SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77722; File No. SR-NASDAQ-2016-034)

April 27, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change Regarding Monthly Distributions, Excess Returns, and Share Index Factors of Certain AccuShares® Trust I Funds

On March 2, 2016, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to modify specific listing requirements applicable to shares of certain funds issued by AccuShares® Trust I ("AccuShares Trust"). The proposed rule change was published for comment in the Federal Register on March 17, 2016.[3] The Commission received two comments on the proposed rule change.[4] This order grants approval of the proposed rule change.

I. Background

On February 18, 2015, the Commission approved an Exchange proposal to adopt NASDAQ Rule 5713, which governs the listing and trading of Paired Class Shares, and to list and trade shares of the following seven funds issued by the AccuShares Trust pursuant to NASDAQ Rule 5713: (1) AccuShares S&P GSCI® Spot Fund; (2) AccuShares S&P GSCI® Agriculture and Livestock Spot Fund; (3) AccuShares S&P GSCI® Industrial Metals Spot Fund;

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 77353 (Mar. 11, 2016), 81 FR 14489 ("Notice").

4 In a comment letter dated March 27, 2016, an anonymous commenter stated: "Good." In another comment letter dated March 27, 2016, Dan Schumann stated: "Please do NOT change any rules that would limit-stop-prevent the trading of ETF's [sic]." All comments on the proposal are available at: http://www.sec.gov/comments/sr-nasdaq-2016-034/nasdaq2016034.shtml.

(4) AccuShares S&P GSCI® Crude Oil Spot Fund; (5) AccuShares S&P GSCI® Brent Oil Spot Fund; (6) AccuShares S&P GSCI® Natural Gas Spot Fund; and (7) AccuShares Spot CBOE® VIX® Fund ("VIX Fund," and collectively, "AccuShares Funds").[5]

NASDAQ Rule 5713(c) defines a Paired Class Share as a security: (1) that is issued by a trust on behalf of a segregated series ("Fund"), as part of a pair of shares of opposing classes whose respective underlying values move in opposite directions as the value of the Fund's "Underlying Benchmark"[6] varies from its starting level, where (a) one constituent of the pair is positively linked to the Fund's Underlying Benchmark ("Up Shares"), and (b) the other constituent is inversely linked to the Fund's Underlying Benchmark ("Down Shares"); (2) that is issued in exchange for cash; (3) the issuance proceeds of which are invested and reinvested in highly rated, short-term financial instruments that mature within 90 calendar days and that serve the functions of (a) covering the Fund's expenses, (b) providing income distributions to investors, based on income (after expenses) from the financial instruments held by the Fund, (c) providing cash proceeds for regular and special distributions to be made in cash in lieu of Paired Class Shares, and (d) providing cash proceeds to be paid upon the redemption of Paired Class Shares; (4) that represents a beneficial interest in the Fund; (5) the value of which is determined by the underlying value of the Fund that is attributable to the class of which such security is a part, which security underlying value will either (a) increase as a result of an increase in the Underlying Benchmark and decrease as a result of a decrease in the Underlying

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5 See Securities Exchange Act Release No. 74299 (Feb. 18, 2015), 80 FR 9778 (Feb. 24, 2015) (SR-NASDAQ-2014-065). The Exchange states that currently only shares of the VIX Fund are listed and trading. See Notice, supra note 3, 81 FR at 14489 n.4.

6 An "Underlying Benchmark" is an index or other numerical variable whose value reflects the value of assets, prices, price volatility, or other economic interests. See NASDAQ Rule 5713(e).

Benchmark (in the case of an Up Share), or (b) increase as a result of a decrease in the Underlying Benchmark and decrease as the result of an increase in the Underlying Benchmark (in the case of a Down Share); (6) that, when timely aggregated in a specified minimum number or amount of securities, along with an equal number or amount of the securities of the opposite class that constitute the other part of the pair, may be redeemed for a distribution of cash on specified dates by authorized parties; and (7) that may be subject to mandatory redemption of all Paired Class Shares under specified circumstances.

The custodian of an Accushares Fund uses a mathematical formula to calculate the liquidation value attributable to each of its classes of Paired Class Shares ("Class Value") and to each share of each class ("Class Value per Share") at the end of each Regular Market Session. The Class Value per Share of each Accushares Fund's Up Shares will have a fixed one-to-one positive linear relationship with the fund's Underlying Benchmark ("Up Share Index Factor"), and the Class Value per Share of each fund's Down Shares will have a fixed one-to-one inverse linear relationship with the fund's Underlying Benchmark ("Down Share Index Factor," and together with the Up Share Index Factor, collectively, "Share Index Factors"). The Down Share Index Factor will equal negative one times the Up Share Index Factor. Share Index Factors are used to determine the Class Value and Class Value Per Share of each Accushares Fund.[7]

The sponsor of an Accushares Fund establishes an Accushares Fund's Share Index Factors at the inception of the fund's operation, and, after any regular or special distribution, the fund resets its Share Index Factors. For the VIX Fund, regular distributions are on the 15th of every month.

[7] See Notice, supra note 3, 81 FR at 14491.

II. Summary of the Proposed Rule Change

In this proposal, NASDAQ proposes the following changes applicable to the listing and trading of shares of certain AccuShares Funds.

A. Frequency of Regular Distributions[8]

With respect to the listing requirements for the AccuShares S&P® GSCI® Industrial Metals Spot Fund, AccuShares S&P® GSCI® Crude Oil Spot Fund, and AccuShares S&P® GSCI® Brent Oil Spot Fund (collectively, "Distribution Funds"), the Exchange proposes to change the frequency of regular distributions from quarterly to monthly.

B. Changes to the Underlying Benchmark[9]

With respect to the listing requirements for the AccuShares S&P® GSCI® Crude Oil Spot Fund and the AccuShares S&P® GSCI® Natural Gas Spot Fund, the Exchange proposes to change the respective Underlying Benchmarks, as follows: (1) for the AccuShares S&P® GSCI® Crude Oil Spot Fund, the Exchange proposes to change this fund's Underlying Benchmark from the "S&P GSCI Crude Oil Spot Index" to the "S&P GSCI Crude Oil Excess Return Index;"[10] and (2) for the AccuShares S&P® GSCI® Natural Gas Spot Fund, the Exchange proposes to change this fund's Underlying Benchmark from the "S&P GSCI Natural Gas Spot Index" to the "S&P GSCI Natural Gas Excess Return Index."[11]

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8 See id., 81 FR at 14491-92.

9 See id., 81 FR at 14492-93.

10 As a result of the proposed change to the Underlying Benchmark, the Exchange also proposes to change the name of this fund to "AccuShares S&P® GSCI® Crude Oil Excess Return Fund."

11 As a result of the proposed change to the Underlying Benchmark, the Exchange also proposes to change the name of this fund to "AccuShares S&P® GSCI® Natural Gas Excess Return Fund."

According to the Exchange, both the spot and the excess return variants of each respective Underlying Benchmark are computed from the same underlying futures contracts at the same point in time. The difference between the two variants occurs only on 5 trading days: the 5th through the 9th trading days of each month ("five-day period"). During the five-day period, each Underlying Benchmark, whether monthly return or excess return, moves its reference from the front-month expiry contract to the next following contract (that is, the futures contract for the next consecutive expiry month) in five equal installments of 20% per day to capture the cost or the benefit from rolling the nearby front-month expiry contract into the next following expiry contract. In the excess return variant, the cost or benefit of transacting out of the current or front-month expiry contract and into the next or following futures contract is added to (or subtracted from) the index value. In contrast, in the spot variant, this cost or benefit is not added to (or subtracted from) the index value, and therefore gives rise to the need for anticipatory hedging that is market makers and authorized participants expect to result in increased bid/offer spreads.

C. Changes to the VIX Fund[12]

The Exchange proposes, with respect to the VIX Fund, that: (1) the Share Index Factors be reset each Tuesday (as well as after regular and special distributions); and (2) the regular distributions be made on the third Tuesday of every month (rather than on the 15th of every month) so that each monthly distribution date and the end of each monthly measuring period coincide with a Share Index Factor reset.

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12 See id., 81 FR at 14493.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, and as discussed further below, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[14] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.[15]

With respect to the proposed changes to the frequency of monthly distributions for the Distribution Funds, the Commission believes that the proposed changes are reasonably designed to: (1) allow investors to realize and reallocate gains from the Distribution Funds more frequently; and (2) appropriately align the changes in the Class Values per Share of both the Up Shares and the Down Shares with changes in the corresponding Underlying Benchmark values. The Commission believes that these more-frequent regular distributions may improve both trading in, and hedging of, the shares, because monthly distributions and the corresponding

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13 In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

14 15 U.S.C. 78f(b)(5).

15 The Commission notes that, other than the changes described herein, all of the representations in support of the Prior Order remain unchanged. See Notice, supra note 3, 81 FR at 14493 (noting that, other than the three proposed changes, the "representations made in the original AccuShares Order and AccuShares Proposal remain unchanged"). See supra note 5; see also Notice, supra note 3, 81 FR at 14489 n.4 (citing to the AccuShares Order and AccuShares Proposal).

monthly Share Index Factor resets would more closely align these funds with the most liquid monthly futures contracts. The Commission notes that, in support of this proposed change, the Exchange makes the following representations: (1) in each instance of a distribution, the sponsor will continue to post a notice of the event and its details on the sponsor's website (www.AccuShares.com); and (2) each Accushares Fund engaging in a regular distribution (or, a special distribution, corrective distribution, or net income distribution) will continue to provide at least three business days' advance notice (or longer advance notice as may be required by the Exchange)[16] of such an event, as currently required.[17]

With respect to the proposed changes to the Underlying Benchmarks for the AccuShares S&P® GSCI® Crude Oil Spot Fund and the AccuShares S&P® GSCI® Natural Gas Spot Fund, the Commission agrees that the excess return variant – which, in contrast to the spot variant, captures the cost or benefit of transacting out of the current or front-month expiry contract and into the next or following futures contract – is not a novel or unique index variant and is one that is employed by other types of exchange-traded products.[18] The Commission believes that the proposed changes to the Underlying Benchmarks for the AccuShares S&P® GSCI® Crude Oil Spot Fund and the AccuShares S&P® GSCI® Natural Gas Spot Fund are reasonable because the excess return variant for these Underlying Benchmarks, which contains the cost or benefit of the

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16 The Exchange may determine that longer notice is advisable in some circumstances (e.g., an extended market break).

17 See Notice, supra note 3, 81 FR at 14492.

18 See id., 81 FR at 14492 n.25 and accompanying text.

roll forward, is reasonably designed to permit more efficient hedging with conventional futures contracts.[19]

With respect to the proposal to reset the Share Index Factors of the VIX Fund more frequently (i.e., weekly), the Commission believes that more frequent resets of the Share Index Factors for the VIX Fund are reasonably designed to benefit market participants that trade shares of the VIX Fund because the increased frequency may improve the arbitrage function of the shares by aligning the setting of the Share Index Factors with the expiry of each weekly VIX futures contract, and because the Share Index Factor will reset with a frequency closer to the daily measurements of spot VIX. The changes to the VIX Fund support the prospect of improved and simplified arbitrage and hedging of VIX Fund shares because the settlement of the shorter VIX futures will coincide with each Share Index Factor reset. In addition, the potentially improved hedgeability of the VIX Fund shares as a result of the proposed changes is expected to bring the share trading prices closer aligned with the corresponding share Class Values, which are tied directly to changes in spot VIX values.

The Commission notes that it received two comments regarding the proposed rule change: one comment supporting the proposal; and another comment addressing exchange-traded funds generally. The Commission notes that the issue raised by the latter comment does not squarely address the Paired Class Shares, which are the subject of this proposed rule change.[20]

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[19] The Exchange represents that the excess return variant is an index variant that (1) has been used by and is familiar to market makers and other market participants; and (2) is directly hedgeable with conventional futures contracts, which contain the cost or benefit of the roll forward. See id., 81 FR at 14492.

[20] See supra note 4.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[21] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2016-034) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett
Deputy Secretary

[21] 15 U.S.C. 78f(b)(5).

[22] 17 CFR 200.30-3(a)(12).