹⁶ We note that throughout this Response, we strive to group commenter quotations according to commenter letter, and cite to the appropriate comment letters in the beginning of each such grouping.

Professor Whaley unequivocally urges the approval of the Proposal, stating: “The Paired Class Shares [proposed] by AccuShares is one of the most innovative product structures that I have seen in my 36 years following the securities industry. I highly recommend that the Proposed Rule Change be approved.”¹⁷ As discussed in more detail below, the professor’s strong support of Paired Class Shares is grounded in its transparency and simple design, no issuer market risk, spot exposure, distribution scheme, passive structure, and exact holding returns.

Regarding spot exposure, Professor Whaley states: “The Up Shares and Down Shares are written on spot market benchmark indexes that provide investors with the price exposures they want. VIX is a great example. Investors would like the ability to trade the cash index because of its hedging properties. The same logic can be applied to commodities like spot crude oil and natural gas. Large segments of the asset management community want to hold spot crude and gas because both can be great portfolio diversifiers.”

Professor Whaley discusses the important issue of transparency, especially in regards to retail customers. “Fact of the matter is that the futures indexes are complicated dynamic futures trading strategies, as opposed to AccuShares’ Up Shares and Down Shares which are direct investments in readily-observable spot market benchmarks.” Professor Whaley commends the simple design of Up Shares and Down Shares, stating that “Up Shares provide a long exposure to a benchmark index and Down Shares provide a short exposure. The daily change in the Class Value per Share of the Funds is purely mechanical. It corresponds directly to the price change in the index. This is distinctly different from many current products.”

Up Shares and Down Shares are quite different than ETNs, which expose their holders to credit risk. In particular, Professor Whaley states that “Up Shares and Down Shares are created and redeemed in cash by authorized participants. The Funds have no market risk exposure in the portfolio because they have equal numbers of each type of Shares. They are simply a cash portfolio consisting of short-term government securities.”

“[While] the ETP industry seems to be moving toward ETPs involving active products, which is adding additional complexity to the ETP market”¹⁸ notes Professor Whaley, “AccuShares’ Paired Class Shares are passive. The returns are linked directly to passive benchmark indexes.”

Professor Whaley notes that the proposed distribution structure should help to eliminate the significant premiums and discounts that have been observed in recent years for other ETPs.

¹⁷ Letter from Robert E. Whaley, Ph.D., Valere Blair Potter Professor of Finance, and Director, Financial Markets Research Center, Vanderbilt Owen Graduate School of Management, dated October 8, 2014.

¹⁸ Exchange traded funds are known as “ETPs”.

“Regular, special, and corrective distributions occur on specified dates or on large and rare index moves. The regular and special distributions are in cash. Assuming the index moved up since the last distribution date, the Up Shares receive cash in the amount of the increase in the index level which can be re-invested in more Up Shares to maintain his/her risk position and redeployed in some other way. A corrective distribution is straightforward in that it provides the investor with an equal number of Up Shares and Down Shares. Consequently, it is equivalent to cash. The investor can choose to liquidate all of the shares for cash or one leg of the distribution of shares to maintain his/her current risk position.”

Finally, Professor Whaley notes that another important feature of the Funds is that they deliver the returns that investors expect, “...that is, the holding period return over the length of time they hold the security. This is in distinct contrast with the levered and inverse funds that implicitly rebalance daily. This can be a source of confusion for retail customers.”

David B. Allen Letter – In Favor of Approval

The second letter in favor of approving the Proposal was penned by David Allen. Allen is an equity options market maker and derivatives trader on behalf of mainly larger institutions such as Goldman Sachs, American International Group, and Barclays. Over the course of the past year, Allen acted in the capacity of advisor to AccuShares. Allen states “My experience has taught me that one of the most important characteristics of any ETF is that it actually trades actively. The most novel ETF will do little good to the overall marketplace, if it does not attract a significant amount of trading volume from a variety of participants. Trading volumes generally require the participation of market makers, arbitrageurs, hedgers, and other investors in unison – if only one narrow group is served by a product, it is unlikely to succeed...Also, an ETF is less useful if it helps solve only one issue for investors (i.e., removing the futures trading and margin funding process) while at the same time creating others (roll yield uncertainty, foreshadowing calendar spread timing to the exchange members, tax liabilities, tracking error.)”

Like Professor Whaley, Allen strongly urges the Commission to approve the Proposal, stating that “...AccuShares funds are both highly relevant to a wide range of investors and highly approachable to all of them.”¹⁹ “An ETF which serves a narrow segment of individual investors, states Allen, “is likely to ultimately close due to illiquidity and poor tradability. Similarly, an ETF which is targeted only at professionals probably [doesn’t] need to be launched as an ETF. The better ETFs are where many types of investors meet to invest and trade. The best ETFs also help solve existing structural problems for traders and investors regarding term structure of price and/or volatility, beta to cash prices and tracking errors, and rebalancing inefficiencies like AccuShares does.”

Allen discusses why AccuShares’ Funds are suited for individual, or retail, investors. “The indexing in the AccuShares funds is arguably better for individual investors because the indices are easier to follow than some existing products, and because the market has been

¹⁹ Letter from David B. Allen, equity options market maker and derivatives trader, dated October 11, 2014.

clamoring for better spot market proxies since the beginning of the ETF market.” Allen is of the opinion that AccuShares’ Funds would, at the same time, be beneficial for other market participants. “The indexing is also beneficial for the market making and institutional community, because they are also looking for better spot market proxies, because these indices create a more complete market for managing trading books and they are constantly looking for interchangeable/fungible/hedgeable instruments.”

Jack Fonss Letter – In Favor of Approval

Jack Fonss has been a securities market professional for more than 20 years. Prior to becoming Co-Founder and Chief Executive Officer at AccuShares Investment Management, LLC, Fonss was Managing Director, Equity Derivatives Structuring at UBS Securities LLC, and Managing Director - Equity Derivatives and Fixed Income at Deutsche Bank; Fonss had similar positions at Credit Suisse Financial Products and Morgan Stanley. Fonss’ experience and understanding of the market are evident in his letter.

In response to the Commission’s request for comment pursuant to the Order Instituting Proceedings, Fonss penned a letter²⁰ that responds to the five sets of questions posted to commenters by the Commission (individually “Question”, and together “Questions”). Fonss “...request[s] approval of the Exchange’s proposed rule as it will be beneficial to investors and market participants.”

Fonss identifies two basic principles which should guide an exchange traded product. “The first principle is that share values should move in direct response to an index in a manner consistent with the intuition of the average investor; that is, if an investor knows what an index did or will do, such investor should be able to have very specific expectations with respect to resulting share values and returns. The second principle is that share values should be realizable by shareholders in the course of ordinary market trading; that is, it should be expected that normal course market making and arbitrage should align trading prices to share values, but should these forces be insufficient, an investor safeguard should be provided when and where possible. While the industry has, to a large extent, moved on to more complex and more interesting pursuits branded as dynamic, enhanced, optimized, or active, we continue to believe there is a need for passive indexed fund alternatives.”

Fonss’ unique responses to the Questions set forth by the Commission are set forth, in part, below.

In answer to the Commission’s Questions One,²¹ Fonss states: “We believe that the presence of regular, special, and corrective distributions will aid in the reduction of premiums

²⁰ Letter from Jack Fonss, CEO and co-founder of AccuShares Investment Management LLC, dated September 25, 2014.

²¹ Question One posed by the Commission: “As described above, the Exchange represents in the proposed rule change that Paired Class Shares would engage in three different types of distributions: regular, special, and corrective. According to the Exchange, market

and discounts. With regard to both regular and special distributions, Class Values per Share will move in response to changes in the related index, a Fund will make a distribution based on the related index move since the last distribution date, and a fund will set the index to the then current market level. Two positive effects relating to potential discounts or premiums from regular and special distributions are: (1) an investor will enjoy an actual distribution relating to the index move rather than having to rely on trading out of an intrinsic gain which could be subject to market lags, frictions or a lack of realizable trading price responsiveness, and (2) a distribution will be accompanied by a setting of the index which will re-equate the intrinsic share prices, having the effect of further highlighting any deviations between trading prices and Class Values; any investor, not just professionals, will more clearly observe any premium or discount and any investor can execute a trade in response to these deviations.”

In reference to corrective distribution, Fonss states: “...[C]orrective distribution...is expected to have both a preventative effect and a curative effect relating to premiums and discounts between trading prices and Class Values per Share. As described more completely below, the presence of the corrective distribution is expected to disincentivize any investor from buying or selling shares at material deviations from intrinsic values (the “preventative” measure), and the declaration of a corrective distribution is expected to deliver investors an accurate value where trading prices were unexpectedly deficient (the “corrective” measure) in aligning trading prices with Class Values per Share and reducing any premiums or discounts...²² As detailed below, because the declaration of a corrective distribution will provide investors with a more readily redeemable position unaffected by the premium or discount of a single share class, traders and other participants are expected to be heavily disincented to buy or sell shares at material premiums or discounts to the Class Values per Share before or after a corrective distribution declaration. In the majority of scenarios, if a share is trading below or above the corrective distribution threshold, normal arbitrage is expected to be effective. There are two specific scenarios (labelled 7 and 8 indicated in Prospectus table “*Potential Combinations of Market Price/Class Value Per Share Differentials*”) where the discount amount of one Fund share is exactly equal to the premium amount of the opposing Fund share, and the discount/premium exceeds the declaration threshold, and the deviation has persisted for a

expectation of these distributions would cause the trading prices of Paired Class Shares to experience less-pronounced conditions of premium or discount to Class Value per Share. Further, according to the Exchange, corrective distributions would eliminate then-existing premiums or discounts and would prevent persistent and material premium and discount conditions for Paired Class Shares from becoming locked. What are commenter’s views on the effect that the distributions would have on premiums and discounts between the trading price of the Paired Class Shares and their respective Class Value per Share? Do commenters agree with the Exchange’s assertions? Why or why not?” Order Instituting Proceedings, p. 27.

²² For purposes of brevity, lengthy quotes from the AccuShares Prospectus are not set forth herein, but can be reviewed in the Letter from Jack Fonss, CEO and co-founder of AccuShares Investment Management LLC, dated September 25, 2014.

material period of time, where a corrective distribution is indicated. In these limited scenarios, an investor holding the discounted share is potentially disadvantaged relative to market bid prices, and an investor purchasing the premium share is potentially disadvantaged by purchasing shares at too high a price – each such situation should be avoided.”

In reference to curative impact, Fonss states: “...following the corrective distribution, the discount class holder, potentially stranded by low available bid prices, now has the correct aggregate value (inclusive of index movements) in a 50/50 position in the discount shares and premium shares. Similarly, a premium class holder would also receive the correct aggregate value (inclusive of index movements) in a 50/50 position in discount shares and premium shares. These positions are now unaffected by a single share class premium or discount, and are expected to be readily saleable at a stable and readily identifiable price (consider that a Fund is limited to holding cash equivalent positions). Authorized participants, if they choose, may redeem these positions in sufficient aggregate amount. In short, we expect the deviations to be reduced or eliminated. Materially premium prices have been known to damage investors in a number of ETPs, and we believe the best approach to reducing losses associated with material premiums is to discourage them from developing at all. In most ETPs, material premiums should be regarded as highly temporary and therefore avoided from propagating.” As described more fully in the Prospectus section “*The Arbitrage Mechanism and Corrective Distributions*” all shareholders will receive a corrective distribution which will result in: (1) the investors holding the share class associated with the favorable index move to realize a gain equal to the realized move in the index, and (2) providing all investors with a position in an equal quantity of each share class of a fund to facilitate direct and indirect redemption; immediately following a corrective distribution, authorized participants can execute redemptions of their positions as desired, and other participants can effect indirect redemptions through a dealer by selling their two offsetting share classes at readily determinable prices which are no longer impacted by supply/demand considerations relating to the index or a single share discount or premium.”

In answer to the Commission’s Questions Two,²³ Fonss states: “We believe that retail investors and other market participants will be able to understand the Fund’s redemption mechanics and the types and timing of distributions. In addition to the detailed examples in the Prospectus (see “*Distributions and Distribution Dates – Investor Responses to Distributions*”

²³ Question Two posed by the Commission: “What are commenters’ views on whether retail investors and other market participants would be able to understand the Funds’ redemption mechanics and the types and timing of distributions in which the Funds would engage? For example, do commenters believe that retail investors in one class of the two classes of shares could be reasonably expected to understand the practical implications of receiving, as a result of certain distributions, shares of the opposing class, which would leave the investor with an equal number of Up Shares and Down Shares, even though they started with only one class of the two classes of shares? Do commenters believe that retail investors could be reasonably expected to understand the actions they would have to take following such a distribution to reestablish the exposure to the index that they had prior to the distribution?” Order Instituting Proceedings, p. 28.

and “*The Arbitrage Mechanism and Corrective Distributions – Examples of Effects of Corrective Distributions*”), the Fund’s website will contain infographics describing each distribution as well as the available investor actions. The infographics simplify the presentation of the effect of distributions and illustrate available investor responses when a distribution occurs – i.e. what is the timing, what is the amount, and what alternative actions are available to the investor. Except in the limited and unanticipated conditions listed in the Prospectus under the section “*Regular and Special Distributions and Distribution Dates – Value of Distributions*”, regular and special distributions will be made to shareholders in cash. Because distributions will be made in cash, except under limited circumstances, investors will generally be making a straightforward decision with respect to deploying or maintaining received cash.”

“Relating to a corrective distribution”, says Fonss, “[it]... is a direct response to retail investor experiences in exchange traded products where obscure technical forces or market illiquidity have caused both large premiums and/or large discounts to persist. While the industry goes to considerable measures to provide adequate investor disclosure in the form of detailed prospectuses and the dissemination of real-time estimates of indicative portfolio values, we believe that: (i) investors do not necessarily review prospectuses in their entirety regularly, and (ii) investors are not necessarily always analyzing indicative portfolio values before transacting in shares. As such, we believe that self-policing and self-correcting measures, like the Fund’s corrective distribution, should be implemented when available and practical.”

Fonss discusses alternatives available to investors. “The action alternatives available to an investor with respect to a distribution are: (1) sell their entire position for cash, (2) sell a portion of their position for cash for a modulated exposure to the Fund index, or (3) sell part of a position and reinvest proceeds to maximize a particular market exposure. For the average or retail investor, we view these alternatives as not materially different from cash or shares received in any distribution or traditional corporate action. For the avoidance of doubt, the declaration of a corrective distribution and the 10 day advance notice are not subject to the discretion of the sponsor or any other party. Meetings with prospective participants have confirmed that the corrective distribution feature, in particular, is viewed as an effective balance of “newness” and “benefit” for the entire range of Fund participants. Those participants with expertise in retail investing indicated that the corrective distribution feature looks to be engineered solely for the benefit of the retail investor, and they questioned whether institutional traders would lose profitable trading opportunities (i.e. the corrective distribution controls-for and limits information asymmetry trading opportunities for professional traders). What we actually found is that market makers, including authorized participants, applaud the addition of a corrective distribution. While the more professional traders are less likely to (inadvertently) purchase shares at a material premium, they may hold shares in response to making a market for a customer, which leaves them holding a share class which could be subject to a persistent material discount (without the inclusion of a corrective distribution feature); authorized participants, with the inclusion of a corrective distribution feature, gain the same benefit as a retail investor, and in particular an authorized participant can directly redeem their position following the corrective distribution – thus, the corrective distribution is expected to encourage more active and accurate market making and more liquidity-enhancing position-taking by authorized participants, all of

which are more likely to actually reduce the likelihood and occurrences of a corrective distribution declaration.”

In answer to the Commission’s Questions Three,²⁴ Fonss states: “With respect to resets, the Funds are similar to comparable exchange traded products in the market, and as such, we expect that both retail investors and other market participants will understand the effect of resets on their investments in the Fund. Fund resets will not impact the actual or intuitive returns available to an investor over either short or long holding periods. In other comparable ETFs and ETNs the impact of resetting comes through the re-trading of futures, options or other contracts. These comparable ETFs and ETNs effect the resetting either daily, monthly (e.g. conventional GSCI rolls), or on another cycle. This conventional resetting has transaction costs which are often difficult to isolate within the context of overall fund performance. Additionally, since the traditional method of resetting is accomplished through the trading of underlying positions at telegraphed times under prescribed fund rules, ETFs and ETNs can be disadvantaged from having to be a “price taker” in possibly adverse or challenging markets. In our experience, these resetting considerations in other funds are well known by retail investors.”

Further discussing resets, Fonss states that “Aside from a reduction in transaction expenses and an elimination of the need to transact in underlying positions, the AccuShares resets are comparable to other funds. Further, the resets (along with resultant distributions) have the benefits highlighted in the response to Question 1. While it is likely difficult for individual investors to track the resetting impact in conventional funds (without the benefit of costly professional live services which report futures contract and other prices), an individual investor in the Funds is expected to be able track and monitor resets of the Funds through readily available and free services such as Yahoo® finance, Google® finance, and the Fund’s website. As further highlighted in the Prospectus section “*Distributions and Distribution Dates – Determination of Regular and Special Distribution Amounts and Share Index Factors*”, the regular resetting not only makes the Funds more comparable to conventional funds, but it also allows the Funds to withstanding “very large changes in the Underlying Index over the life of the Fund”.”

In answer to the Commission’s Questions Four,²⁵ Fonss states: “We believe that the Exchange’s rules governing sales practices adequately ensure the suitability of recommendations regarding the Fund’s shares, and we do not believe that enhancement is necessary.” We agree.

²⁴ Question Three posed by the Commission: “In the proposed rule change, the Exchange represents that each fund issuing Paired Class Shares would periodically reset its exposure to its Underlying Benchmark to avoid depleting all of the capital of one class of shares and to avoid “leverage drift”. What are commenter’s views on whether retail investors and other market participants would be able to understand the effect of these “resets” on their investments in the Funds?” Order Instituting Proceedings, p. 28.

²⁵ Question Four posed by the Commission: “With respect to the trading of Paired Class Shares on the Exchange, do commenters believe that the Exchange’s rules governing

Fonss observes that “NASDAQ Equities Rule 2111A, in summary, requires that an exchange member have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the exchange member to ascertain the customer’s investment profile. In general, a customer’s investment profile would include the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, and risk tolerance. The rule also explicitly covers recommended investment strategies involving securities, including recommendations to “hold” securities.”

Moreover, Fonss states that “Prior to the commencement of trading of Fund shares, the Exchange will inform its members of the suitability requirements of NASDAQ Equities Rule 2111A in an information circular. Specifically, members are required to be reminded in the information circular that, in recommending transactions in shares of the Funds, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer’s investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristic and is able to bear the financial risks of an investment in the shares. In connection with the suitability obligation, the information circular would also provide that members must make reasonable efforts to obtain the following information: (1) the customer’s age; (2) the customer’s other investments; (3) the customer’s financial situation and needs; (4) the customer’s tax status; (5) the customer’s investment objectives, experience, time horizon, liquidity needs and risk tolerance; and (6) such other information used or considered to be reasonable by such members or registered representatives in making recommendations to the customer.”

In answer to the Commission’s Questions Five,²⁶ Fonss states: “We believe that retail investors will understand this aspect of the Funds. A Fund holds cash and cash equivalent securities, and the Cash Values per Share will be directly responsive to changes in the underlying index. In addition, like any exchange traded product, the investor can purchase or sell shares at any time through their brokerage account. Also, exchange traded notes are similar to the Fund

sales practices are adequately designed to ensure suitability of recommendations regarding the Shares? Why or why not? If not, should the Exchange’s rules governing sales practices be enhanced? If so, in what ways?” Order Instituting Proceedings, p. 28.

²⁶ Question Five posed by the Commission: “Although each of the Funds would be based on an index, none of the Funds would actually invest its portfolio assets in an effort to match or exceed the performance of its underlying index. Instead, each Fund would hold short-term government securities (and repurchase agreements on those securities) and would allocate the value of its portfolio between holders of the Up Shares and holders of the Down Shares, depending on changes in the underlying index. What are commenter’s views with respect to whether retail investors will understand this aspect of the Funds, and what are commenter’s views about whether it is appropriate for an exchange traded product to be structured in this way?” Order Instituting Proceedings, p. 29.

with respect to the “portfolio assets” aspect, in that an ETN does not have identified “portfolio assets”, and this aspect of ETNs has been well understood. We further believe that it is appropriate for an exchange traded product to be structured this way. The structure presents a number of advantages over many conventional types of funds for retail investors, market makers, and other participants. Among the advantages are lower fund operating costs, improved fund transparency, a higher certainty of redemption values, and direct indexing. Also, as highlighted above, an exchange traded note is similar to the Funds in that an exchange traded note also does not invest in segregated or other identifiable index related assets. Exchange traded notes currently trading on exchanges illustrate a precedent relating to “actual investments”, and the Funds have a number of benefits over exchange traded notes. “

Fonss states regarding lower costs and transparency: “Because the Class Value per Share amounts are directly related to an independent and readily observable index, there is no need for a Fund to incur trading costs over assets in an effort to track the index. Further, in the case where other funds experience both transaction costs and securities (or other instrument) prices in markets not directly observable by retail investors (e.g. futures markets, over-the-counter markets, commodity markets, fixed income markets, or foreign markets) investors may realize values in their ETFs that differ from their intuition based on observable instruments, observable target indices, or reported fund portfolio values. The structure of the Funds eliminate this trading cost, and an investor, even one with the most limited market data access such as television, Yahoo® or Google® finance, or newspapers, will be reasonably well equipped to have accurate intuition of Class Values.”

Fonss explains why the Funds will provide higher certainty of redemption values. “Because Class Values per Share and creations and redemptions are all based on objective, independent, and readily observable indices, the arbitrage process effected by authorized participants has a number of benefits over other funds. The shares are readily created and redeemed at a certain and readily determinable value thereby eliminating the frictions often caused where (a potential large number of) in-kind securities are challenging to value or where a cash creation or redemption is based on trading illiquid securities or trading securities in a fast moving market. Since the entitlements of the shares is algorithmic, and since the redemption basket for a Fund share is limited to a single security (i.e. the other Fund share), arbitrages and redemptions are highly transparent and highly efficient with a minimum of moving parts.”

And finally, Fonss explains direct indexing vis a vis the Funds. “Conversations with participants have been encouraging the launch of the Funds. While existing fund offerings fulfill some investing needs, prospective participants have been supportive of funds which deliver more direct indexing that is more easily followed through readily observable and free data services. Further, we believe that the advantage of direct indexing will improve the alignment between investor intuition and Class Values per Share. As discussed above, with respect to the delivery of an independent and objectively determined index investment exposure without holding the underlying securities, the Funds are similar to an exchange traded note. However, in an exchange traded note, an investor is subject to the performance risk of the obligor, and a market maker is subject to exchange traded note creation and redemptions processes which are sometimes less standardized than ETF processes.”

As urged by the writers of the letters discussed (Prof. Whaley, Allen, Fonss), and as we have stated in the Notice and throughout the filing process, we continue to steadfastly urge approval of the Proposal, which will be beneficial to investors and market participants.

One Comment Letter Does Not Support the Proposal

A single comment letter opposes the Proposal.²⁷ On the basis of our Notice and Proposal filing efforts and in conjunction with AccuShares, we now respond to the Kassner Letter.

While the Kassner Letter writer's perspective is uncertain, a reasonable reading is that the Kassner Letter is an instructional piece on how a futures-based ETP would have considerable challenges delivering the underlying index of the Funds (i.e. spot VIX). The Funds are not, however, futures-based and the considerations do not apply to the Funds. The Kassner Letter can also be read as an advocacy piece on futures-based ETPs, perhaps because the commenter is fearful that the Funds will somehow supplant currently available futures-based ETPs. AccuShares does not expect the Funds to have such an effect or impact.

Even though the Kassner Letter is not directly related to the five Questions posed by the Commission, we have undertaken a complete response to the Kassner Letter's considerations and concerns. The Kassner Letter is largely an instructional piece on the limitations and constraints of some futures-based ETPs, and in that regard, it presents a force-fit analysis of these limitations on the Funds; limitations and constraints which do not apply to the Funds.

The Kassner Letter addresses four topics: (1) premiums, discounts and the arbitrage function, (2) Fund disclosure, (3) the Corrective Distribution, and (4) the accessibility of the Funds to investors. While all of these are addressed below, we note that the majority of the Kassner Letter focuses on the first topic: premiums, discounts, and arbitrage. Contrary to the unfounded and incorrect assertions in the Kassner Letter, the arbitrage described in the Notice and Order Instituting Proceedings will work as described, and in fact, Fund share prices have very limited degrees of freedom to deviate. While the Kassner Letter contains several numerical examples, including a loosely specified "cubic spline interpolation" back-testing analysis, direct guidance from market experts and market data are readily available to more accurately assess the likelihood and degrees of premiums and discounts reasonably expected.²⁸

²⁷ Letter from Mark Kassner, Esq., dated October 13, 2014 ("Kassner Letter").

²⁸ The Chicago Board Option Exchange ("CBOE") provides specific guidance relating to the relationship between spot VIX levels and VIX futures prices. With all due respect to the author of the Kassner Letter, the CBOE guidance is in direct opposition to the related conclusions and statements in the Kassner Letter, as detailed below. Further, the Fund's creations, redemptions, and other operations are not limited by VIX futures expiration dates - a fact in direct opposition to the assumptions underlying all of the numerical examples in the Kassner Letter.

1. Premiums/Discounts and the Arbitrage Process

By way of background, we note that the arbitrage process will operate for each share singularly comparable to all ETFs, such that a share trading above or below an intrinsic Class Value, can be transacted, hedged, and re-traded. In addition to the single share arbitrage, the intra-fund arbitrage (the valuation and trading of both Fund Shares, up and down) bounds the discounts, premiums, or any combination thereof of the share classes to a value indicated by the readily determinable NAV of the Fund's cash equivalent assets.

The Funds have the unique benefit of a limited and knowable set of discount and premium conditions which will be bounded by the Fund's aggregate NAV as illustrated in the narrative and tables in the Fund's Prospectus, section "*The Arbitrage Mechanism and Corrective Distributions - Market Conditions for Arbitrage and Corrective Distributions*". Arbitrages are uniquely easy to identify because of the direct observability of the Underlying Index, the direct linkage of the intrinsic Class Values to the Underlying Index, and the simplicity and very limited number of the moving parts in a creation or redemption – i.e. the two Fund Share prices versus the readily determinable value of the Fund's cash equivalent assets. The Fund's Underlying Index is, as discussed in the Notice and the Prospectus, widely available and widely disseminated across a range of outlets.

Because all values and all arbitrage conditions are transparent and readily observable (directly through two Fund share prices, the Underlying Index, and hedge instruments where applicable), the functioning of the arbitrage process will be consistently accessible to market makers, and as importantly, directly observable by all participants and investors. Uniquely, the intrinsic Class Values of the Funds are not dependent upon successful trading, rolling, or otherwise rebalancing securities or futures contracts, so observed arbitrages are directly realizable.

A Logic Flaw in the Kassner Letter

There is a fundamental logic flaw in the Kassner Letter. The Kassner Letter contains a number of examples and purported back-testing which are based on the mistaken assumption that spot VIX levels and VIX futures prices are directly comparable and direct substitutes for one another; and the mistaken assumption that the Fund's creations, redemptions and other operations are somehow limited by a future's expiration dates. The Kassner Letter echoes a contention by some ETN and ETF sponsors who inappropriately and incorrectly equate spot prices (and their changes) as directly substitutable for futures prices (and their changes).²⁹ In particular, the page one example of the Kassner Letter erroneously concludes that the return on a futures position would always dominate the return on a spot position where the futures position begins at a lower level (e.g. VIX futures and spot VIX at 27 and 30, respectively).

²⁹ The false conclusion that spot levels and futures levels (and the respective changes thereon) are direct substitutes may have unfortunately frustrated the intuitive use of many funds by average investors; particularly those who have experienced surprises and dissatisfaction in existing commodity and volatility funds.

The primary basis for the Kassner Letter's numerical examples and conclusions are, we believe, the assertions that "...it is not economically possible to construct a two sided market for spot exposure that does not trade in line with VIX futures prices", and "...it necessitates the products to trade at premiums or discounts such that they reflect a VIX future." While it is true that global markets will be broadly interrelated, including spot markets, futures markets, stock markets, and bond markets, in the case of volatility and VIX in particular, the spot market is not "in line" and directly comparable with VIX futures prices. We cite the following statements directly from the CBOE VIX Primer Basics on the educational section of the CBOE's website,³⁰ wherein CBOE states: "The price of a VIX futures contract can be lower, equal to or higher than VIX, depending on whether the market expects volatility to be lower, equal to or higher in the 30-day forward period covered by the VIX futures contract than in the 30-day spot period covered by VIX."³¹ And also that: "There is no cost-of-carry relationship between the price of VIX futures and the VIX. This is simply because there is no "carry" arbitrage between VIX futures and VIX as there is between a stock index futures and the underlying index..."

Further, because the shares of the Fund are both available for creation and redemption daily, the Fund provides for spot VIX positions to be created or redeemed daily, and for returns to be realized on a daily basis. In contrast, VIX (and other) futures have an expiration date defined by the terms of the contracts, and as such a position in VIX futures is not available for the realization of a spot VIX return. A buyer or seller of VIX futures contracts is limited to transacting with another buyer or seller who must wait for a futures expiry. Thus, while the Kassner Letter author's above-noted two statements are the lynchpin of his examples and conclusions, his statements are unsupported and are directly contradicted by the CBOE guidance and the operation of the Funds.³²

A typical non-financial analogy relating to spot VIX versus VIX futures is as follows: spot VIX is comparable to today's weather forecast (e.g. do I need an umbrella today), while VIX futures is comparable to next month's weather forecasts (e.g. will it be sunny for my

³⁰ CBOE Futures Exchange, "Introduction to VIX Futures", cfe.cboe.com/education/vixprimer/Basics.aspx.

³¹ Id.

³² In addition, many other sources can be cited making comparable supporting statements relating to the relationship between spot VIX levels and VIX futures prices. In the interest of brevity, we limited guidance citations to the CBOE, arguably the world's foremost experts in volatility, and the owner and the calculation agent for VIX calculations and procedures. As stated by the CBOE, spot VIX measures the markets expectation of S&P 500 stock market volatility right now using a live comprehensive computation of 30-day option prices. By comparison, VIX futures prices reflect the market expectation of where the spot VIX level will be at the expiration of related VIX futures contract (e.g. 30, 60, or more days in the future) with its final value adjusted for a special opening quotation which occurs at expiry.

upcoming vacation). VIX futures are important for intermediate and longer-term planning, but they may be less effective in shorter-term planning. In economic terms, the spot VIX is directly influenced by market factors happening now and in the near-term, while VIX futures is a measurement of expected market volatility largely after “the now and near-term” has passed.

Finally, we note that many institutional investors have access to a range of instruments where they can transact in volatility across a range of instruments, including the tracking of spot VIX. In contrast, because there are no ETNs or ETFs which reference the spot VIX, average investors have been precluded from transacting directly in VIX – spot VIX may be the most widely watched and widely followed market variable which average investors have been precluded from participating in.

What Industry Experts Say About the Market Price for Volatility

We believe that, as evidenced by the market’s willingness to trade the options underlying the spot VIX in addition to all of the futures on VIX, it is more accurate to conclude that the market is highly capable of understanding the differences between spot VIX and the range of VIX futures prices than the above-discussed theories in the Kassner letter. One can only assess the components and dynamics of a “two sided market” when looking at real world conditions where market participants are actually transacting over the same thing. The volatility market is rich with examples without the need for the hypotheticals attempted by the author of the Kassner Letter.

Notwithstanding the “same market” error by the author of the Kassner Letter’s, we address the author’s concerns with the Daily Amount (i.e. page 3 of the Kassner Letter contains the phrase “...or even for a fixed average 4.5% per month”). To be clear, the Daily Amount is not a charge, fee or amount which leaves the Fund as would futures trading losses, commissions, and bid/offers, but rather it is an amount applied to both share classes (Class Values). Further, consistent with the desire for directness in the Funds (i.e. no value impacts the Fund’s Class Values which is not directly identified in the Prospectus, and readily track able with free data on Google® or Yahoo®), the Daily Amount described in the Prospectus section “*Summary – Overview*”, and discussed in the Notice, is applied to both share classes such that the share classes have a readily obtainable Class Values consistent with both how volatility trades and how the range of volatility instruments have traded since their inception.

A “two sided market” is a normal occurrence in all securities markets, and the volatility markets are no exception. Two conventional ways to transact in volatility are: (1) purchase a volatility ETN or ETF such as “VXX” or “XIV”, or (2) buy or sell a front VIX futures contracts. There are a number of other variations, but illustrative about these alternatives is that the ETF/ETN alternative is widely available to all participants, while the buy/sell front futures contract is widely available to professionals and market makers. In each of these markets, participants are transacting in volatility directly or indirectly through one or more VIX futures contracts; buying or selling futures contracts is obviously a direct transaction, and buying or selling volatility ETPs is an indirect futures transaction. It should also be realized that every futures transaction has a buyer and a seller – clearly a “two sided market”. Most of the ETPs

trade, re-trade, hold, or short at least two futures contracts with differing expiration dates. Another useful aspect of the comparison across alternatives 1 and 2 is that it helps to demonstrate any difference in price levels in the ‘two sided market’ for a single front contract versus multiple contracts through an ETP.

In the interest of clarity, we cite three industry experts on the topic: Berlina Liu (S&P Dow Jones Indices), Bill Luby (VIX and More), and previously-discussed Professor Robert E. Whaley (Vanderbilt University, and creator of the original VIX index for the CBOE) (together ‘Industry Experts’).

Berlina Liu of S&P Dow Jones Indices states in ‘Trading and Managing Volatility’ that ‘In the S&P 500 VIX Short-Term Futures Index, a positive roll cost occurs on 76% of days, with an average daily loss of 0.18%’.³³ In a second article, Berlinda Liu writes that ‘It has been widely observed that the S&P500 VIX Short Term and Mid Term Futures indices track only a fraction of the VIX spot return’³⁴; a confirmation that it is known that spot VIX levels are not ‘in line with’ VIX futures prices.

Bill Luby of VIX and More, writes in ‘Ways to Turn Volatility into an Asset Class’ that ‘The persistent contango in VIX futures means that in the course of rebalancing, the one-month ETPs incur a ‘negative roll yield’ of 5% to maintain that constant average maturity.’³⁵

Professor Robert E. Whaley of Vanderbilt University, whose comment letter urging approval of the Proposal is previously discussed, published a research paper entitled ‘Trading Volatility: At What Cost?’³⁶ wherein he reports the results of an examination of the 30-day futures price drop per day over an eight year sample period from March 2004 to March 2012. In the paper Professor Whaley writes: ‘This means that the 30-day futures price is expected to drop by 0.0230 per day on average. The median slope is 0.0304, which means that on a typical day the 30-day futures are expected to drop by 0.0304.’

Thus, the Industry Experts-indicated values are: (a) 0.18% – a daily percentage (Liu), (b) 5.0% - a monthly percentage (Luby), and (c) 0.0304 – a daily price point decline (Whaley) and, all three values can all be converted to a monthly percentage to determine if there is consistency

³³ Liu Berlinda, ‘Trading and Managing Volatility’, S&P Dow Jones Indices, March 2012. The S&P 500 VIX Short-Term Futures Index is, we note, the most common underlying index for ETPs as measured by trading volumes and assets outstanding.

³⁴ Liu, Berlinda, ‘VIX futures indices only track a fraction of VIX spot return’, S&P Dow Jones VIX® Views, November 2 2011.

³⁵ Luby, Bill (2011), ‘Ways to Turn Volatility into an Asset Class’, Barrons, January 12, 2011.

³⁶ Whaley, Robert E., ‘Trading Volatility At What Cost?’, The Journal of Portfolio Management, Fall 2013, pp 95-108.

of results and opinion. On a monthly basis, the Experts would show the following figures. Liu: $1 - [(1 - 0.0018)^{30}] =$ approximately 5.3% per month; Luby: approximately 5.0% per month; and Whaley (as a median price decline to median price): $1 - [(1 - (0.0304/19.3)^{30}] =$ 4.6% per month.³⁷

What Experts and Market Data Indicate About the Range of Premiums and Discounts

If we consider the range of two-sided market estimates for volatility across the sources established by Industry Experts, as discussed, the range expressed on a monthly basis is 4.6% to 5.3%. This range estimate capture a range of markets populated by different participants, as also single front futures contracts and weighted arrangements of two futures contracts (the front contract and the next following contract as in many ETPs). Moreover, Volatility ETNs which seek to track increases in volatility, volatility ETNs which seek to track decreases in volatility, the index underlying volatility ETNs, and futures contract underlying the underlying indices are all represented in the values presented herein.

As discussed in the Prospectus and the Notice, the monthly Daily Amount in the Fund is 4.5% under normal market conditions. If participants including market makers dismissed that shorter volatility is transacted at approximately 4.5%, and instead insisted on either buying or selling shares of the Funds at levels indicated by the longer-dated and higher frequency trading ETPs level of 5.3% for the purpose of testing deviations, the share prices will trade an additional 0.8% apart. This is a tiny fraction of what is indirectly contended in the Kassner Letter. Moreover, we recall that the Kassner Letter did not make any attempt to identify this “two sided market” price, but rather it incorrectly forced spot VIX to trade at and “in line” with VIX futures in contradiction with CBOE publications and actual market experience.

Further, it must be recognized that because the shares of the Fund are both available for creation and redemption daily, the Fund provides for spot VIX positions to be created or redeemed daily, and for returns to be realized on a spot basis. In contrast, VIX (and other) futures have an expiration date defined by the terms of the contracts, and as such a position in VIX futures is not available for realization of a spot daily return. A buyer or seller of VIX futures contracts is limited to transacting with another buyer or seller who must wait for a futures expiry. This feature, in addition to the CBOE guidance, is inconsistent with the assumptions made in the Kassner Letter.

³⁷ There is an expected spread between the Liu/Luby values and the Whaley value. The Liu and Luby values are based on the underlying index used in the most popular volatility ETPs and that index is based on a weighting of two futures contracts; the “front” or first contract and the “next” or second contract. In contrast, the Whaley value looks at only the “front” or first contract – the Whaley analysis, because it measures values closer to spot VIX, is more closely aligned with the Funds, however the distinction is unimportant in the context of the Kassner Letter.

2. Fund Disclosure, Returns and the Index

On page 2 of the Kassner Letter, the commenter writes: “This [a reference to the highlighted disclosure] is obviously highly misleading” and that “The Sponsor recognizes this fact, which is why the Daily Amount exists, but, falsely advertises the product as being “Spot”.” While the paragraph lacks an organized argument, we take note of the words “*misleading*” and “*falsely*” and assume that the author is intimating that the Fund disclosure is unclear with respect to targeted returns and intrinsic Class Value entitlements. To the contrary, if one reads the Prospectus, as clearly disclosed in the Notice, they will find more than 90 uses of the term “Daily Amount” therein. Further, the Daily Amount is one of the unique structural features of the Funds which leads to complete transparency of intrinsic Class Value entitlements. In contrast to some funds, where shareholders are exposed to the effects of a manager rolling positions, which are challenging to monitor, the Daily Amount is always readily determinable.

We also cite from page 3 of the Prospectus: “During any Measuring Period and in order to create a balanced market for the Up Shares and Down Shares of the Fund, the Class Value per Share of each Up Share of the Fund will be reduced and the Class Value per share of each Down Share of the Fund will be increased by the fixed amount of the Daily Amount. In each Measuring Period where the VIX has a level of 30 or lower on the prior Distribution Date, the Daily Amount will be 0.15% per day of the Class Value per Share on the prior Distribution Date. If the level of the VIX is greater than 30, the Daily Amount will be zero. The Daily Amount is intended to reflect an attribute of the market for long financial instruments seeking exposure to the expected volatility of the S&P 500 Index implicit to options contracts on the performance of the S&P 500 Index. As reflected in the historical performance of the VIX, the market for such long instruments deteriorates over both long and short term time frames as both S&P 500 Index volatility and the VIX tend to return to a mean level. Under these circumstances, a long position on the VIX will tend to decrease in value over time while a short position will tend to increase in value.”

3. Corrective Distribution and The Seatbelt Analogy

While Fund Sponsors universally hope to identify, address, and cure all possible discounts and premiums before they happen, in actual practice unforeseen market conditions have frequently occurred in the ETP market – even in those that purported to track VIX futures positions (e.g. TVIX). As discussed below, the Funds and their Corrective Distribution feature is a direct solution to eliminate headline losses that have occurred in other ETPs in the past, despite the best planning of those ETP sponsors. One particular ETN which specifically tracked VIX futures, for example, “veered as much as 89 percent away from the index it was created to mimic”³⁸ and was directly responsible for material investor losses reported to be in excess of

³⁸ Vannucci, C., Xydias, A, Gammeltoft, N, “Credit Suisse VIX Note That Ran Amok in 2012 Back on Top”, Bloomberg, March 13, 2014.

80% due to technical deficiencies.³⁹ A Corrective Distribution feature, such as built into the structure of the Funds, would likely have prevented mis-tracking and the resultant investor losses.

The estimates of premiums and discounts and the estimated occurrences of Corrective Distributions, as put forth by the author or the Kassner Letter, are incorrect and should be dismissed based on the supporting information outlined above. As stated previously, a possible interpretation of the Kassner Letter on this point is that futures-based ETP's would be challenged to deliver the Underlying Index of the Fund; while this contention may be true, it is of no value because the contention does not apply to the Funds.

Because the principle points in the Kassner Letter⁴⁰ are clearly at odds with authoritative guidance on volatility, a reasonable reading of the "cubic spline interpolation" back-testing of the Kassner Letter is that a futures-based ETP which would seek to track the Underlying Index of the Fund would have material and regular deviations. Consistent with the other parts of the Kassner Letter, the author is likely cautioning that spot VIX will not be accurately tracked by an ETP which is either "in line with" or comprised of only VIX futures contracts. There is insufficient detail in the Kassner Letter to replicate the analysis the commenter may have intended (or chose not to publish), and in any event the result would be of no practical interest since it is inapplicable to the performance of the Funds.

The author of the Kassner Letter is also concerned that the occurrence of a Corrective Distribution will require an additional investor transaction (i.e. an additional buy or sell of distributed shares). Uniquely, the Corrective Distribution has both a preventative effect and a curative effect over premium and discount conditions, and more importantly, it was included to avoid the kind of losses that have occurred previously in some ETPs. The above-cited Credit Suisse ETP mishap is a good illustration of the potential benefit analysis of the Corrective Distribution.⁴¹

³⁹ Dugan, Kevin, "How a 56-Year-Old Engineer's \$45,000 Loss Spurred SEC Probe", Bloomberg, April 17, 2014.

⁴⁰ The principal points of the Kassner letter are that: (1) "...it is not economically possible to construct a two sided market for spot exposure that does not trade in line with VIX futures prices", and (2) "...it necessitates the products to trade at premiums or discounts such that they reflect a VIX future".

⁴¹ A analogy of the Corrective Distribution can be made to other areas of design and structure where participants are saved from ruin for a small cost. For example, an automobile seatbelt restraint may save a driver's life while causing some inconveniences. While the retraction of a seatbelt may dislodge eyeglasses and pull at the driver's clothing, the driver is likely to spared great injury, or even death, by the seatbelt. Thus, a consequence of Corrective Distribution "deployment" is an additional one or two transaction costs (possibly less than \$10 for each), which is an extremely small price to pay for preventing material and persistent discounts and premiums in the first place, and

4. The Accessibility of Funds to Investors

Page 4 of the Kassner Letter can be read as expressing an ideal that investors and traders should be aware of all security specific and market related information at all times. Ideals are, by definition, what one strives for, and as discussed in the Notice, the Response and during the pendency of the Proposal, AccuShares has taken steps to facilitate that result all investors. As highlighted above, the Funds are unique in relationship to other volatility ETPs in that all parameters which influence or directly impact the Funds are detailed in the Proposal and the Prospectus, and are readily available to any investor with internet access – that is, there is no need for professional data feeds, and no need to track the prowess of an asset manager’s ability to track the Underlying Index.

In an ideal scenario, an investor is reviewing, among other things: (i) the prospectus, (ii) all issuer filings, (iii) FINRA guidance, (iv) share price levels, (v) indicative price values, (vi) market conditions, (vii) market forecasts, and (viii) any other relevant factors before executing any transactions. The Funds were specifically designed to simplify this review, on the one hand, and to ensure that Class Value entitlements would be directly defined and intuitive to use, on the other hand. In particular, because distributions of Fund shares are limited to scheduled dates or the occurrence of large and rare index moves, and because a Fund’s index movements are particularly easy for any investor to track using free and publicly available sources (e.g. Google® Finance, Yahoo® Finance), the information required by investors to transact in the shares, or any distributions thereon, will be readily accessible.

Finally, we note that it is important that all ETPs provide whatever supporting information is useful and necessary to transact in its shares. Pertinent information should, as appropriate, be published on the Fund’s website and disseminated by the Exchange;⁴² the Funds have the added benefit that investors can monitor and recreate many of the values themselves because, unlike many other ETP’s, there is no portfolio manager slippage relating to the Underlying Index. What is of particular note in the Kassner Letter at page 4, item number 5, is that while the commenter appears to have been able to identify all of the information necessary to evaluate transacting in the Fund shares, which is ostensibly an indication of the accessibility of the Fund disclosure and an investor’s ability to understanding the Fund mechanics, the futures-based ETP related arguments are simply incorrect and without support.

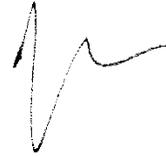
We respectfully request the Commission to approve the Proposal at SR-NASDAQ-2014-065. The great majority of commenters clearly recognize the potential value of the proposed Funds to market participants, and recommend approval of the Proposal. The single unfavorable comment letter (Kassner Letter) provides no basis for not approving the Proposal.

providing the average investor with the ability to exit a share position (if the investor so chooses) at a valuation at or very close to accurate intrinsic Class Value.

⁴² Moreover, as we discussed in the Notice, and previously herein, AccuShares intends to publish extensive Fund-specific data on its website (www.AccuShares.com).

We appreciate the opportunity to address the Commission.

Respectfully Submitted,

A handwritten signature in black ink, consisting of a series of connected loops and a final horizontal stroke.

cc: The Hon. Mary Jo White, Chair
The Hon. Luis A. Aguilar, Commissioner
The Hon. Daniel M. Gallagher, Commissioner
The Hon. Kara M. Stein, Commissioner
The Hon. Michael S. Piwowar, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gregg E. Berman, Associate Director, Division of Trading and Markets
Heather Seidel, Associate Director, Division of Trading and Markets
Michael Coe, Assistant Director, Division of Trading and Markets
Brad Gude, Special Counsel, Division of Trading and Markets