

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73480; File No. SR-NASDAQ-2014-090)

October 31, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of the Validea Market Legends ETF of the ETF Series Solutions ETF Trust

I. Introduction

On September 11, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares (“Shares”) of the Validea Market Legends ETF (“Fund”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the Federal Register on September 26, 2014.<sup>3</sup> The Commission received no comments on the proposed rule change. On October 28, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is approving the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of Proposed Rule Change

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 73178 (Sep. 22, 2014), 79 FR 58012 (“Notice”).

<sup>4</sup> In Amendment No. 1, Nasdaq corrected a typographical error, deleting the second use of the word “not” in the following statement throughout the filing: “ADRs not listed on an exchange that is not a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.” See infra note 10 (setting forth the full representation, as amended). Because Amendment No. 1 is a technical amendment that does not raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

The Exchange proposes to list and trade the Shares pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the ETF Series Solutions Trust (“Trust”), which was established as a Delaware business trust on February 9, 2012.<sup>5</sup> The Fund is a series of the Trust. Validea Capital Management, LLC will be the investment adviser (“Adviser”) to the Fund.<sup>6</sup> Quasar Distributors, LLC will be the principal underwriter and distributor of the Fund’s Shares. U.S. Bancorp Fund Services, LLC (“USBFS”) will act as the administrator, accounting agent, and transfer agent to the Fund. U.S. Bank National Association will act as the custodian to the Fund.

The Exchange has made the following representations and statements in describing the Fund and its principal investments, other investments, and investment restrictions.<sup>7</sup>

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<sup>5</sup> According to the Exchange, the Trust is registered with the Commission as an investment company under the Investment Company Act of 1940 (“1940 Act”) and has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission. The Exchange states that the Trust has obtained, or will obtain prior to listing Shares of the Fund on the Exchange, an order from the Commission granting certain exemptive relief to the Trust under the 1940 Act. See Post-Effective Amendment No. 14 to the Registration Statement on Form N-1A for the Trust, dated July 16, 2014 (File Nos. 333-179562 and 811-22668). See Application for an Order (Jun. 16, 2014) (File No. 812-14322).

<sup>6</sup> The Exchange states that the Adviser is not a broker-dealer and is not affiliated with the any broker-dealer. The Exchange represents that in the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser, new adviser, or new sub-adviser, as the case may be, will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition or changes to the portfolio, and the Adviser, new adviser, or new sub-adviser, as the case may be, will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio. The Exchange also states that the Adviser does not currently intend to become newly affiliated with any broker-dealer, and the Fund does not currently intend to use a sub-adviser.

<sup>7</sup> The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (“NAV”), fees, portfolio holdings disclosure policies,

### Principal Investments of the Fund

According to the Exchange, the Fund's primary investment objective is to achieve capital appreciation, with a secondary focus on income. The Fund is a non-diversified, actively-managed exchange-traded fund ("ETF") that will pursue its objectives by investing primarily at least 80% of its assets under normal market conditions,<sup>8</sup> in U.S. exchange-listed equity securities of U.S. companies and foreign equity securities traded on a U.S. exchange as American Depositary Receipts ("ADRs").<sup>9</sup> The Fund's investment in ADRs may include ADRs representing companies in emerging markets. With respect to its investments in exchange-listed common stocks and ADRs, the Fund will invest in such securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG"). The Fund may invest in the securities of companies of any market capitalization, but the Adviser expects that the Fund will have a bias toward small-cap and mid-cap companies. The Adviser also expects to limit the Fund's investment in any individual economic sector to no more than 40% of the Fund's total assets.

The Exchange notes that the Adviser will select securities using a proprietary quantitative

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distributions, and taxes, among other things, can be found in the Notice and Registration Statement, as applicable. See *supra* notes 3 and 5, respectively.

<sup>8</sup> The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objectives.

<sup>9</sup> ADRs are receipts, typically issued by a bank or trust issuer, which evidence ownership of underlying securities issued by a non-U.S. issuer. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a non-U.S. issuer. ADRs are not necessarily denominated in the same currency as their underlying securities.

and fundamentals-based system that evaluates investment opportunities based on the published investment strategies of legendary investors whose investment strategies have generally been subject to significant academic or media analysis, such as Warren Buffet, Peter Lynch, and David Dreman. The Adviser's system incorporates 17 stock selection models, each intended to replicate the strategy of a legendary investor. The models incorporate over 300 unique fundamental metrics of companies, including measures relating to profitability, valuation, growth, cash flow, financing, and past performance, among others. The Adviser scores over 6,000 companies based on the metrics of its investor models and expects that the Fund will generally hold approximately 100 securities.

According to the Exchange, the Adviser's system, using historical data, evaluates the long term performance, risks, and correlation of each model, and blends some or all of the models to identify the composite strategy that the Adviser believes is most likely to achieve the Fund's investment objectives while reducing volatility. By utilizing various stock picking methods in the creation of the composite strategy, the Adviser will seek to reduce the volatility of the Fund's returns in different market environments and limit investment style specific risk.

The Exchange notes that the Adviser expects that the Fund will regularly update or "rebalance" the securities that it holds, but no more often than once every 28 days and at least 5 times per year. On each such date, securities whose fundamental scores no longer meet the Fund's requirements will be removed and replaced with higher scoring securities. A stock will only be sold in between rebalance dates if the stock has significantly underperformed the overall market since the time the stock was purchased.

#### Other Investments and Restrictions

While the Fund, under normal circumstances, will invest at least 80% of its assets in U.S.

exchange-listed equity securities, the Fund may invest the remaining assets in a variety of other securities in support of its primary investment strategy, including, but not limited to: (a) equity securities traded over-the-counter;<sup>10</sup> (b) equity securities of other U.S. registered investment companies, including open-end mutual funds, money market mutual funds and exchange-traded funds; and (c) money market instruments.<sup>11</sup>

While the Fund will generally invest in sponsored ADRs that are listed on ISG member exchanges and that the Adviser deems as liquid, in certain limited circumstances, as stated above, the Fund may invest in unlisted or unsponsored ADRs<sup>12</sup> or ADRs that the Adviser deems illiquid at the time of purchase or for which pricing information is not readily available.<sup>13</sup> The issuers of unlisted or unsponsored ADRs are not obligated to disclose material information in the United States. As such, according to the Exchange, there may be less information available regarding such issuers and there may be no correlation between available information and the market value of the ADRs.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid

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<sup>10</sup> The Exchange represents that, while the Fund's investments in equity securities traded over-the-counter include shares of common stock and ADRs, not more than 10% of the net assets of the Fund, in the aggregate, will be invested in: (1) unlisted or unsponsored ADRs; (2) ADRs not listed on an exchange that is a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

<sup>11</sup> The term "money market instruments," as used herein, means: (i) short-term obligations issued by the U.S. Government; (ii) short term negotiable obligations of commercial banks, fixed time deposits and bankers' acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc. or "A-1+" or "A-1" by Standard & Poor's, or, if unrated, of comparable quality, as the Adviser of the Fund determines; and (iv) money market mutual funds.

<sup>12</sup> See supra note 10 and accompanying text.

<sup>13</sup> See infra note 14 and accompanying text.

securities or other illiquid assets (calculated at the time of investment).<sup>14</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other registered investment companies.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. The Commission notes that the Fund and the Shares

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<sup>14</sup> Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. See Notice, supra note 3, 79 FR at 58014.

<sup>15</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>17</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services and via the Consolidated Tape Association plans for the Shares. In addition, an estimated value, defined in Nasdaq Rule 5735(c)(3) as the "Intraday Indicative Value,"<sup>18</sup> will be available on the NASDAQ OMX Information LLC proprietary index data service and will be updated, widely disseminated, and broadly displayed at least every 15 seconds during the Regular Market Session.<sup>19</sup> On each business day, before commencement of trading in Shares in the Regular Market Session<sup>20</sup> on the

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<sup>17</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>18</sup> According to the Exchange, the Intraday Indicative Value will reflect an estimated intraday value of the Fund's portfolio and will be based upon the current value for the components of the Disclosed Portfolio. The Exchange states that the Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close, that premiums and discounts between the Intraday Indicative Value and the market price may occur, and that the Intraday Indicative Value should not be viewed as a "real time" update of the NAV per Share of the Fund, which is calculated only once a day.

<sup>19</sup> Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service. The Exchange represents that GIDS offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs, and that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

<sup>20</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market

Exchange, the Fund will disclose on its website the Disclosed Portfolio, as defined in Nasdaq Rule 5735(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>21</sup> A basket composition file, which includes the security names, amounts, and share quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via the National Securities Clearing Corporation. The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time.<sup>22</sup> Information

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Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m., Eastern Time).

<sup>21</sup> On a daily basis, the Fund will disclose the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, number of shares); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

<sup>22</sup> NAV per Share will be calculated for the Fund by taking the market price of the Fund's total assets, less all liabilities, dividing such amount by the total number of Shares outstanding, and rounding to the nearest cent. The value of the securities, other assets, and liabilities held by the Fund will be determined pursuant to valuation policies and procedures approved by the Trust's Board. Exchange-traded equities, exchange-traded ADRs, and other exchange-traded securities will be valued at the official closing price on their principal exchange or board of trade, or lacking any current reported sale at the time of valuation, at the mean between the most recent bid and asked quotations on its principal exchange or board of trade. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities. Equity securities traded over-the-counter and ADRs traded over-the-counter will be valued at the mean between the most recent bid and asked quotations received from pricing services; if the most recent bid and asked quotations are not available, these securities will be valued in accordance with the Fund's fair valuation procedures. Money market instruments with maturities of less than 60 days will be valued at amortized cost; money market instruments with longer maturities will be valued at the mid-point of the bid-ask prices. Investment company shares will be valued at NAV, unless the shares are exchange-traded, in which case they will be valued at the last sale or official closing price on the



regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for any underlying exchange-traded products will be available via the quote and trade service of their respective primary exchanges. Intra-day, executable price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms. Intra-day price information on the securities and other assets held by the Fund will also be available through subscription or free services that can be accessed by Authorized Participants and other investors: (a) pricing information for exchange-traded equity securities; investment company securities; exchange-traded ADRs; or other exchange-traded securities will be publicly available from the websites of the exchanges on which they trade,<sup>23</sup> on public financial websites, and through subscription services such as Bloomberg and Thompson Reuters; and (b) pricing information regarding over-the-counter equities (including over-the-counter ADRs and certain investment company securities) and money market instruments, will be available through subscription services such as Markit, Bloomberg, and Thompson Reuters. The Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the

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market on which they primarily trade.

<sup>23</sup> According to the Exchange, quotation and last-sale information for any underlying exchange-traded products will also be available via the quote and trade services of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans, as applicable.

Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pause provisions under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,<sup>24</sup> and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth additional circumstances under which trading in Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority, as defined in Nasdaq Rule 5735(c)(4), that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>25</sup> In addition, the Exchange states that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer and has no present intent or arrangement to become newly affiliated with any broker-dealer. The Fund does not currently intend to use a sub-adviser.<sup>26</sup>

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<sup>24</sup> These reasons may include: (1) the extent to which trading is not occurring in the securities and other financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

<sup>25</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

<sup>26</sup> See supra note 6. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>27</sup> Prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

- (1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

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

<sup>27</sup> The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund, which include ADRs, exchange-listed investment companies, or other exchange-traded securities with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded equities held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and such exchange-traded equities held by the Fund from markets and other entities that are members of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

(4) Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in (a) unlisted or unsponsored ADRs, (b) ADRs not listed on an exchange that is a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange, or (c) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

(5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) the procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually

redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) the dissemination of information regarding the Intraday Indicative Value through major index service providers such as NASDAQ OMX proprietary index data services or other major market proprietary index services; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (f) trading information; and (g) the dissemination of the Disclosed Portfolio through the Fund's website.

(6) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>28</sup>

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

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

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

For the foregoing reasons, the Commission finds that the proposed rule change is

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<sup>28</sup> See 17 CFR 240.10A-3.

consistent with Section 6(b)(5) of the Act<sup>29</sup> 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,<sup>30</sup> that the proposed rule change (SR-NASDAQ-2014-090), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).