

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72096; File No. SR-NASDAQ-2014-040)

May 5, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the Calamos Focus Growth ETF of the Calamos ETF Trust

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> notice is hereby given that on April 21, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to list and trade the shares of the Calamos Focus Growth ETF, formerly known as the Calamos Select Growth ETF (the “Fund”) of the Calamos ETF Trust (the “Trust”) under Nasdaq Rule 5735 (“Managed Fund Shares”).<sup>3</sup> The shares of the Fund are collectively

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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> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039). There are already multiple actively-managed funds listed on the Exchange; see Securities Exchange Act Release No. 66175 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed WisdomTree funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. See, e.g., Securities Exchange Act Release No. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR-NYSEArca-2011-21) (order approving listing and trading of WisdomTree Global Real Return Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

referred to herein as the “Shares.”

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

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

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

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange. The Fund will be an actively-managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust, which was established as a Delaware business trust on June 17, 2013.<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement on Form

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<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1)(the “1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30653 (August 20, 2013) (File No. 812-14169) (“Exemptive Order”).

N-1A (“Registration Statement”) with the Commission.<sup>6</sup> The Fund is a series of the Trust.

Calamos Advisors LLC will be the investment adviser (“Adviser”) to the Fund. Foreside Fund Services, LLC (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. State Street Bank and Trust (“SSB”) will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, nonpublic information regarding the open-end

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<sup>6</sup> See Initial Registration Statement on Form N-1A for the Trust, dated September 13, 2013 (File Nos. 333-191151 and 811-22887). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with applicable federal securities laws as defined in Rule 204A-1(e)(4). Accordingly, procedures designed to prevent the communication and misuse of nonpublic 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.

fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with Calamos Financial Services LLC, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. 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, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio. The Adviser has no present intent or arrangement to become newly affiliated with any broker-dealer other than Calamos Financial Services LLC, and the Fund does not currently intend to use a sub-adviser.

#### Calamos Focus Growth ETF.

#### Principal Investments.

The Fund is a diversified, actively-managed ETF that intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund's primary investment objective is to achieve long-term capital growth. The Fund will pursue its objectives by investing primarily, i.e. at least 80% of its assets under normal

market conditions,<sup>8</sup> in U.S. exchange-listed equity securities. Under normal market conditions, the Fund will invest primarily in companies with market capitalization of greater than \$1 billion that the Adviser believes offer the best opportunities for growth.

When buying and selling growth-oriented securities, the Adviser will focus on the company's growth potential coupled with financial strength and stability. When selecting specific growth-oriented securities, the Adviser will combine its top-down macroeconomic views with individual security selection (referred to as a "bottom-up approach") based on qualitative and quantitative research. The equity securities held by the Fund may include small- and mid-cap sized companies. The Fund may invest in equity securities issued by other registered investment companies (including money market funds).

The Fund may invest up to 25% of its assets in foreign securities. The Fund's investment in such stocks may be in the form of direct investments in non-U.S. securities that are listed on non-U.S. exchanges or in the form of American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs") and European Depositary Receipts ("EDRs") (collectively, "Depositary Receipts").<sup>9</sup> With respect to its investments in exchange-listed common stocks and

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<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> Depositary Receipts 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. For other forms of Depositary Receipts, the depository may be a

Depository Receipts of non-U.S. issuers, the Fund will generally invest in such securities that trade in markets that are members of the Intermarket Surveillance Group (“ISG”) or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The Fund will generally invest in sponsored Depository Receipts that are listed on ISG member exchanges and that the Adviser deems as liquid at time of purchase. In certain limited circumstances, the Fund may invest in unlisted or unsponsored Depository Receipts, Depository Receipts listed on non-ISG member exchanges, or Depository Receipts that the Adviser deems illiquid at the time of purchase or for which pricing information is not readily available.<sup>10</sup> The issuers of unlisted or unsponsored Depository Receipts are not obligated to disclose material information in the United States. Therefore, there may be less information available regarding such issuers and there may be no correlation between available information and the market value of the Depository Receipts.

#### Other Investments.

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

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non-U.S. or a U.S. entity, and the underlying securities may be issued by a non-U.S. or a U.S. issuer. Depository Receipts are not necessarily denominated in the same currency as their underlying securities. Generally, ADRs, issued in registered form, are designed for use in the U.S. securities markets, and EDRs, issued in bearer form, are designed for use in European securities markets. GDRs are tradable both in the United States and in Europe and are designed for use throughout the world.

<sup>10</sup> Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in (1) unlisted or unsponsored Depository Receipts; (2) Depository Receipts not listed on an exchange that is a member of the 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.

an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>11</sup>

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.<sup>12</sup>

While the Fund under normal circumstances will invest at least 80% of its assets in exchange-listed equity securities issued by U.S. companies, the Fund may invest the remaining assets in a variety of other securities and investments in support of its primary investment

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

<sup>12</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

strategy, including, but not limited to: equity securities traded over-the-counter,<sup>13</sup> convertible securities, synthetic convertible instruments, debt securities (including high yield fixed-income securities, loan participations and assignments, inflation-indexed bonds, municipal bonds, U.S. Government obligations (including stripped securities<sup>14</sup>), and agency mortgage-backed securities), repurchase agreements, reverse repurchase agreements, exchange-traded options on exchange-traded securities, indexes and currencies, money market instruments,<sup>15</sup> foreign currency forward contracts, futures contracts on securities indices and options on futures contracts on securities indices, warrants, [sic] total return swaps related to individual exchange-traded securities or securities indices. The Fund does not intend to use these other investments to create a leveraged return on the Fund's portfolio.

#### The Shares.

The Fund will issue and redeem Shares only in Creation Units at the net asset value

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<sup>13</sup> As noted previously, not more than 10% of the net assets of the Fund, in the aggregate, will be invested in certain Depositary Receipts or in 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>14</sup> The term "stripped security," as used herein, means a security that evidences ownership in either the future interest payments or the future principal payments on underlying U.S. Government, mortgage and other debt obligations. These securities generally are structured to make a lump-sum payment at maturity and do not make periodic payments of principal or interest.

<sup>15</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.



(“NAV”)<sup>16</sup> next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the NYSE, generally, 4:00 p.m. Eastern time.

Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the agreement executed with each Authorized Participant (as defined below).

The consideration for purchase of a Creation Unit generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and the Cash Component (as defined below), computed as described below or (ii) the cash value of all or a portion of the Deposit Securities (“Deposit Cash”) and the “Cash Component,” computed as described below. The Fund may, under certain circumstances, effect a portion of creations and redemptions for cash, rather than in-kind securities, in accordance with the Exemptive Order.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the “Fund Deposit,” which represents the minimum initial and

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<sup>16</sup> 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 (“NYSE”), generally 4:00 p.m. Eastern time (the “NAV Calculation Time”). NAV per Share will be calculated by dividing the Fund’s net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund’s NAV, see Registration Statement.

subsequent investment amount for a Creation Unit of the Fund. The “Cash Component” will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (i.e., the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the Cash Component is a negative number (i.e., the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”) or (ii) a Depository Trust Company (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute an agreement that has been agreed to by the Distributor and SSB with respect to purchases and redemptions of Creation Units.

SSB, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange’s Regular Market Session (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and/or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit,

subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities and/or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through SSB and only on a business day.

With respect to the Fund, SSB, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund's portfolio securities ("Fund Securities") and/or, if relevant, the required cash value thereof that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in kind or in cash or a combination thereof, as determined by the Trust. With respect to in kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by SSB on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized

Participant may receive the corresponding cash value of the securities in lieu of one or more Fund Securities.

The creation/redemption order cut off time for the Fund is expected to be 4:00 p.m. Eastern time for purchases of Shares. On days when the Exchange closes earlier than normal and in the case of custom orders, the Fund may require orders for Creation Units to be placed earlier in the day.

Net Asset Value.

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be calculated by SSB and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open. In calculating the Fund's NAV per Share, investments will generally be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer).<sup>17</sup>

Exchange-traded equities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes or currencies; sponsored or unsponsored Depositary Receipts; or other exchange traded

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<sup>17</sup> Under normal market conditions, the Fund will obtain pricing information on all of its assets from these sources.

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, convertible securities, synthetic convertible instruments, debt securities (including high yield fixed-income securities, loan participations and assignments, inflation-indexed bonds, municipal bonds, U.S. Government obligations (including stripped securities), and agency mortgage-backed securities) 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. Repurchase agreements and reverse repurchase agreements are valued at cost. 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. Foreign currency forward contracts will be valued in U.S. dollars using an exchange price provided by a third party. Total return swaps related to individual exchange-traded securities or securities indices will be valued at the mean between bid and asked prices provided by a dealer (which may be the counterparty). 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 market on which they primarily trade.

Notwithstanding the foregoing, in determining the value of any security or asset, the Fund may use a valuation provided by a pricing vendor employed by the Trust and approved by

the Board. The pricing vendor may base such valuations upon dealer quotes, by analyzing the listed market, by utilizing matrix pricing, by analyzing market correlations and pricing and/or employing sensitivity analysis.

The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust Board from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Adviser's Pricing Committee to determine a security's fair value if a market price is not readily available in accordance with the 1940 Act.<sup>18</sup> In determining such value the Adviser's Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators. In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the

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<sup>18</sup> The Valuation Committee of the Trust Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Valuation Committee has delegated day-to-day pricing responsibilities to the Adviser's Pricing Committee, which will be composed of officers of the Adviser. The Pricing Committee will be responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, nonpublic information regarding valuation and revaluation of any portfolio investments.

sale of the security.

Availability of Information.

The Fund's website ([www.calamos.com](http://www.calamos.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>19</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session<sup>20</sup> on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>21</sup> On a daily basis,

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<sup>19</sup> The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>20</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

<sup>21</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

the Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund’s website: (1) ticker symbol (if applicable), (2) name of security and financial instrument, (3) number of shares (if applicable) (4) dollar value of securities and financial instruments held in the Fund and (5) percentage weighting of the security and financial instrument in the Fund. The website information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,<sup>22</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. 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. 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; futures contracts on securities indices and options on

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<sup>22</sup> Currently, the NASDAQ OMX Global Index Data Service (“GIDS”) is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.



futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; sponsored or unsponsored Depositary Receipts; or other exchange-traded securities will be publicly available from the websites of the exchanges on which they trade, on public financial websites, and through subscription services such as Bloomberg and Thompson Reuters; (b) pricing information regarding over-the-counter equities (including Depositary Receipts and certain investment company securities), convertible securities, synthetic convertible instruments, debt securities (including high yield fixed-income securities, loan participations and assignments, inflation-indexed bonds, municipal bonds, U.S. Government obligations (including stripped securities), and agency mortgage-backed securities), repurchase agreements, reverse repurchase agreements, money market instruments, and foreign currency forward contracts will be available through subscription services such as Markit, Bloomberg and Thompson Reuters; (c) pricing information on the reference index or security underlying total return swaps will be available on Bloomberg.

Premiums and discounts between the Intraday Indicative Value and the market price of the Fund's shares may occur. This should not be viewed as a "real time" update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

In addition, 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 NSCC. The basket will represent one Creation Unit of the Fund.

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's annual and semi-annual reports (together, "Shareholder Reports"), and its Form N-CSR and Form N-SAR. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov).

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services and via the Consolidated Tape Association plans for the Shares. Similarly, 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 or through the Options Price Reporting Authority, or equivalent services related to futures, as applicable.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Initial and Continued Listing.

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or

continued listing, the Fund must be in compliance with Rule 10A-3<sup>23</sup> under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

#### Trading Halts and Trading Pauses.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules.

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund

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<sup>23</sup> See 17 CFR 240.10A-3.

Shares traded on the Exchange is \$0.01.

Surveillance.

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>24</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. In addition, the Exchange may obtain information from the Trade Reporting and Compliance Engine (“TRACE”), which is the FINRA-developed vehicle that facilitates mandatory reporting of over-the-counter secondary market transactions in eligible fixed income securities.<sup>25</sup>

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares; exchange-traded equities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; exchange-listed investment companies; or other exchange-traded

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<sup>24</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>25</sup> All broker/dealers who are FINRA member firms have an obligation to report transactions in corporate bonds to TRACE.

securities with other markets and other entities that are ISG members, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded equities, futures contracts on securities indices and options on futures contracts on securities indices, warrants, exchange-traded options on exchange-traded securities indexes or currencies, exchange-listed investment companies, or other exchange-traded securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares; exchange-traded equities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; exchange-listed investment companies; or other exchange-traded securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>26</sup> FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in (1) unlisted or unsponsored Depositary Receipts; (2) Depositary Receipts not listed on an exchange that is not 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. All futures and options held by the Fund will be listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of

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<sup>26</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

material, nonpublic information by its employees.

Information Circular.

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

## 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act<sup>27</sup> in general and Section 6(b)(5) of the Act<sup>28</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The exchange-traded equities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; exchange-listed investment companies; or other exchange-traded securities in which the Fund may invest will be limited to U.S. exchanges that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In

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<sup>27</sup> 15 U.S.C. 78f.

<sup>28</sup> 15 U.S.C. 78f(b)(5).

addition, the Exchange may obtain information from TRACE, which is the FINRA-developed vehicle that facilitates mandatory reporting of over-the-counter secondary market transactions in eligible fixed income securities.

The Fund will pursue its objectives by investing primarily, i.e., at least 80% of its assets under normal market conditions, in U.S. exchange-listed equity securities. The equity securities held by the Fund may include small- and mid-cap sized companies. The equity securities held by the Fund may also include publicly-traded exchange-listed common stocks of non-U.S. issuers in the form of Depositary Receipts.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities or other illiquid assets (calculated at the time of investment). The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. The Fund will not invest more than 25% of its net assets (valued at the time of purchase) in securities of foreign issuers.

Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in (1) unlisted or unsponsored Depositary Receipts; (2) Depositary Receipts not listed on an exchange that is a member of the 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. The Adviser is not a broker-dealer, but is affiliated with a broker-dealer, and has implemented a “fire wall” with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use



and dissemination of material nonpublic information regarding the open-end fund's portfolio.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will also be available via Nasdaq proprietary quote and trade services and via the Consolidated Tape Association plans for the Shares. Similarly, 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 or through the Options Price Reporting Authority, or equivalent services related to futures, as applicable. Intra-day, executable price quotations of the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information will also

be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The website for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted or paused under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the

requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-040 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NASDAQ-2014-040 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).