

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72412; File No. SR-NASDAQ-2014-065)

June 17, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt New Rule 5713 and List Paired Class Shares Issued by AccuShares[®] Commodities Trust I

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 11, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 the Substance of the Proposed Rule Change

NASDAQ proposes to add new Rule 5713 (Paired Class Shares), and to list Paired Class Shares issued by AccuShares[®] Commodities Trust I (the “AccuShares Trust”) on behalf of each of the following seven segregated series thereof: AccuShares S&P GSCI[®] Spot Fund, AccuShares S&P GSCI Agriculture and Livestock Spot Fund, AccuShares S&P GSCI Industrial Metals Spot Fund, AccuShares S&P GSCI Crude Oil Spot Fund, AccuShares S&P GSCI Brent Oil Spot Fund, AccuShares S&P GSCI Natural Gas Spot Fund, and AccuShares Spot CBOE[®] VIX[®] Fund (each an “AccuShares Fund”, and collectively the “AccuShares Funds”).³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AccuShares[®] is a registered trademark of AccuShares Holdings LLC. S&P[®], S&P GSCI[®], S&P 500[®] and Standard & Poor’s[®] are registered trademarks of Standard & Poor’s[®] Financial Services LLC. CBOE[®], Chicago Board Options Exchange[®], CBOE Volatility Index[®] and VIX[®] are registered trademarks of Chicago Board Options

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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this proposed rule change is to add new Rule 5713 regarding Paired Class Shares. The purpose is to also enable the Exchange to list Paired Class Shares issued by the AccuShares Trust on behalf of the AccuShares Funds pursuant to new Rule 5713 (also known as “Shares”) as follows:

<u>Fund</u>	<u>Paired Class Shares</u>
AccuShares S&P GSCI Spot Fund	AccuShares S&P GSCI Spot Up Shares
	AccuShares S&P GSCI Spot Down Shares

Exchange[®], Incorporated (“CBOE”). Dow Jones[®] is a registered trademark of Dow Jones[®] Trademark Holdings LLC.

<u>Fund</u>	<u>Paired Class Shares</u>
AccuShares S&P GSCI Agriculture and Livestock Spot Fund	AccuShares S&P GSCI Agriculture and Livestock Spot Up Shares
	AccuShares S&P GSCI Agriculture and Livestock Spot Down Shares
AccuShares S&P GSCI Industrial Metals Spot Fund	AccuShares S&P GSCI Industrial Metals Spot Up Shares
	AccuShares S&P GSCI Industrial Metals Spot Down Shares
AccuShares S&P GSCI Crude Oil Spot Fund	AccuShares S&P GSCI Crude Oil Spot Up Shares
	AccuShares S&P GSCI Crude Oil Spot Down Shares
AccuShares S&P GSCI Brent Oil Spot Fund	AccuShares S&P GSCI Brent Oil Spot Up Shares
	AccuShares S&P GSCI Brent Oil Spot Down Shares
AccuShares S&P GSCI Natural Gas Spot Fund	AccuShares S&P GSCI Natural Gas Spot Up Shares
	AccuShares S&P GSCI Natural Gas Spot Down Shares
AccuShares Spot CBOE VIX Fund	AccuShares Spot CBOE VIX Up Shares
	AccuShares Spot CBOE VIX Down Shares

A discussion of Paired Class Shares that will be listed pursuant to proposed new Rule 5713 will follow the description of new Rule 5713.

Proposed Rule 5713 is based, in part, on NYSE Arca (“Arca”) Equities Rule 8.400 (the “Arca rule”).⁴ While the Arca rule deals with an unmanaged investment product called Paired Trust Shares (“PTS”),⁵ proposed Rule 5713 deals with products called Paired Class Shares, also an unmanaged investment product.⁶ Subsequent to the initial listing of PTS on Arca in 2007,⁷ variants of the original PTS were listed until 2009.⁸ It became evident, however, that PTS had inherent design issues that led to severely diminished use of the product. PTS are not currently listed and have not been listed and traded for more than two years.

PTS were designed to be a passive unmanaged investment vehicle with an objective to provide investors with exposure to changes in an underlying benchmark or index. PTS were to provide retail investors with a simple, liquid and cost effective means of simulating an investment in an underlying benchmark asset or index. One PTS trust issuer seeking to deliver to investors the gains from any positive movements (or losses from negative movements) in the

⁴ See Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007)(SR-NYSEArca-2006-75)(order approving Arca Equities Rule 8.400). See also Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006)(SR-Amex-2006-82)(order approving NYSE MKT (formerly AMEX) Options Rules 1401-1403). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

⁵ For the definition of PTS, see Arca Equities Rule 8.400(b)(1)(A)(i).

⁶ For the definition of Paired Class Shares, see proposed Rule 5713(c).

⁷ See supra note 4.

⁸ See Securities Exchange Act Release Nos. 58873 (October 28, 2008), 73 FR 65709 (November 4, 2008)(SR-NYSEArca-2008-110)(Claymore MacroShares \$100 Oil Up/Down Trust (UOY and DOY)); and 58704 (October 1, 2008), 73 FR 59026 (October 8, 2008)(SR-NYSEArca-2008-92) (Claymore MacroShares Major Metro Housing Up/Down Shares (UMM and DMM)).

underlying benchmark or index (“Up PTS”), would be paired with another PTS trust issuer seeking to deliver to investors the gains from any negative movements (or losses from positive movements) in the same underlying benchmark or index (“Down PTS”). Principally, the PTS trust issuers sought to track underlying benchmark or index performance through re-balancing assets between the trusts by means of a swap agreement between the trusts based on the underlying benchmark or index. The referenced value or notional amount of this swap agreement was equal to the aggregate amount of investment in the PTS trusts held by investors. Thus, any change in value attributable to a change in the underlying benchmark or index would be allocated between the PTS trust issuers by transferring assets pursuant to the swap agreement between them, and such change would directly affect the liquidation value of each PTS.

Despite the purported benefits of PTS, the PTS products in operation suffered from several fundamental design flaws that led to their ultimate demise and disappearance from the market within the span of a few years. First, the trading prices of PTS did not track the changes in the levels of the underlying benchmark or index. PTS products had no mechanism to prevent one of the PTS from trading at a premium to its underlying or net asset value (“NAV”) while the other PTS was trading at a discount to NAV. Once opposing PTS traded in offsetting premium and discount conditions, this condition became “locked.” There was no incentive for market participants to seek PTS creation or redemption arbitrage opportunities since PTS always had to be created and redeemed in equal quantities (pairs) of Up PTS and Down PTS. This premium and discount condition occurred and persisted over the life of the previously traded PTS products.

Second, PTS products had no mechanism to prevent one PTS trust from exhausting its capital – where the value of its swap exposure became zero – and thereby forcing a liquidation of

both of the PTS issuer trusts. Instead, the PTS issuer trusts, by operation of their charter documents, would be forced to liquidate if their underlying benchmark or index increased by a fixed amount after their inception date. Such a liquidation occurred in the first PTS product issued within two years of its commencement of operations and PTS trading.

Third, PTS never reset their exposure to, or participation in, the reference value of their underlying benchmark or index. Consequently, the percentage changes in the price of a Down PTS did not correlate to the percentage changes in the underlying benchmark or index once the underlying benchmark or index increased or decreased over time. This problem is referred to as “leverage drift.” For instance, if a PTS product initially set its exposure to its benchmark asset at \$60 and the benchmark subsequently rose to \$90, an investor seeking a short exposure to the benchmark asset would buy the Down PTS at \$30 per share. Thereafter, any percentage change in Down PTS price experienced by the investor would be three times the percentage change in the underlying benchmark (e.g., a \$10 change in the benchmark results in about an 11% change in the benchmark and a 33% change in Down PTS price).⁹ The combination of these deficiencies frustrated market maker arbitrage opportunities and the overall utility of PTS to investors. The Exchange believes that the structural differences between Paired Class Shares and PTS make the proposed Paired Class Shares a superior product that should eliminate the fundamental problems inherent with PTS.

⁹ In this scenario, the percentage of Up PTS price changes tracks the percentage changes of the benchmark. However, this was not the case for PTS products that tracked a multiple of changes in the underlying benchmark or index. For such “leveraged return” PTS products, both UP PTS and Down PTS experienced leverage drift.

Paired Class Shares – A Short Background¹⁰

As noted in proposed Rule 5713, Paired Class Shares will be issued by a trust (“Trust”) on behalf of a segregated series of the Trust (“Fund”). Paired Class Shares will have values that are based on an index or other numerical variable (“Underlying Benchmark”) whose value reflects the value of assets, prices, price volatility or other economic interests (“Reference Asset”).¹¹ The Trust will always issue Paired Class Shares in pairs of shares of opposing classes of each Fund. The values of the opposing classes will move in opposite directions as the value of the Fund’s Underlying Benchmark varies from its starting level, where one constituent of the pair is positively linked to the Fund’s Underlying Benchmark (“Up Shares”) and the other constituent is negatively linked to the Fund’s Underlying Benchmark (“Down Shares”). The rate of linkage or leverage of a Fund’s Up Shares and Down Shares performance to the performance of the Fund’s referenced Underlying Benchmark will be one-to-one. The calculation of the liquidation value of a Fund attributable to each of its classes of Paired Class Shares (“Class Value”), and each Share of such class’ pro rata portion of Class Value (“Class Value per Share”), will be determined according to a mathematical formula.¹²

¹⁰ Paired Class Shares that will be listed by the AccuShares Trust are described in detail below, after the description of proposed new Rule 5713, under the heading “Paired Class Shares That Will Be Listed on Behalf of the AccuShares Trust – the Details.” This short description is intended to provide context for discussion of the proposed new rule.

¹¹ Other economic interests would include, for example, currencies, interest rates, non-investable economic indices and other measures of financial instrument value.

¹² The mathematical formula is based on the following factors: (1) the value of Fund assets, (2) the allocation of such value based on changes in the level of the Fund’s Underlying Benchmark which may be limited, reduced, capped or otherwise modified according to formula or pre-set parameters, and (3) the daily accrual of gain and income or loss on the assets of the Fund, less the liabilities of the Fund, as such gains, income losses and liabilities are allocated to each class of the Fund.

Each Fund will engage in (1) scheduled “regular distributions,” (2) “special distributions” that are automatically triggered upon the Underlying Benchmark exceeding a fixed rate of change since the Fund’s prior regular or special distribution date or inception date in the case of the first such distribution (each a “prior distribution date”), and (3) “corrective distributions” that are automatically triggered when the trading price of a Paired Class Share deviates by a specified amount from its Class Value per Share for a specified period of time. Immediately after each regular, special and corrective distribution, the Fund’s Underlying Benchmark participation or exposure will be reset and the Fund’s Class Value per Share for each of its classes will be set to equal the lowest Class Value per Share of the two classes of Paired Class Shares. To the extent any class of Paired Class Shares of a Fund has a positive net income from income or gain on class assets, after deduction of class liabilities, on a regular or special distribution date as measured from the prior distribution date, such class of Paired Class Shares will receive a distribution in cash equal to such positive net income regardless as to whether such class is entitled to a regular or special distribution on such date.

The structure of Paired Class Shares is designed to be a passive unmanaged investment vehicle with the objective to provide investors with exposure to changes in an Underlying Benchmark. Paired Class Shares are expected to provide retail investors with a simple, liquid and cost effective means of simulating an investment in an Underlying Benchmark. Paired Class Shares provide distinct benefits that seek to remedy the perceived failings of PTS and make Paired Class Shares a unique product that would be beneficial to market participants.

First, a Trust issuing Paired Class Shares on behalf of a Fund actively monitors deviations of trading price to Class Value per Share. To the extent there is a material and persistent deviation of a Paired Class Share trading price from such Paired Class Share’s Class

Value per Share according to pre-set thresholds, a Trust issuing the Paired Class Shares will distribute, to holders of each class of shares, shares of the opposing class, which would leave each holder with an equal number of Up Shares and Down Shares. As each holder would own both Up Shares and Down Shares, each holder could redeem their shares through an authorized participant (“Authorized Participant”)¹³ for cash at their respective Class Values per Share, which would eliminate the premium or discount. Even if a corrective distribution is not triggered, the existence of a Fund’s corrective distribution feature is expected to modify investor and Authorized Participant behavior to prevent persistent and material premium and discount conditions for Paired Class Shares from becoming locked. PTS had no similar mechanism and did in fact trade at significant discounts from and premiums to NAV in a locked fashion. Furthermore, regular and special distributions have the effect of delivering changes in Class Value per Share to each class of the Paired Class Shares either directly through the distribution or indirectly through the dilution caused by the distribution. Thus, market expectation of regular and special distributions will cause the trading prices of a Fund’s Paired Class Shares to experience less pronounced conditions of premium or discount to Class Value per Share than PTS experienced with respect to NAV per share. PTS lacked these mechanisms and experienced significant premium or discount conditions as well as locked premium and discount conditions.

Second, a Trust issuing Paired Class Shares on behalf of a Fund makes regular and special distributions and resets the Fund’s exposure or participation in its Underlying Benchmark

¹³ An Authorized Participant may place orders to create or redeem one or more Creation Units, and must be (1) a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, (2) a direct participant in The Depository Trust Company, and (3) a party to an Authorized Participant Agreement with the Sponsor setting forth the procedures for the creation and redemption of Creation Units in an AccuShares Fund.

to avoid depleting all of the capital of one class of shares. PTS had no similar mechanism and did in fact liquidate when its underlying benchmarks or index moved more than 80%, which occurred on numerous occasions.

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

Creation and Redemption

The Paired Class Shares creation and redemption process is similar in nature to that of other exchange traded products. Paired Class Shares of a Fund are created and redeemed in specified aggregations of equal quantities of Up Shares and Down Shares (“Creation Units”)¹⁴ at their respective Class Values per Share. Paired Class Shares can also only be created or redeemed by Authorized Participants. In contrast to other exchange traded products that often allow or require non-cash creation and redemption consideration in the form of specified securities or other assets and do not involve multiple share classes, Paired Class Shares creation and redemption transactions will only occur (a) for cash consideration and (b) in equal pre-determined quantities of Up Shares and Down Shares.

New Rule 5713

The provisions of proposed new Rule 5713 are set forth below.

¹⁴ Each Creation Unit for each AccuShares Fund will be comprised of 25,000 Up Shares and 25,000 Down Shares.

New Rule 5713(a) indicates that NASDAQ will consider for trading, whether by listing or pursuant to unlisted trading privileges (“UTP”), Paired Class Shares, which are defined in subsection (c), if the Paired Class Shares meet the criteria of Rule 5713. Proposed Rule 5713(b) clarifies that the rule is applicable only to Paired Class Shares. Subsection (b) states that except to the extent inconsistent with this Rule, or unless the context otherwise requires, the By-laws and all other rules and procedures of the Board of Directors shall be applicable to the trading on NASDAQ of such securities. Paired Class Shares, which are defined in proposed new subsection (c), are included within the definition of “security” or “securities” as such terms are used in the By-laws and Rules of NASDAQ.

Paired Class Shares Defined

Proposed subsection (c) specifically states that the term “Paired Class Share” means a security (1) that is issued by a Trust on behalf of a 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 (which is defined in Rule 5713(e)) varies from its starting level, where one constituent of the pair is positively linked to the Fund’s Underlying Benchmark – Up Shares – and the other constituent is 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 certain functions,¹⁵ (4) that represents a beneficial interest in the

¹⁵ These functions are (i) covering the Fund’s expenses, (ii) providing income distributions to investors, based on income (after expenses) from the financial instruments held by the Fund, (iii) providing cash proceeds for regular and special distributions to be made in cash in lieu of Paired Class Shares, and (iv) providing cash proceeds to be paid upon the redemption of Paired Class Shares. Thus, for example, upon redeeming 100 Paired Class Shares an investor would receive cash equal to the NAV per share for each share redeemed. Moreover, a Trust issuing Paired Class Shares on behalf of a Fund would

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,¹⁶ (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, and (7) that may be subject to mandatory redemption of all Paired Class Shares under specified circumstances. The Exchange notes that while the definition of Paired Class Shares is, to a large extent, based on the Arca rule there are structural differences between the two types of products that allow a more compact definition of, and listing procedure regarding, Paired Class Shares.¹⁷

Distributions

Proposed subsection (d) provides that a Fund may engage in scheduled regular distributions, special distributions that are automatically triggered upon the Underlying Benchmark exceeding a fixed rate of change since the prior distribution, and corrective

engage in regular distributions, special distributions and corrective distributions. Proposed Rule 5713(c), subpart (3).

¹⁶ The Paired Class Shares value will either (i) increase as a result of an increase in the Underlying Benchmark and decrease as a result of a decrease in the Underlying Benchmark (in the case of an Up Share) or (ii) 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). Proposed Rule 5713(c), subpart (5).

¹⁷ The basic definition of Paired Class Shares, is largely similar in concept to that of Tradeable Shares in PTS, albeit Paired Class Shares as discussed reflect an improved product. Thus, where Tradeable Shares use the terms “Up Tradeable Trust” and “Down Tradeable Trust”, Paired Class Shares use the product-appropriate terms “Up Shares” and “Down Shares.” The Paired Class Shares definition in proposed Rule 5713(c) is straightforward in comparison to PTS, which requires an unnecessarily complex three-part definition (“Tradeable Shares,” “Holding Shares,” and “Trading Shares” in Arca Equity Rule 8.400(b)(1)(a)(i)).

distributions that are automatically triggered when the trading price of a Paired Class Share deviates by a specified amount from its underlying value for a specified period of time.

Designation

Following on subsection (a) of the proposed rule, proposed subsection (e) states that NASDAQ may trade, either by listing or pursuant to unlisted trading privileges (“UTP”),¹⁸ Paired Class Shares whose values are based on an Underlying Benchmark whose value reflects the value of a Reference Asset. Each issue of Up Shares or Down Shares of a Fund shall be designated as a separate series and shall be identified by a unique symbol.

Listing Standards

Initial Listing

Proposed subsection (f) deals with initial and continued listing. Initial listing is specifically discussed in subsection (f)(i). There are three initial listing requirements. (A) NASDAQ will establish a minimum number of Paired Class Shares for each Fund required to be outstanding at the time of commencement of trading on NASDAQ. (B) NASDAQ will obtain a representation from the Trust on behalf of each Fund that the underlying value per share of each Up Share and Down Share will be calculated daily and that these underlying values and information about the assets of the Fund will be made available to all market participants at the same time.¹⁹ In addition, (C) if the Underlying Benchmark is maintained by a broker-dealer or investment advisor, the broker-dealer or investment advisor shall erect a “firewall” around the

¹⁸ For a discussion of the UTP process, see the NASDAQ UTP Plan. See also Rules 3381 and 3385 (off-board trading by national securities exchange members), 4630 (commodity-related securities), 5711 (trading of certain derivative securities), 5735 (managed fund shares), and 5740 (derivative securities traded under UTP).

¹⁹ This is similar in nature to Arca Equity Rule 8.400(d)(1). As noted, however, the Holding, Tradeable, and Trading nomenclature of PTS is not needed or used for Paired Class Shares.

personnel who have access to information concerning changes and adjustments to the Underlying Benchmark.²⁰

Continued Listing

Continued listing is discussed in proposed subsection (f)(ii), which gives the circumstances under which NASDAQ will consider the suspension of trading in or removal from listing of a Fund's Paired Class Shares. These circumstances include the following alternatives: (A) if, following the initial twelve-month period beginning upon the commencement of trading of the Paired Class Shares: (i) there are fewer than 50 record and/or beneficial holders of the Fund's Up Shares or Down Shares for 30 or more consecutive trading days; (ii) the Fund has fewer than 50,000 Up Shares or 50,000 Down Shares issued and outstanding; or (iii) the combined market value of all shares of a Fund issued and outstanding is less than \$1,000,000; (B) if the intraday level of the Underlying Benchmark, or a substitute or replacement Underlying Benchmark based on the same Reference Asset, is no longer calculated or available²¹ on at least a 15-second delayed basis during the Regular Market Session²² when the Fund's Paired Class

²⁰ The firewall provision is unique to proposed Rule 5713; there is no firewall provision in Arca Equity Rule 8.400.

²¹ The Underlying Benchmark may no longer be available due to a number of circumstances, including where the publication of the Underlying Benchmark is no longer economically viable, the data used to compute the Underlying Benchmark is no longer available, or the Underlying Benchmark methodology no longer tracks the same Reference Asset. See Commentary .04 to proposed Rule 5713.

²² NASDAQ market makers are open for business during normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. Rule 4617. The Exchange has trading hours from 4:00 a.m. until 8:00 p.m. Eastern Time, with trading sessions before and after normal market hours ("Pre-Market" and "Post-Market"), and appropriate rules to facilitate transactions during all trading sessions. Normal market hours are also known as the Regular Market Session. See, e.g., Rules 5705 (ETFs: portfolio depository receipts and index fund shares), and 5710 (securities linked to the performance of indexes and commodities (including currencies)).

Shares trade on NASDAQ from a source unaffiliated with the sponsor, the custodian, the trustee of the Trust, the Fund or NASDAQ that is a major market data vendor (e.g., Reuters or Bloomberg); (C) if the underlying value per share of each Up Share and Down Share of a Fund is no longer made available on a daily basis to all market participants at the same time; (D) if the estimate of the value of a share of the series of Paired Class Shares (the “Intraday Indicative Value”) of the underlying value of each listed Up Share and Down Share of the Fund is no longer made available on at least a 15-second delayed basis by a major market vendor during the time the Paired Class Shares trade on NASDAQ during the Regular Market Session; (E) if the “firewall” erected around the personnel who have access to information concerning changes and adjustments to the Underlying Benchmark is no longer in place; or (F) if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable.²³

Proposed subsection (f)(ii) provides also that upon termination of a Fund, Paired Class Shares issued in connection with such Fund must be removed from listing. A Fund may terminate in accordance with the provisions of the Fund prospectus, which may provide for termination if the underlying value of the Paired Class Shares falls below a specified amount.

Firewall Procedures

Firewall procedures are proposed in respect of the listing of Shares. Paragraph (f)(i)(C) of proposed Rule 5713 provides that if the Underlying Benchmark is maintained by a broker-dealer or investment advisor, the broker-dealer or investment advisor shall erect a “firewall”

²³ The proposed continuing listing standards are, in all material respects, similar in nature to Arca Equity Rule 8.400(d)(2); the structure of Paired Class Shares is, as noted, accommodated in the proposed language. The Exchange also adds the subsection (f)(ii)(C) continuing listing requirement that the underlying value per share of each Up Share and Down Share of a Fund is no longer made available on a daily basis to all market participants at the same time.

around the personnel who have access to information concerning changes and adjustments to the Underlying Benchmark. In addition, paragraph (f)(ii)(E) provides, as one of the continued listing provisions that would cause NASDAQ to consider the suspension of trading in or removal from listing of a Fund's Paired Class Shares, that the "firewall" erected around the personnel who have access to information concerning changes and adjustments to the Underlying Benchmark is no longer in place. Paragraph (f)(i)(C) of proposed Rule 5713 is similar, in relevant part, to Rule 5735(g) regarding actively managed ETFs regarding the necessity of having a firewall provision.²⁴ However, whereas (f)(i)(C) of new Rule 5713 discusses establishment of a "firewall" around personnel who have access to information concerning changes and adjustments to the Underlying Benchmark, paragraph (g) of Rule 5735 discusses establishment of a "fire wall" between the investment adviser and the broker-dealer with respect to an open-end fund's portfolio, not an Underlying Benchmark.

Additional Rule Provisions

Term, trustee, and voting rights are discussed in subsection (f). Regarding term, proposed subsection (f)(iii) states that the stated term of a Fund shall be as stated in the Fund prospectus. However, a Fund may be terminated under such earlier circumstances as may be specified in the Fund prospectus. Regarding trustees, proposed subsection (f)(iv) states that the trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking

²⁴ There are similar "firewall" provisions regarding other listed products. See, e.g., Rule 5711(e)(Currency Trust Shares) and Rule 5710(g)(Index-Linked Securities).

institution must be appointed co-trustee.²⁵ No change is to be made in the trustee of a listed issue without prior notice to and approval of NASDAQ. Regarding voting rights, subsection (f)(v) states that such rights, if any, shall be as set forth in the applicable Fund prospectus.

Proposed subsection (g) sets forth a limitation of liability that states that neither NASDAQ nor any agent of NASDAQ shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable Underlying Benchmark value; the underlying value of the Fund and its Paired Class Shares; distribution values or any other information relating to the purchase, redemption, or trading of the Paired Class Shares, resulting from any negligent act or omission by NASDAQ, or any agent of NASDAQ, or any act, condition or cause beyond the reasonable control of NASDAQ or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in the applicable positions or interests.²⁶

Regarding an Exchange member acting as a Market Maker²⁷ in Paired Class Shares, proposed subsection (h) states that such member must file with NASDAQ, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading in the applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any

²⁵ The proposed term, trustee and voting rights provisions are, in all material respects, similar to Arca Equity Rule 8.400(d)(3), (4), and (5).

²⁶ Subsection (g) is similar in nature to Arca Equity Rule 8.400(f). For other current Exchange limitation of liability provisions, see Rules 5735(e) and 5711(d)(vi).

²⁷ For requirements applicable to Market Maker accounts, see proposed Rule 5713(h).

other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in the applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to NASDAQ as required by this Rule. The subsection also provides that in addition to the existing obligations under NASDAQ rules regarding the production of books and records (see, e.g., Rule 4625), a registered Market Maker in Paired Class Shares shall make available to NASDAQ such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable securities or physical commodities included in, or options, futures or options on futures on, the Reference Asset of the Underlying Benchmark of any Paired Class Shares or any other derivatives based on such Reference Asset or based on any security or Reference Asset included in the Underlying Benchmark, as may be requested by NASDAQ.

The Exchange also proposes six Commentaries. Commentary .01 states that members provide all purchasers of newly issued Paired Class Shares a prospectus for the Fund.²⁸ Commentary .02 states that transactions in Paired Class Shares will occur during the trading hours specified in Rule 4120. Commentary .03 states that NASDAQ will file separate proposals

²⁸ The proposed commentaries are, in all material respects, similar to those in Arca Equity Rule 8.400.

under Section 19(b) of the Act before trading Paired Class Shares. Commentary .04 states that prior to a substitute or replacement Underlying Benchmark being selected for the Fund, NASDAQ must file a related proposed rule change pursuant to Rule 19b-4 under the Exchange Act to continue trading the Paired Class Shares. Commentary .05 states that subsection (f)(ii)(D), discussed previously, is not applicable as a continuing listing standard if a Fund's Paired Class Shares have been approved for listing and trading by the Commission under Section 19(b)(2) of the Act without the requirement that an estimate of the Intraday Indicative Value be made available on at least a 15-second delayed basis by a major market vendor during the time the Paired Class Shares trade on NASDAQ during the Regular Market Session. Commentary .06 states that NASDAQ will implement written surveillance procedures for trading the Paired Class Shares.

Paired Class Shares That Will Be Listed on Behalf of the AccuShares Trust – the Details
Description of the AccuShares Trust

The Shares will be offered by the AccuShares Trust, which is a Delaware statutory trust that was established into separate AccuShares Funds pursuant to the Second Amended and Restated Trust Agreement of the AccuShares Trust, by AccuShares Investment Management, LLC, a Delaware limited liability company, as sponsor (the “Sponsor”), and Wilmington Trust, N.A., a national banking association, as trustee (the “Trustee”), as it may be amended and restated from time to time (the “Trust Agreement”).

The Sponsor

Under the Trust Agreement, the Sponsor has exclusive management and control of all aspects of the business of each AccuShares Fund. Specifically, the Sponsor selects the AccuShares Funds' service providers, negotiates various fees and agreements and performs such other services as the Sponsor believes that the AccuShares Trust may require from time to time.

Each class of an AccuShares Fund pays the Sponsor a management fee (the “Management Fee”), monthly in arrears, in an amount equal to a percentage of its average daily Class Value at the rate set forth in the applicable AccuShares Fund prospectus. No other fee is paid by the AccuShares Funds. The Management Fee is paid in consideration of the Sponsor’s management and administrative services and the other services provided to the AccuShares Funds for which the Sponsor pays directly.²⁹

Service Providers to the AccuShares Trust and AccuShares Funds

The Trustee acts as the sole trustee of the AccuShares Trust under the Trust Agreement for the purpose of creating the AccuShares Trust as a Delaware statutory trust in accordance with the Delaware Statutory Trust Act. The Trustee has only nominal duties and liabilities under the Trust Agreement to the AccuShares Trust and the AccuShares Funds. The Trustee will have no duty or liability to supervise or monitor the performance of the Sponsor, nor will the Trustee have any liability for the acts or omissions of the Sponsor.

Wilmington Trust, N.A. also serves as the investment advisor (the “Investment Advisor”) for each AccuShares Fund pursuant to the Non-Custody Investment Advisory Agreement by and among the AccuShares Trust, the Sponsor and the Investment Advisor (the “Investment Advisory Agreement”). The Investment Advisor, which is chosen by the Sponsor, is responsible for investing each AccuShares Fund’s available cash in bills, bonds and notes issued and guaranteed by the United States Treasury (“United States Treasury Securities”) with remaining maturities of 90 days or less (“Eligible Treasuries”) and over-night repurchase agreements collateralized by United States Treasury Securities (“Eligible Repos,” together with cash and Eligible Treasuries, “Eligible Assets”). As discussed, if the Underlying Benchmark is

²⁹ The Sponsor selects all service providers for the AccuShares Trust and each AccuShares Fund, including each AccuShares Fund’s investment advisor.

maintained by the Investment Advisor, it will erect a “firewall” around the personnel who have access to information concerning changes and adjustments to the Underlying Benchmark.

State Street Bank and Trust Company, a Massachusetts trust company (“State Street”), serves as the custodian (the “Custodian”) for each AccuShares Fund pursuant to appointment by the AccuShares Trust and the terms of a domestic custodian agreement. The Custodian will hold each AccuShares Fund’s securities and cash, and will perform each AccuShares Fund’s Class Value and Class Value per Share calculations.

State Street serves as the administrator (the “Administrator”) for each AccuShares Fund pursuant to appointment by the Sponsor and the terms of an administration agreement. The Administrator, among other things, performs or supervises the performance of services necessary for the operation and administration of the AccuShares Funds (other than making investment decisions or providing services provided by other service providers), including accounting and other fund administrative services.

State Street serves as the transfer agent (the “Transfer Agent”) for each AccuShares Fund pursuant to appointment by the Sponsor and the terms of a transfer agency and services agreement to provide certain services to the AccuShares Funds. The Transfer Agent, among other things, provides transfer agent services with respect to the creation and redemption of Creation Units. The Transfer Agent will receive from Authorized Participants creation and redemption orders and deliver acceptances and rejections of such orders to Authorized Participants as well as coordinate the transmission of such orders and instructions among the Sponsor and the Authorized Participants.

The Underlying Benchmark of each AccuShares Fund, other than the AccuShares Spot CBOE VIX Fund (the “VIX Fund”), is constructed, calculated and published by S&P[®] Dow

Jones Indices LLC (the “Index Provider”).³⁰ The CBOE Volatility Index[®] (the “VIX”), which is the Underlying Benchmark of the VIX Fund, is constructed by the CBOE and calculated and published by the Index Provider. Both the Index Provider and the CBOE are unaffiliated with the AccuShares Trust and the Sponsor.³¹ As discussed, to the extent that an Underlying Benchmark is maintained by a broker-dealer or investment advisor, such broker-dealer or investment advisor will erect a “firewall” around personnel who have access to information concerning changes and adjustments to the Underlying Benchmark.

The Sponsor receives the Management Fee and otherwise bears all the routine ordinary expenses of each AccuShares Fund, including the fees and reimbursable expenses of the Trustee, the Investment Advisor, the Custodian, the Administrator, the Transfer Agent and the Index Provider. The AccuShares Funds bear all their tax liabilities, which are accrued daily, and their extraordinary, non-recurring expenses that are not assumed by the Sponsor under the Trust Agreement.

Authorized Participants

Each Authorized Participant must be a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, and a direct participant in The Depository Trust Company. In addition, each Authorized Participant must be a party to an Authorized Participant Agreement with the Sponsor setting forth the procedures for the creation and

³⁰ The Underlying Benchmarks for all AccuShares Funds other than the VIX Fund are: (1) the S&P GSCI Spot index; (2) the S&P GSCI Agricultural and Livestock Spot index; (3) the S&P GSCI Industrial Metals Spot index; (4) the S&P GSCI Crude Oil Spot index; (5) the S&P GSCI Brent Crude Oil Spot index; and (6) the S&P GSCI Natural Gas Spot index, and are collectively referred to herein as the “S&P GSCI Commodity Indices.”

³¹ Should, however, the Index Provider become affiliated with the AccuShares Trust and the Sponsor, an appropriate firewall will be warranted.

redemption of Creation Units in an AccuShares Fund. Only Authorized Participants may place orders to create or redeem one or more Creation Units.

Registration Statement

The offer and sale of Paired Class Shares of each AccuShares Fund will be registered with the SEC by means of the AccuShares Trust's registration statement on Form S-1 (the "Registration Statement") under the Securities Act of 1933 (the "Securities Act"). The Registration Statement was filed on March 18, 2014 and will be effective as of the date of such offer and sale.

Description of the Underlying Benchmarks

The S&P GSCI Commodity Indices

Each S&P GSCI Commodity Index is constructed, calculated and published by the Index Provider. The S&P GSCI Spot index (the "S&P GSCI"), which serves as the Underlying Benchmark for the AccuShares S&P GSCI Spot Fund, is an index on a production-weighted basket of currently 24 principal physical commodities that satisfy criteria established by the Index Provider. The commodities included in the S&P GSCI are weighted, on a production basis, to reflect the relative significance (in the view of the Index Provider) of those commodities to the world economy. The referenced commodities within the S&P GSCI Agricultural and Livestock Spot index (the "S&P GSCI-AL") and the S&P GSCI Industrial Metals Spot index (the "S&P GSCI-IN") each receive weightings that differ from the weightings they receive in the broader S&P GSCI.³² The value of the S&P GSCI has been normalized (the "Normalizing Constant") such that its hypothetical level on January 2, 1970 was 100.

³² The S&P GSCI-AL is comprised of contracts referencing the following Reference Assets: Corn, Chicago Wheat, Soybeans, Live Cattle, Lean Hogs, Sugar, Cotton, Kansas Wheat, Coffee, Feeder Cattle and Cocoa. The S&P GSCI-IN is comprised of contracts

The S&P GSCI Crude Oil Spot index (the “S&P GSCI-CL”), the S&P GSCI Brent Crude Oil Spot index (the “S&P GSCI-BR”) and the S&P GSCI Natural Gas Spot index (the “S&P GSCI-NG”) are single commodity sub-indices of the S&P GSCI.³³ The S&P GSCI-AL and the S&P GSCI-IN are sub-indices of the S&P GSCI that comprise related groups of commodities otherwise contained in the broader S&P GSCI. All of the S&P GSCI Commodity Indices are the spot versions of such indices as further discussed below.

Each S&P GSCI Commodity Index reflects only the daily settlement prices (“Daily Contract Reference Prices”) of commodities futures contracts that are the components of such index (“Designated Contracts”) on each business day. Each S&P GSCI Commodity Index is based on the daily settlement prices of first nearby contract, except during the five day “Roll Period” where the “Roll Contract Expirations” shift to the next nearby contract and where the weighting of the first nearby contract is decreased in favor of the next expiry contract 20 percent per day during the Roll Period. Immediately following the Roll Period, the next expiry contract is used for the index until the next following Roll Period. When shifting to a next nearby contract, contract quantities remain consistent and relative values between the nearby and next nearby contracts may vary.

The daily value of the S&P GSCI Commodity Indices, therefore, is calculated solely based on the commodity production weightings assigned by the Index Provider of each

referencing the following Reference Assets: LME Copper, Aluminum, Nickel, Zinc and Lead. The S&P GSCI is comprised of contracts referencing the Reference Assets of the S&P GSCI-AL and the S&P GSCI-IN, as well as West Texas Intermediate Crude Oil, Brent Crude Oil, Gas Oil, Heating Oil, RBOB Gasoline, Gold, Natural Gas and Silver.

³³ The S&P GSCI-CL, the S&P GSCI-BR and the S&P GSCI-NG are comprised of contracts referencing West Texas Intermediate Crude Oil, Brent Crude Oil and Natural Gas, respectively.

Designated Contract, and of the Daily Contract Reference Prices of the nearby contract expiration of each Designated Contract, and do not reflect any roll yield.

The quantity of each of the contracts included in the S&P GSCI Commodity Indices is determined on the basis of a five year average, referred to as the “world production average,” of the production quantity of the underlying commodity as published by the United Nations Statistical Yearbook, the Industrial Commodity Statistics Yearbook and other official sources. However, if a commodity is primarily a regional commodity, based on its production, use, pricing, transportation or other factors, the Index Provider may calculate the weight of that commodity based on regional, rather than world, production data. At present, natural gas is the only commodity the weights of which are calculated on the basis of regional production data, with the relevant region defined as North America.

For a complete and current description the eligibility criteria, weighting and calculation methodologies the Index Provider utilizes in selecting commodities and Designated Contracts and their weights for an S&P GSCI Commodity Index, see the S&P GSCI Handbook, which is available at: www.spindices.com/documents/methodologies/methodology-sp-gsci.pdf.

The VIX

The Underlying Benchmark of the VIX Fund is the VIX. The VIX is constructed by the CBOE and calculated and published by the Index Provider. The VIX seeks to serve as a measure of the expected volatility of the S&P 500[®] total return stock index (the “S&P 500 Index”). It is an up-to-the-minute market estimate of expected volatility that is calculated by using real-time S&P 500 Index option (ticker SPX) bid/ask quotes. The SPX is the Reference Asset of the VIX. Each business day, the VIX uses SPX options with at least eight days left to expiration, and then

weights them to yield a constant, 30-day measure of the expected volatility of the S&P 500 Index.

The VIX is based on real-time option prices, which reflect investors' consensus view of future expected stock market volatility. During periods of financial stress, which are often accompanied by steep market declines, SPX options prices – and the VIX – tend to rise. As expectations of large market moves subside, SPX option prices tend to decline, which in turn causes the VIX to decline.

The VIX is quoted in percentage points and translates, roughly, to the expected movement in the S&P 500 Index over the next 30-day period, which is then annualized. The VIX is based on the spot variation of its Reference Asset and as such does not incorporate the effects of closing out an expiring contract and establishing a position in the next available contract. Consequently, the VIX does not reflect any roll yield in option contract turnover and is properly viewed as a spot measure of 30-day expiry expected S&P 500 Index volatility measured through SPX price movements. For additional information regarding the VIX, see the CBOE's website at www.cboe.com/VIX.

Description of the AccuShares Funds

Shares Issued In Pairs as “Up Shares” and “Down Shares”

The AccuShares Trust will issue Shares on behalf of an AccuShares Fund in offsetting pairs, where one constituent of the pair, the Up Shares, is positively linked to the AccuShares Fund's Underlying Benchmark and the other constituent, the Down Shares, is negatively linked to the AccuShares Fund's Underlying Benchmark. Therefore, the AccuShares Trust will only issue, distribute, maintain and redeem equal quantities of Up Shares and Down Shares on behalf

of an AccuShares Fund at all times. The AccuShares Trust will create and redeem Paired Class Shares on behalf of an AccuShares Fund in Creation Units for cash only.³⁴

Use of Proceeds

Cash proceeds from the creation of Paired Class Shares by an AccuShares Fund may only be held by an AccuShares Fund in Eligible Assets that serve the functions of (1) covering the AccuShares Fund's fees, expenses and taxes not assumed by the Sponsor, (2) providing cash distributions to investors based on income (after expenses) from the financial instruments held by the AccuShares Fund (each a "net income distribution"), (3) providing cash proceeds for regular and special distributions to be made in cash in lieu of Paired Class Shares, (4) providing cash proceeds to be paid upon the redemption of Paired Class Shares and (5) providing cash proceeds for any AccuShares Fund liquidation distribution. Each AccuShares Fund will invest its assets so as to preserve its capital while, at the same time, earning an investment return that is consistent with such preservation of capital.

AccuShares Fund Assets

Each AccuShares Fund will maintain its Eligible Assets in a separate custody account maintained by the AccuShares Fund's Custodian that will be segregated from the assets of any other series of the AccuShares Trust, the Custodian or any other customer of the Custodian. Any date on which there is cash on deposit in an AccuShares Fund's custody account that is not required to make payments or to make distributions to shareholders all such cash will be either held as cash or invested by the Investment Advisor, acting in accordance with the Investment

³⁴ Once created, an AccuShares Fund's Paired Class Shares will trade independently of each other on the Exchange.

Advisory Agreement and on behalf of the AccuShares Fund, in cash bank deposits, Eligible Treasuries or Eligible Repos.³⁵

Each AccuShares Fund will invest its cash in Eligible Treasuries or Eligible Repos in order to generate income to pay its fees, expenses and taxes and to generate income to shareholders from cash on deposit in the AccuShares Fund that is not immediately needed for other purposes pending a later net income distribution. Each AccuShares Fund will hold a portion of its assets in Eligible Repos, because these agreements mature and convert to cash within one business day, which will make it possible for the AccuShares Fund to have sufficient cash available on each business day to be able to effect any redemptions of its Creation Units.

The Trust Agreement will limit, and the Investment Advisory Agreement will direct the Investment Advisor to limit, each AccuShares Fund's holdings of Eligible Repos.

Daily, except on a distribution date where such proceeds are needed to effect redemptions or net income distributions or to distribute cash for regular and special distributions, the Investment Advisor, on behalf of the AccuShares Fund, will reinvest the proceeds received upon the maturity of the AccuShares Fund's Eligible Treasuries and Eligible Repos in Eligible Assets. The Investment Advisor will also invest in Eligible Assets all of an AccuShares Fund's cash funds delivered to it in connection with each creation of the AccuShares Fund's Creation Units.

³⁵ Eligible Repos will (i) be entered into with a seller that is a bank with at least one billion U.S. dollars in assets or a registered securities dealer that is deemed creditworthy by the AccuShares Fund's investment advisor, (ii) terminate the business day following their execution, (iii) be denominated in U.S. dollars, and (iv) be "collateralized fully," meaning that (A) the value of the assets collateralizing the Eligible Repo (less transaction costs, including loss of interest, that the AccuShares Fund reasonably could expect to incur if the seller were to default) is, and during the entire term of the Eligible Repo remains, at least equal to the resale price payable by the seller under the Eligible Repo, (B) such assets are held by a custodian bank for the benefit of the AccuShares Fund during the term of the Eligible Repo, and (C) such assets consist entirely of United States Treasury Securities.

On the liquidation of an AccuShares Fund, all of the proceeds of the Eligible Treasuries and Eligible Repos held by the AccuShares Fund will be used to make final cash liquidating payments, less the fees, expenses and taxes of the AccuShares Fund not assumed by the Sponsor, to the AccuShares Fund's shareholders. Upon any redemption of an AccuShares Fund's Creation Units by an Authorized Participant, the cash of the AccuShares Fund will be used to pay the proceeds of such redemption to the redeeming Authorized Participant.

The Investment Advisor will select Eligible Treasuries and Eligible Repos for acquisition by an AccuShares Fund in accordance with the acquisition guidelines that are contained in the Investment Advisory Agreement and the applicable AccuShares Fund prospectus.

Determination of Class Value and Class Value per Share

The Custodian will daily determine the Class Value of each class of an AccuShares Fund, which is based on the value of the AccuShares Fund's Eligible Assets attributable to such class, (a) plus any accrued income or gains or losses on such assets attributable to such class ("Investment Income"), (b) less all fees, expenses and taxes attributable to such class not otherwise assumed by the Sponsor, where such income and gains after deduction of such fees, expenses and taxes is referred to as the class "Net Investment Income." Such accrued income, gains, losses, fees, expenses and taxes will be allocated to each Share class on a daily basis, where such allocation is equal to the amount of such accrued income, gains, losses, fees, expenses and taxes multiplied by a fraction the numerator of which is the closing Class Value per Share of the referenced class and the denominator of which is the sum of the closing Class Values per Share of both classes of the AccuShares Fund.

The Class Value per Share of each AccuShares Fund's Up Shares will have a fixed one-to-one positive linear relationship with such AccuShares Fund's Underlying Benchmark (the

“Up Share Index Factor”) and the Class Value per Share of each AccuShares Fund’s Down Shares will have a fixed one-to-one inverse linear relationship with such AccuShares Fund’s Underlying Benchmark (the “Down Share Index Factor” and together with the Up Share Index Factor, the “Share Index Factors”). The Down Share Index Factor will equal negative one times the Up Share Index Factor. At the inception of operations of each AccuShares Fund, the Sponsor will establish such AccuShares Fund’s Share Index Factors. After any regular or special distribution by an AccuShares Fund, the AccuShares Fund will reset its Share Index Factors. This resetting of the Share Index Factors causes Class Values per Share to be equal following each such distribution, where the Class Values per Share will be equal to the lowest Class Value per Share of either class calculated in determining the distribution.

During any single distribution measurement period that starts with the prior distribution date (the “Measuring Period”) and in order to create a balanced market for the Up Shares and Down Shares of the VIX Fund, the Class Value per Share of each Up Share of the VIX Fund will be reduced and the Class Value per Share of each Down Share of the VIX Fund will be increased by an additional daily amount (the “Daily Amount”). In each Measuring Period where the VIX has a level that is below a threshold specified in the VIX Fund’s prospectus on the prior distribution date, the Daily Amount will be a fixed percentage per day³⁶ of the Class Value per Share on the prior distribution date. If the level of the VIX is above the threshold specified in the VIX Fund’s prospectus, the Daily Amount will be zero. The Daily Amount is intended to reflect an attribute of the market for long financial instruments seeking exposure to the expected volatility of the S&P 500 Index implicit to options contracts on the performance of the S&P 500

³⁶ The fixed percentage will vary according to the level of the VIX on the prior distribution date. If the level of the VIX on such prior distribution date was 30 or lower, the Daily Amount will be 0.15% of the Class Value per Share on such prior distribution date. If the level of the VIX was greater than 30, the Daily Amount will be zero.

Index. As reflected in the historical performance of the VIX, the market for such long instruments deteriorates over both long and short term time frames as both S&P 500 Index volatility and the VIX tend to return to a mean level. Under these circumstances, a long position on the VIX will tend to decrease in value over time while a short position will tend to increase in value. Thus, the VIX Fund will devalue its Up Shares and increase the value of its Down Shares over a Measuring Period by the fixed amount of the Daily Amount where the VIX is within a range consistent with its long run mean level.

The AccuShares Funds' assets are not managed to track the performance of their respective Underlying Benchmarks, and the Shares of the AccuShares Funds will not rely on the investment acumen of a manager or the precision of the investment tools used by a manager for performance or for tracking the targeted Underlying Benchmark. Rather, the return on an AccuShares Fund's Shares with respect to its Underlying Benchmark will be algorithmic and delivered to AccuShares Fund investors experiencing an increase in their Shares' Class Value per Share by regular and special distributions and to AccuShares Fund investors experiencing a decrease in their Shares' Class Value per Share by the dilution of their Shares' Class Value per Share due to regular and special distributions received by the class of Shares opposing their Shares. The Class Values and Class Values per Share for each AccuShares Fund will be calculated as set forth to the applicable AccuShares Fund prospectus.

Class Value and Class Value Per Share

The Class Value of each class of an AccuShares Fund is the portion of that fund's net asset value, or liquidation value, that is attributable to that class. Class Values and Class Values per Share of each AccuShares Fund will be calculated by the fund's custodian at the end of each

Regular Market Session.³⁷ The Class Value of each class of an AccuShares Fund will be calculated by determining the liquidation value attributable to such class, as described below.

In determining liquidation value, each AccuShares Fund will value all assets consistent with generally accepted industry practice for valuation of cash and cash equivalent securities. Cash balances and cash equivalent securities will be valued at purchase price plus accrued interest and longer dated U.S. Treasury securities will be valued at market prices.

The Class Value of a specific class of an AccuShares Fund is the fund's liquidation value, adjusted for the total Net Investment Income, multiplied by a fraction, the numerator of which is the closing Class Value per Share of the referenced class and the denominator of which is the sum of the closing Class Values per Share of both classes of the AccuShares Fund. The Class Value per Share of all outstanding Shares of a class of an AccuShares Fund is its Class Value divided by the number of outstanding Shares of such class.

The Class Value per Share of each AccuShares Fund's Up Shares will be increased or decreased, as applicable, by an amount equal to the change in the fund's Underlying Benchmark since the prior distribution date multiplied by the fund's Up Share Index Factor. The Class Value per Share of each AccuShares Fund's Down Shares will be increased or decreased, as applicable, by an amount equal to the change in the fund's Underlying Benchmark since the prior distribution date multiplied by the fund's Down Share Index Factor.

Arbitrage

Similar to other exchange traded products, the AccuShares Funds will rely on the Share creation and redemption process to reduce any premium or discount that may occur in an AccuShares Fund's Share trading prices on the Exchange relative to that Share's Class Value per

³⁷ The Class Values and Class Values per Share of each AccuShares Fund will be made available to all market participants at the same time.

Share. Shares in each AccuShares Fund may be created or redeemed only by certain Authorized Participants who have entered into Authorized Participant Agreements with the AccuShares Trust and the Sponsor. The creation/redemption process is important for each AccuShares Fund in providing Authorized Participants with an arbitrage mechanism through which they may keep Share trading prices in line with each Share's Class Value per Share.

As an AccuShares Fund's Shares trade intraday on the Exchange, their market prices will fluctuate due to supply and demand. The following scenarios generally describe the conditions surrounding a creation/redemption:

- If the aggregate market prices of the two classes of Shares of an AccuShares Fund exceed their aggregate Class Values per Share,³⁸ an Authorized Participant can purchase both classes of Shares through a cash payment as part of a Creation Unit from the AccuShares Fund, and then sell the new Shares on the market at a profit, taking into account the value and market price of both classes of Shares. This process of increasing the supply of Shares is expected to bring the market prices of the Shares back to their aggregate Class Values per Share.
- If the aggregate Class Values per Share of the two classes of Shares of an AccuShares Fund exceed their aggregate market prices,³⁹ an Authorized Participant can purchase

³⁸ This would include a scenario where both classes of an AccuShares Fund are trading at a premium to their respective Class Values per Share, as well as where one class of an AccuShares Fund is trading at a premium to its Class Value per Share while the other class trades at Class Value per Share or at a discount that is smaller than the other class' [sic] premium.

³⁹ This would include a scenario where both classes of an AccuShares Fund are trading at a discount to their respective Class Values per Share, as well as where one class of an AccuShares Fund is trading at a discount to its Class Value per Share while the other class trades at Class Value per Share or at a premium that is smaller than the other class' [sic] discount.

Shares on the market in an amount equal to a Creation Unit and redeem them for cash at their Class Values per Share at a profit, taking into account the value and market price of both classes of Shares. This process of increasing the demand for Shares on the Exchange through decreasing supply is expected to raise the trading price of a Share to meet its Class Value per Share.

- If the aggregate Class Values per Share of the two classes of Shares of an AccuShares Fund are equal to their aggregate market prices, but the market price of one of the classes of Shares exceeds its Class Value per Share and the Class Value per Share of the opposing class of Shares exceeds its market price, the redemption and creation mechanism may not create an arbitrage opportunity to eliminate this disparity. An AccuShares Fund's corrective distribution mechanism is designed to resolve this discrepancy. As discussed above, a corrective distribution will leave each shareholder of an AccuShares Fund with an equal number of Up Shares and Down Shares. As each shareholder would own both Up Shares and Down Shares, each holder could redeem their Shares through an Authorized Participant for cash at their respective Class Values per Share, which would eliminate the premium or discount. Even if a corrective distribution is not triggered, the existence of an AccuShares Fund's corrective distribution feature is expected to modify investor and Authorized Participant behavior to prevent persistent and material premium and discount conditions for Paired Class Shares from becoming locked.

The processes examined in the first two scenarios above are referred to as the “arbitrage mechanism.” The arbitrage mechanism helps to minimize the difference between the trading price of a Share of an AccuShares Fund and its Class Value per Share. Over time, these buying

and selling pressures should balance out, and a Share's market trading price is expected to remain at a level that is at or close to its Class Value per Share. The arbitrage mechanism provided by the creation and redemption process is designed, and required, in order to maintain the relationship between the market trading price of Shares and their Class Values per Share between distribution dates.

Distributions

Each AccuShares Fund is expected to engage in four types of distributions as of certain distribution dates. The first type of distribution, regular distributions, will occur at regular intervals for each AccuShares Fund. Regular distributions will generally occur as long as there has been a change in the level of the Underlying Benchmark (and, in the case of the VIX Fund, the Daily Amount) as of the distribution date since the prior distribution date. Secondly, each AccuShares Fund expects to make net income distributions on each regular or special distribution date to the shareholders of any class of such AccuShares Fund whose class Net Investment Income is positive as of such distribution date.

The other two types of distributions are not expected to occur regularly and are mechanisms intended to protect the interests of investors by providing them with the expected value of their Shares upon specified events. Thus, the third type, special distributions, occurs where the change in the Underlying Benchmark exceeds a specified percentage value since the prior distribution date but before the next regular distribution. The fourth type, corrective distributions, occur only if the trading price of a class' Shares on the Exchange deviates for a specified length of time over a specified threshold amount from the Class Value per Share of such class.

Regular Distributions

Each AccuShares Fund will engage in regular distributions on either a monthly or quarterly basis as set forth in the applicable AccuShares Fund prospectus.⁴⁰ After each regular distribution, the applicable AccuShares Fund will reset its Share Index Factors. An investor receiving distributions in cash can then choose to either do nothing or reinvest all or part of the distribution in the desired class of Shares to gain more economic exposure to the Underlying Benchmark.

An investor receiving distributions in pairs of Shares can (i) sell the Shares received for cash and maintain the proceeds in cash, (ii) sell only the opposing class of Shares received and maintain proceeds in cash or (iii) sell only the opposing class of Shares received and reinvest the proceeds in the desired class of Shares to gain more economic exposure to the Underlying Benchmark.

Special Distributions

Special distributions are a measure designed to protect the AccuShares Funds and the investors in the AccuShares Funds during periods when the AccuShares Fund's Underlying Benchmark experiences unexpected degrees of volatility. The AccuShares Funds will effect a special distribution and a resetting of the Share Index Factors between regular distribution dates where the change in the Underlying Benchmark exceeds a specified percentage value since the

⁴⁰ The VIX Fund and the AccuShares S&P GSCI Natural Gas Spot Fund will engage in monthly regular distributions on the 15th day of each calendar month (or the next following business day if the scheduled regular distribution date is not a business day). Each of the other five AccuShares Funds will engage in quarterly regular distributions on March 15, June 15, September 15 and December 15 of each year (or the next following business day if the scheduled regular distribution date is not a business day).

prior distribution date, as set forth in the applicable AccuShares Fund prospectus.⁴¹ A reverse share split may also be executed in conjunction with any special distributions.

Value of Regular and Special Distributions

When the Class Values per Share of the Up Shares and the Down Shares of an AccuShares Fund differ at the close of a Measuring Period (after adjusting for any net income distribution for such Shares), the Share class with the higher Class Value per Share is expected to receive a regular or special distribution on that distribution date.

The value of a distribution relating to each of an AccuShares Fund's Up Shares (where such Shares are valued at their respective Class Values per Share) entitled to a distribution on a distribution date will be equal to the positive amount, if any, of the closing Class Value per Share of the AccuShares Fund's Up Shares (after adjusting for any net income distribution) less the closing Class Value per Share of the AccuShares Fund's Down Shares (after adjusting for any net income distribution).

The value of a distribution relating to each of an AccuShares Fund's Down Shares (where such Shares are valued at their respective Class Values per Share) entitled to a distribution on a distribution date will be equal to the positive amount, if any, of the closing Class Value per Share of the AccuShares Fund's Down Shares (after adjusting for any net income distribution) less the closing Class Value per Share of the AccuShares Fund's Up Shares (after adjusting for any net income distribution).

Regular and special distributions will ordinarily be made in the form of cash during the first six months of trading in an AccuShares Fund's Shares. Thereafter, each AccuShares Fund will pay all or any part of any regular or special distribution in Paired Class Shares instead of

⁴¹ The percentage value for special distributions for each of the AccuShares Funds will be 75%.

cash where further cash distributions would adversely affect the liquidity of the market for the AccuShares Fund's Shares⁴² or impact the AccuShares Fund's ability to meet minimum asset size Exchange listing standards.⁴³ All payments made in Paired Class Shares shall be made in equal numbers of Up and Down Shares. To the extent a Share distribution would result in the distribution of fractional Shares, cash in an amount equal to the value of the fractional Shares will be distributed rather than fractional Shares.

Corrective Distributions

Corrective distributions will occur for the AccuShares Funds after the trading price of an AccuShares Fund's Shares deviates materially and persistently from Class Value per Share according to fixed thresholds as set forth in the applicable AccuShares Fund prospectus. Corrective distributions are a formulaic process that continuously measures for any material deviation between the Class Value per Share of the Shares and the closing trading prices of the Shares as reported on the Exchange. After a specified period of time following an AccuShares Fund's inception, if the closing trading prices of the Shares of the AccuShares Fund deviate significantly from their Class Value per Share by a specified amount over a specified period of time, as set forth in the applicable AccuShares Fund prospectus, the AccuShares Fund will make a corrective distribution in addition to a regular distribution or special distribution on the next

⁴² The AccuShares Fund would engage in distributions of Paired Class Shares in order to maintain a net asset value sufficient to meet the net asset value expectations of certain institutional shareholders that condition their investment in ETPs to only those ETPs having more than a minimum amount of net assets. Consequently, Paired Class Share distributions will have the effect of preserving an AccuShares Fund's net assets (aggregate Class Values) to attract and retain these institutional investors and thereby increase the liquidity of the market for an AccuShares Fund's Shares for the benefit all of an AccuShares Fund's shareholders.

⁴³ For the minimum asset size Exchange listing standards, see proposed Rule 5713(f)(ii)(A)(iii).

scheduled regular distribution date or special distribution date if previously triggered.⁴⁴ In a corrective distribution, each Share (including those to be distributed on the related regular or special distribution date) will be resolved into a risk neutral position comprised of an equal number of Up Shares and Down Shares. The corrective distribution will distribute (1) a number of Down Shares equal to the number of outstanding Up Shares to the Up Shares holders and (2) a number of Up Shares equal to the number of outstanding Down Shares to the Down Shares holders. Once the requirements for a corrective distribution are triggered, the corrective distribution will occur on the next available regular or special distribution date.

Net Income Distributions

Whenever an AccuShares Fund engages in a regular or special distribution, such AccuShares Fund will determine whether any of its classes has a positive Net Investment Income. Shareholders of any class that has a positive Net Investment Income will receive a net income distribution. Net income distributions may occur for any class regardless of whether such class receives a regular or special distribution on that date.

Share Splits

Reverse share splits will be declared to maintain a positive Class Value per Share for either the Up Shares or the Down Shares of an AccuShares Fund should the Class Value per Share of either class approach zero. Reverse share splits are expected to occur in the context of special distributions and are expected to be triggered after Class Value per Share declines below

⁴⁴ The corrective distribution threshold for the VIX Fund will be a 10.0% deviation for three consecutive business days. The corrective distribution threshold for the AccuShares S&P GSCI Natural Gas Spot Fund will be a 7.5% deviation for three consecutive business days. The corrective distribution threshold for each of the other five AccuShares Funds will be a 5.0% deviation over three consecutive business days.

a specified dollar threshold as set forth in the applicable AccuShares Fund prospectus.⁴⁵ No other share splits are expected to occur, although the Sponsor will have the right to declare in its sole discretion a share split, either forward or reverse, pursuant to the Trust Agreement. In the event of a reverse share split, the Share Index Factors and the per Share calculations for Net Investment Income will be adjusted to reflect the split to maintain continuity in tracking the AccuShares Fund's Underlying Benchmark.

Notification

Each AccuShares Fund engaging in a regular distribution, a special distribution, a corrective distribution or a net income distribution will provide at least three business days' advance notice (or longer advance notice as may be required by the Exchange)⁴⁶ of such an event. Each AccuShares Fund engaging in a share split will provide at least ten calendar days' advance notice (or longer advance notice as may be required by the Exchange)⁴⁷ of such an event. In each instance, the Sponsor will notify the Exchange, and post a notice of such event and its details on the Sponsor's website (www.AccuShares.com).

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

⁴⁵ The specified dollar threshold for each AccuShares Fund will be \$4.00.

⁴⁶ The Exchange may determine that longer notice is advisable in some circumstances (e.g. an extended, or unexpected, market break).

⁴⁷ Id.

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

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

In addition, notice of net income distributions for each class of an AccuShares Fund, if any, will also be included in the notifications of regular, special and corrective distributions.

Information Available to the Public

Information about the AccuShares Trust, the AccuShares Funds and Shares will appear in the AccuShares Fund prospectuses as well as in periodic and current reports by the AccuShares Trust under the Exchange Act. Information about the AccuShares Trust, the AccuShares Funds and the Shares will also be available from the website www.AccuShares.com.

Intraday Indicative Value

For each AccuShares Fund, an estimated value, defined in proposed Rule 5713(f)(ii)(D) as the "Intraday Indicative Value," will be disseminated. The Intraday Indicative Value, made available by a major market vendor, will be based upon the previous day's Class Value per Share, as adjusted throughout the day based on changes in the value of the AccuShares Fund's Underlying Benchmark or the value of an equivalent front futures contract price, and will be updated and widely disseminated and broadly displayed on at least a 15-second delayed basis

during the Regular Market Session.⁴⁸ Premiums and discounts between a Share's Intraday Indicative Value and its Class Value per Share may occur. The Intraday Indicative Value should not be viewed as an actual real-time update of Class Value per Share because Class Value per Share is calculated only once at the end of each business day. The Intraday Indicative Value also should not be viewed as a precise value of the Shares. The dissemination of the Intraday Indicative Value will provide a close estimate of that value throughout the trading day.

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 an AccuShares Fund. NASDAQ will halt or pause trading in an AccuShares Fund's 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 for reasons that, in the view of the Exchange, make trading in the AccuShares Fund's Shares inadvisable.⁴⁹ Additionally, trading in an AccuShares

⁴⁸ The value of an equivalent futures contract price may be used for calculation of the IIV only (a) during such time that the value of the AccuShares Fund's Underlying Benchmark is unavailable, and (b) if the equivalent futures contract price is available and used in calculation of the Underlying Benchmark. Once the Underlying Benchmark becomes available again, the calculation of the AccuShares Fund's IIV promptly will resume based on the Underlying Benchmark. During such time that an equivalent futures contract price is utilized, the Sponsor will so note for the affected AccuShares Fund on its website at www.AccuShares.com. The substitution of equivalent futures contract price in lieu of the Underlying Benchmark value may be needed where the provider of the Underlying Benchmark is unable to use the Underlying Benchmark for calculation of the IIV due to unforeseen circumstances arising with the provider of the Underlying Benchmark or its service providers (e.g., technical or continuity issues). The Exchange, the Sponsor and the AccuShares Trust believe that a substitution of an equivalent futures contract price in lieu of an Underlying Benchmark value would rarely, if ever, occur.

⁴⁹ For instance, a trading halt may be instituted where unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Fund's Shares will be subject to proposed Rule 5713(f)(ii), which sets forth additional circumstances under which trading in Paired Class Shares may be halted.

If the intraday level of an AccuShares Fund's Underlying Benchmark or the Intraday Indicative Value is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the AccuShares Trust on behalf of each AccuShares Fund that the Class Value per Share of each of its Up Shares and Down Shares will be calculated daily and that these Class Values per Share and information about the assets of the AccuShares Fund will be made available to all market participants at the same time.

Availability of Information

The Sponsor's website (www.AccuShares.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each AccuShares Fund that may be downloaded. The Sponsor's website will include additional information updated on a daily basis, including, for each AccuShares Fund: (1) the prior business day's reported Class Values and Class Values per Share; and (2) notifications with respect to distributions and share splits.

Investors will also be able to obtain each AccuShares Fund's annual and quarterly reports (together, "Reports"). Each AccuShares Fund's Reports will be available free upon request from the AccuShares Trust, and those documents may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and

trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information will also be available via NASDAQ proprietary quote and trade services, as well as in accordance with any UTP plans for an AccuShares Fund's Shares, if applicable. The value of each AccuShares Fund's Underlying Benchmark will be published by one or more major market data vendors on at least a 15-second delayed basis during the Regular Market Session. Information about each AccuShares Fund's Underlying Benchmark constituents, the weighting of the constituents, the Underlying Benchmark's methodology and the Underlying Benchmark's rules will be available at no charge on the Index Provider's website at us.spindices.com or, in the case of the VIX Fund, the CBOE's website at www.cboe.com/VIX.

Additional information regarding the AccuShares Funds and the Shares, including risks, creation and redemption procedures, fees, distributions and taxes, is included in the Registration Statement.

Trading Rules

The Exchange deems the Shares to be equity securities, which include, among other things, exchange traded funds and exchange traded notes, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of such securities. The Exchange will allow trading Paired Class Shares during all trading sessions.⁵⁰ As provided in Rule 4613(a)(2)(I), the minimum quotation increment for quotations of \$1.00 and above in Paired Class Shares on the Exchange is \$0.01.

Surveillance

The Exchange represents that trading in Paired Class Shares will be subject to the existing trading surveillances, administered by both the Exchange and the Financial Industry

⁵⁰ See Commentary .02.

Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁵¹ The Exchange represents that these procedures are adequate to properly monitor trading of Paired Class Shares 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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Paired Class Shares and in the securities in which the AccuShares Fund will invest with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁵² In addition, FINRA may obtain trading information regarding trading in the Shares and in the securities in which the AccuShares Fund will invest with such markets and other entities; and the Exchange may obtain information regarding trading in the Shares and in the securities in which the AccuShares Fund will invest from markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

⁵¹ 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.

⁵² For a list of the current members of ISG, see www.isgportal.org.

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 Paired Class Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Paired Class Shares; (2) Rule 2111A, which imposes suitability obligations on Exchange members with respect to recommending transactions in Paired Class Shares to customers; (3) how information regarding the Underlying Benchmark and Intraday Indicative Value is disseminated; (4) the risks involved in trading Paired Class Shares during the Pre-Market and Post-Market sessions when an updated Underlying Benchmark and Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Paired Class Shares; (6) trading information; and (7) how information regarding distributions and share splits is disseminated and the requirements of public notification of these events.⁵³

The Exchange believes that its proposal to establish a rule to enable listing Paired Class Shares is, as noted, substantively similar to the Arca rule to establish listing PTS. In approving Arca's PTS Rule 8.400, the Commission stated that "...the Exchange's proposed rules and procedures for the listing and trading of the Paired Trust Shares are consistent with the Act. The Paired Trust Shares will trade as equity securities subject to the Exchange's existing rules governing the trading of equity securities."⁵⁴ Similarly, the Exchange's existing equity rules will be applicable to Paired Class Shares.

⁵³ In addition, the Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

⁵⁴ In the PTS approval order, the Commission stated further that it "...finds that proposed NYSE Arca Equities Rule 8.400(e) establishing certain restrictions on [members] acting as registered Market Makers in Paired Trust Shares is reasonably designed to address

The Exchange believes that this proposal will allow investors to execute trading and hedging decisions using a new product, Paired Class Shares, which offers the ability to invest in securities tied to increases or decreases in the prices of securities, commodities or other financial assets on an unleveraged basis. Paired Class Shares accomplishes this result without the need to replicate the return profile using other financial assets and thus reduces or avoids typical portfolio costs and risks, such as portfolio transaction costs, country risk, counterparty risk and liquidity risk associated with the underlying investments. As such, the Exchange believes that Paired Class Shares will benefit market participants and the market in general.⁵⁵

Moreover, we believe that the structure of Paired Class Shares in terms of paired Up Shares and Down Shares have characteristics that would provide unique benefits and opportunities to market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵⁷ in particular, in that it is

potential conflicts of interest in connection with [members] acting as registered Market Makers in Paired Trust Shares. The Commission believes that the listing and delisting criteria for the Paired Trust Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Paired Trust Shares.” See Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007)(SR-NYSEArca-2006-75).

⁵⁵ As discussed, the uniqueness of Paired Class Shares in comparison to PTS lies in the periodic distributions, periodic Share Index Factor resets, and active market monitoring of Paired Class Shares. These unique factors allow Paired Class Shares to provide investors with: (i) a reduction of persistent or cumulative deviations in share trading price to actual index performance; (ii) improved correlations over the life of the securities between percentage changes in the index and percentage changes in the share price of the Fund shares; and (iii) significant reduction of the need to liquidate the issuer in response to large movements in its related index.

⁵⁶ 15 U.S.C. 78f(b).

designed to promote just and equitable principles of trade, 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.⁵⁸

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that, to be listed, each Fund⁵⁹ must meet newly-established initial listing standards per proposed Rule 5713 that include: (1) a minimum number of Paired Class Shares for each Fund required to be outstanding at the time of commencement of trading on NASDAQ, (2) a representation from the Trust issuing Paired Class Shares on behalf of each Fund that the underlying value per share of each Up Share and Down Share will be calculated daily and that these underlying values and information about the assets of the Fund will be made available to all market participants at the same time, and (3) an appropriate “firewall” if the Underlying Benchmark is maintained by a broker-dealer or investment advisor. Similarly, once listed, each Fund must meet continued listing standards.

The proposed rule change is also designed to promote just and equitable principles of trade and to protect investors and the public interest through its distribution provision. Once listed each Fund may engage in (1) scheduled regular distributions, (2) special distributions that are automatically triggered upon the Underlying Benchmark exceeding a fixed rate of change since the Fund’s prior distribution date, and (3) corrective distributions that are automatically

⁵⁷ 15 U.S.C. 78f(b)(5).

⁵⁸ The proposal is likewise consistent with Section 11A(a)(1)(C)(iii) of the Act, 15 U.S.C. 78k-1(a)(1)(C)(iii), 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.

⁵⁹ The Exchange notes that the Statutory Basis discussion applies equally to the AccuShares Funds and the AccuShares Trust.

triggered when the trading price of a Paired Class Share deviates by a specified amount from its Class Value per Share for a specified period of time. These distributions provide investors with the expected value of their Paired Class Shares periodically as well as upon the occurrence of specified events, and are also expected to limit the frequency and magnitude of oscillations between fund trading price premiums and discounts to Class Value per Share.

Moreover, a large amount of information will be publicly available regarding the Funds and their Paired Class Shares, thereby promoting market transparency. The Intraday Indicative Value of each listed Up Share and Down Share of a Fund, and the intraday level of each Fund's Underlying Benchmark, will be widely disseminated by one or more major market data vendors, such as Reuters or Bloomberg, and broadly displayed on at least a 15-second delayed basis during the Regular Market Session. Information regarding market price and trading volume of each Fund's Up Shares and Down 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 will also be available via NASDAQ proprietary quote and trade services, as well as in accordance with any UTP plans for a Fund's paired Class Shares, if applicable.

Trading in a Fund's Paired Class Shares 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 for reasons that, in the view of the Exchange, make trading in the Paired Class Shares inadvisable, and trading in Paired Class Shares will be subject to proposed Rule 5713(f)(ii), which sets forth additional circumstances under which trading in Paired Class Shares may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's Intraday Indicative Values and Underlying Benchmark, as well as quotation and last sale information for each Fund's Paired Class Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, as noted above, investors will have ready access to information regarding each Fund's Intraday Indicative Values and Underlying Benchmark, as well as quotation and last sale information for each Fund's Paired Class 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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that no burden exists in that no other Exchange has a listing rule regarding this product. Paired Class Shares represent a significant improvement over a product that is no longer traded, PTS, because of the periodic distributions, periodic index resets, and active market monitoring of Paired Class Shares. These unique factors allow Paired Class Shares to provide investors with: (i) a reduction of persistent or cumulative deviations in share trading price to actual index performance; (ii) improved correlations over the life of the securities between percentage changes in the index and the percentage changes in the share price of the shares; and (iii) significant reduction of the need to liquidate the issuer in response to large movements in its related index, which represent significant benefits to traders and investors.

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 after publication (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. Please include File Number SR-NASDAQ-2014-065 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-2014-065. 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 such 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-2014-065, 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.⁶⁰

Kevin M. O'Neill
Deputy Secretary

⁶⁰ 17 CFR 200.30-3(a)(12).