

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78150; File No. SR-NASDAQ-2016-086)

June 24, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to List and Trade the Shares of the VanEck Vectors Long/Flat Commodity ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 10, 2016, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the shares of the VanEck Vectors Long/Flat Commodity ETF (the “Fund”), a series of VanEck Vectors ETF Trust (“Trust”), under Nasdaq Rule 5735 (“Managed Fund Shares”). The shares of the Fund are collectively referred to herein as the “Shares.”

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

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

proposed rule change. The text of these 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares<sup>3</sup> on the Exchange.<sup>4</sup> The Fund will be an actively managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust, which was organized as a Delaware statutory trust on March 15, 2001.<sup>5</sup> The Trust is

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<sup>3</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the “1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>4</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039). The Fund would not be the first actively-managed fund listed on the Exchange; see Securities Exchange Act Release No. 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

<sup>5</sup> The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act (the “Exemptive Order”). See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust’s application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

registered with the Commission as an investment company and has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission.<sup>6</sup> The Fund is a series of the Trust.

Van Eck Absolute Return Advisers Corporation will be the investment adviser (“Adviser”) and the administrator to the Fund. Van Eck Securities Corporation (“Distributor”) will be the distributor of the Fund’s Shares. The Bank of New York Mellon (“Custodian”) will act as the custodian of the Fund’s assets and provide transfer agency and fund accounting services to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, paragraph (g) further requires that personnel who make

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<sup>6</sup> See Registration Statement on Form N-1A for the Trust, dated November 12, 2015 (File Nos. 333-123257 and 811-10325). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a

decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) operates in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.

The Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's (including the Subsidiary's) portfolio.

In the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

#### VanEck Vectors Long/Flat Commodity ETF

The Fund's investment objective will be to seek long-term capital appreciation while seeking to manage volatility and reduce downside risk during sustained market declines.

#### Principal Investment Strategies

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supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

The Fund will be an actively managed ETF that seeks to achieve its investment objective by investing, under normal circumstances, in exchange-traded commodity futures contracts and, under certain limited circumstances, other commodity-linked instruments (“Other Commodity Instruments”<sup>8</sup>) and, collectively with exchange-traded commodity futures contracts, “Commodities Instruments”).

The Fund will invest in Commodities Instruments primarily through a wholly-owned subsidiary of the Fund organized under the laws of the Cayman Islands (“Subsidiary”). The Subsidiary will be advised by the Adviser.

With respect to the exchange-traded commodity futures contracts and options on futures contracts (if applicable) held, not more than 10% of the weight<sup>9</sup> of such futures contracts and options on futures contracts in the aggregate shall consist of instruments whose principal trading market is not a member of the Intermarket Surveillance Group (“ISG”) or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Fund (directly or indirectly through the Subsidiary) will normally invest in exchange-traded commodity futures contracts that are components of the Morningstar<sup>®</sup> Long/Flat Commodity Index<sup>SM</sup> (“Benchmark”), an index composed of futures contracts on 20 heavily traded commodities across the energy, agriculture, industrial metals, precious metals, and livestock sectors. The Adviser will employ a rules-based investment approach when selecting Commodities Instruments based upon momentum characteristics of the Commodities Instruments. Commodities Instruments are assessed on a monthly basis by comparing current

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<sup>8</sup> Other Commodity Instruments will include commodity-based swap agreements cleared through a central clearing house or the clearing house’s affiliate (“Cleared Swaps”), forward contracts on commodities, exchange-traded options on futures contracts, and commodity-based swaps other than Cleared Swaps.

<sup>9</sup> To be calculated as the value of the contract divided by the total absolute notional value of the Fund’s futures contracts and options on futures contracts.

prices to 12-month moving averages. The Fund's positions will be either long<sup>10</sup> or flat.<sup>11</sup> The Fund intends to take long positions in those Commodities Instruments whose prices are above their 12-month moving average. Conversely, the Fund intends to take flat positions to manage volatility and reduce downside risk for those Commodities Instruments whose prices are below their 12-month moving average. The Fund will not be an "index tracking" ETF and may not always invest in all of the Benchmark's components, or in the same proportion, and it may invest in Commodities Instruments outside the Benchmark.

The Subsidiary will be an exempted company operating under Cayman Islands law. It will be wholly-owned and controlled by the Fund and will be advised by the Adviser. The Fund's investment in the Subsidiary may not exceed 25% of the value of the Fund's total assets at each quarter-end of the Fund's fiscal year. The Fund's investment in the Subsidiary is expected to provide the Fund with exposure to Commodities Instruments within the limits of the federal tax laws, which limit the ability of investment companies like the Fund to invest directly in such instruments. The Subsidiary will have the same investment objective as the Fund and will follow the same general investment policies and restrictions, except that unlike the Fund, it may invest without limit in Commodities Instruments.

The Fund (and the Subsidiary, as applicable) expects to invest its remaining assets in any one or more of the following: U.S. government securities,<sup>12</sup> money market funds, cash and other

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<sup>10</sup> A "long" position is a position that will increase in market price if the price of the commodity futures contract is rising during the period when the position is open.

<sup>11</sup> A "flat" position is a position that will not increase or decrease in market price whether the price of the commodity futures contract to which it relates is rising or falling.

<sup>12</sup> Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the "full faith and credit" of the U.S. government. Securities issued or

cash equivalents,<sup>13</sup> treasury inflation-protected securities, sovereign debt obligations of non-U.S. countries and repurchase agreements that provide liquidity, serve as margin or collateralize the Fund's or the Subsidiary's investments in exchange-traded commodity futures contracts.

The Fund also may invest directly in ETFs, exchange-traded closed end funds (to the extent permitted by the 1940 Act, and certain exemptive relief therefrom), and exchange-traded notes ("ETNs") that provide exposure to commodities.<sup>14</sup>

As previously noted, the Subsidiary will be advised by the Adviser.<sup>15</sup> The Subsidiary will typically consider investing in futures contracts of the Benchmark ("Index Commodity

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guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

<sup>13</sup> Cash equivalents will include banker's acceptances, commercial paper, and certificates of deposit.

<sup>14</sup> An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs in which the Fund invests will be listed and traded in the U.S. on registered exchanges. The ETFs in which the Fund will invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges, or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange. An ETN is a senior, unsecured, unsubordinated debt security issued by an underwriting bank that, similar to other debt securities, has a maturity date and is backed only by the credit of the issuer. ETNs in which the Fund invests will be listed and traded in the U.S. on registered exchanges. The ETNs in which the Fund will invest include Securities Linked to the Performance of Indexes and Commodities, Including Currencies (as described in Nasdaq Rule 5710), and Index-Linked Exchangeable Notes (as described in Nasdaq Rule 5711). The Fund will not hold inverse, leveraged, and inverse leveraged ETFs or ETNs. Leveraged instruments are operated in a manner designed to seek a multiple of the performance of an underlying reference index, and inverse instruments are designed to seek investment results that correspond to the inverse (opposite) of the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof.

<sup>15</sup> The Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. However, the

Contracts”) set forth in the following table. The table also provides each instrument’s trading hours, exchange (“Futures Exchange”) and ticker symbol. The table is subject to change.

<u>Contract Ticker</u>	<u>Exchange</u>	<u>Code</u>	<u>Exchange Name</u>	<u>Commodity Contract</u>	<u>Trading Hours (ET)</u>
<u>(Bloomberg)</u>	<u>(Bloomberg)</u>	<u>Code</u>	<u>Exchange Name</u>	<u>Commodity Contract</u>	<u>Trading Hours (ET)</u>
<u>Generic)</u>	<u>(Bloomberg)</u>	<u>Code</u>	<u>Exchange Name</u>	<u>Commodity Contract</u>	<u>Trading Hours (ET)</u>
BO1	CBT	CBT	Chicago Board of Trade	Soybean Oil / Crude	20:00-14:20
C 1	CBT	CBT	Chicago Board of Trade	Corn / No. 2 Yellow	20:00-14:20
CO1	ICE	ICE	ICE Futures Europe	Crude Oil Brent / Global Spot	20:00-18:00
CL1	NYM	NYM	New York Mercantile Exchange	Crude Oil WTI / Global Spot	18:00-17:15

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Subsidiary will be wholly-owned and controlled by the Fund and will be advised by the Adviser. The Trust’s board (“Board”) will have oversight responsibility for the investment activities of the Fund, including its investment in the Subsidiary, and the Fund’s role as the sole shareholder of the Subsidiary. The Adviser will receive certain fees for managing the Subsidiary’s assets and the Adviser will waive or credit such amounts against the fees payable to the Adviser by the Fund. It is expected that the Subsidiary will become party to the existing custody agreement, transfer agency agreement and accounting agreement of the Trust and Fund.

<sup>16</sup> The exchange codes listed are Bloomberg shorthand codes for the corresponding exchanges. The New York Board of Trade is currently owned by the ICE Futures Exchange; Bloomberg continues to use NYB as its shorthand code for certain contracts formerly traded on the New York Board of Trade.

<sup>17</sup> All of the exchanges are ISG members.



<u>Contract Ticker</u>	<u>Exchange</u>	<u>Trading</u>
<u>(Bloomberg</u>	<u>Code</u>	<u>Hours (ET)</u>
<u>Generic)</u>	<u>(Bloomberg)</u> <sup>16</sup>	<u>Exchange Name</u> <sup>17</sup>
		<u>Commodity Contract</u>
CT1	NYB	ICE Futures US Softs
		Cotton / 1-1/16"
		21:00-14:20
GC1	CMX	Commodity Exchange, Inc.
		Gold
		18:00-17:15
HG1	CMX	Commodity Exchange, Inc.
		Copper High Grade / Scrap No. 2 Wire
		18:00-17:15
HO1	NYM	New York Mercantile Exchange
		Heating Oil #2 / Fuel Oil
		18:00-17:15
KC1	NYB	ICE Futures US Softs
		Coffee 'C' /Colombian
		04:15-13:30
LC1	CME	Chicago Mercantile Exchange
		Cattle Live / Choice Average
		09:00-17:00
QS1	ICE	ICE Futures Europe Commodities
		Gas-Oil-Petroleum
		20:00-18:00
LH1	CME	Chicago Mercantile Exchange
		Hogs Lean / Average Iowa/S Minn
		09:00-17:00

<u>Contract Ticker</u>	<u>Exchange</u>	<u>Trading</u>
<u>(Bloomberg</u>	<u>Code</u>	<u>Hours (ET)</u>
<u>Generic)</u>	<u>(Bloomberg)</u> <sup>16</sup>	<u>Exchange Name</u> <sup>17</sup>
		<u>Commodity Contract</u>
NG1	NYM	New York Mercantile Exchange
		Natural Gas Henry Hub
		18:00-17:15
XB1	NYM	New York Mercantile Exchange
		Gasoline Blendstock
		18:00-17:15
S 1	CBT	Chicago Board of Trade
		Soybeans / No. 2 Yellow
		20:00-14:20
SB1	NYB	ICE Futures US
		Sugar #11/World Raw Softs
		03:30-13:00
SI1	CMX	Commodity Exchange, Inc.
		Silver
		18:00-17:15
SM1	CBT	Chicago Board of Trade
		Soybean Meal / 48% Protein
		20:00-14:20
W 1	CBT	Chicago Board of Trade
		Wheat / No. 2 Soft Red
		20:00-14:20
CC1	NYB	ICE Futures US
		Cocoa / Ivory Coast Softs
		04:45-13:30

As U.S. and London exchanges list additional contracts, as currently listed contracts on those exchanges gain sufficient liquidity or as other exchanges list sufficiently liquid contracts,

the Adviser may include those contracts in the list of possible investments of the Subsidiary. The list of commodities futures and commodities markets considered for investment may change over time.

### Other Investments

The Fund currently intends to invest first in exchange-traded commodity futures contracts. Thereafter, if the Fund reaches the position limits applicable to one or more Index Commodity Contracts or a Futures Exchange imposes limitations on the Fund's ability to maintain or increase its positions in an exchange-traded commodity futures contract after reaching accountability levels or a price limit is in effect on an exchange-traded commodity futures contract during the last 30 minutes of its regular trading session, the Fund's intention is to invest first in Cleared Swaps to the extent permitted under the position limits applicable to Cleared Swaps and appropriate in light of the liquidity in the Cleared Swaps market, and then, using its commercially reasonable judgment, in Other Commodity Instruments.

The Fund may also invest in commodity-related foreign and domestic equity securities<sup>18</sup>.

### Commodities Regulation

The Commodity Futures Trading Commission ("CFTC") has recently adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator.<sup>19</sup> As a result of the amendments and based on the Fund's and its Subsidiary's current investment strategies, the Fund and the Subsidiary will each be a "commodity pool" and the Adviser, which is currently registered with

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<sup>18</sup> Commodity-related foreign and domestic equity securities will be comprised of exchange-traded common stocks of companies that operate in commodities, natural resources and energy businesses, and in associated businesses, as well as companies that provide services or have exposure to such businesses.

<sup>19</sup> 17 CFR 4.5. See, e.g., 77 FR 11252 (Feb. 24, 2014); 77 FR 17328 (March 26, 2012).

the CFTC as a commodity pool operator (“CPO”) and a commodity trading adviser under the Commodity Exchange Act of 1936, is considered a CPO with respect to the Fund and the Subsidiary. The Adviser is also a member of the National Futures Association (“NFA”). The Fund will be and the Adviser is subject to regulation by the CFTC and the Commission and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools.

Investment Restrictions of the Fund<sup>20</sup>

The Fund may not make loans, except that it may (i) lend portfolio securities, (ii) enter into repurchase agreements, (iii) purchase all or a portion of an issue of debt securities, bank loan or participation interests, bank certificates of deposit, bankers’ acceptances, debentures or other securities, whether or not the purchase is made upon the original issuance of the securities, and (iv) participate in an interfund lending program with other registered investment companies, all in accordance with the 1940 Act.

The Fund may not borrow money, except as permitted under the 1940 Act, and as interpreted or modified by regulation from time to time. The Fund also may not issue senior securities, except as permitted under the 1940 Act, and as interpreted or modified by regulation from time to time.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment).<sup>21</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

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<sup>20</sup> Percentage limitations of the investment restrictions set forth herein are measured at the time of investment.

<sup>21</sup> In reaching liquidity decisions, the Adviser may consider factors such as but not limited to the following: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>22</sup> An illiquid security is generally considered to be a security that cannot be sold or disposed of in the ordinary course of business within seven days at or near its carrying value.

The Fund may not purchase any security if, as a result of that purchase, 25% or more of its total assets would be invested in securities of issuers having their principal business activities in the same industry. This limit does not apply to securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or securities of other investment companies.

#### Determination of Net Asset Value

The net asset value ("NAV") per Share for the Fund will be computed by dividing the value of the net assets of the Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund

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<sup>22</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

will be determined each business day as of the close of trading (ordinarily 4:00 p.m. Eastern Time) on the Nasdaq. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The values of the Fund's portfolio securities will be valued in accordance with the Trust's valuation policies and procedures which may be amended from time to time. Included herein is a description of how various types of securities and instruments will be valued based on the current valuation policies and procedures for the Trust. ETFs, exchange-traded closed-end funds, ETNs, and commodity-related foreign and domestic equity securities, will be based on the securities' closing prices on local markets, when available. Due to the time differences between the United States and certain countries, securities on these non-U.S. exchanges may not trade at times when Shares of the Fund will trade. In the absence of a last reported sales price, or if no sales were reported, and for other assets for which market quotes are not readily available, values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service using data reflecting the earlier closing of the principal markets for those securities. U.S. government securities, treasury inflation-protected securities and sovereign debt obligations of non-U.S. countries will normally be valued on the basis of quotes from brokers or dealers, established market makers or an outside independent pricing service. Short-term investments purchased with a remaining maturity of 60 days or less, including repurchase agreements and cash equivalents, will be valued on the basis of quotes from broker dealers, established major market makers, an independent pricing service or at amortized cost. Money market funds will be valued at their reported closing NAV. Futures contracts and options on futures contracts, which are traded on exchanges, will be valued at the current settle

price for like contracts acquired on the day on which the futures contract will be valued as of the close of such exchanges.

Other Commodity Instruments not traded on exchanges will generally be valued daily based upon quotations from market makers or by a pricing service and in accordance with the Trust's valuation policies and procedures. Prices obtained by an outside independent pricing service may use information provided by market makers or estimates of market values obtained from yield data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities. If a market quotation for a security is not readily available or the Adviser believes it does not otherwise accurately reflect the market value of the security at the time the Fund calculates its NAV, the security will be fair valued by the Adviser in accordance with the Trust's valuation policies and procedures approved by the Board of Trustees.

The Fund may also use fair value pricing in a variety of circumstances, including but not limited to, situations when the value of a security or instrument in the Fund's portfolio has been materially affected by events occurring after the close of the market on which the security or instrument is principally traded (such as a corporate action or other news that may materially affect the price of a security) or trading in a security or instrument has been suspended or halted.

In addition, the Fund expects that it will fair value certain of the foreign equity securities held by the Fund each day it calculates its NAV, except those securities principally traded on exchanges that close at the same time the Fund calculates its NAV. Accordingly, the Fund's NAV may reflect certain portfolio securities' or instruments' fair values rather than their market prices at the time the exchanges on which they principally trade close. Fair value pricing

involves subjective judgments and it is possible that a fair value determination for a security or instrument will be materially different than the value that could be realized upon the sale of the security or instrument. With respect to securities or instruments that are principally traded on foreign exchanges, the value of the Fund's portfolio securities or instruments may change on days when you will not be able to purchase or sell your Shares.

#### Creation and Redemption of Shares

The Trust will issue and sell Shares of the Fund only to authorized participants ("Authorized Participants") and only in aggregations of 50,000 Shares (each, a "Creation Unit"), on a continuous basis through the Distributor, without an initial sales load, at their NAV next determined after receipt, on any Business Day,<sup>23</sup> of an order in proper form.

The consideration for a purchase of Creation Units will generally consist of cash and/or the in-kind deposit of a designated portfolio of securities ("Deposit Securities") and an amount of cash computed as described below ("Cash Component"). The Cash Component together with the Deposit Securities, as applicable, will be referred to as the "Fund Deposit," which represents the minimum initial and subsequent investment amount for Shares. The Cash Component will represent the difference between the NAV of a Creation Unit and the market value of Deposit Securities and may include a Dividend Equivalent Payment. The "Dividend Equivalent Payment" will enable the Fund to make a complete distribution of dividends on the next dividend payment date, and will be an amount equal, on a per Creation Unit basis, to the dividends on all the securities held by the Fund ("Fund Securities") with ex-dividend dates within the

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<sup>23</sup> A "Business Day" with respect to the Fund is any day on which Nasdaq is open for business. As of the date of this filing, the Nasdaq observes the following holidays: New Year's Day, Martin Luther King, Jr. Day, President's Day (Washington's Birthday), Good Friday, Memorial Day (observed), Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.



accumulation period for such distribution (the “Accumulation Period”), net of expenses and liabilities for such period, as if all of the Fund Securities had been held by the Trust for the entire Accumulation Period. The Accumulation Period will begin on the ex-dividend date for the Fund and will end on the next ex-dividend date.

The Administrator, through the NSCC, will make available on each Business Day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern Time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) as well as the Cash Component for the Fund. Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced Fund Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund may change as rebalancing adjustments and corporate action events occur from time to time. In addition, the Trust will reserve the right to accept a basket of securities or cash that differs from Deposit Securities or to permit or require the substitution of an amount of cash (i.e., a “cash in lieu” amount) to be added to the Cash Component to replace any Deposit Security which may, among other reasons, not be available in sufficient quantity for delivery or not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention or which may not be eligible for transfer through the Clearing Process , or which may not be eligible for trading by a Participating Party (defined below).

In light of the foregoing, in order to seek to replicate the in-kind creation order process, the Trust expects to purchase the Deposit Securities represented by the cash in lieu amount in the

secondary market (“Market Purchases”). In such cases where the Trust makes Market Purchases because a Deposit Security may not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention, or for other reasons, the Authorized Participant will reimburse the Trust for, among other things, any difference between the market value at which the securities were purchased by the Trust and the cash in lieu amount (which amount, at the Adviser’s discretion, may be capped), applicable registration fees and taxes.

Brokerage commissions incurred in connection with the Trust’s acquisition of Deposit Securities will be at the expense of the Fund and will affect the value of all Shares of the Fund; but the Adviser may adjust the transaction fee to the extent the composition of the Deposit Securities changes or cash in lieu is added to the Cash Component to protect ongoing shareholders. The adjustments described above will reflect changes, known to the Adviser on the date of announcement to be in effect by the time of delivery of the Fund Deposit, resulting from stock splits and other corporate actions.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through the NSCC, will also make available (i) on each Business Day, the Dividend Equivalent Payment, if any, and the estimated Cash Component effective through and including the previous Business Day, per outstanding Shares of the Fund, and (ii) on a continuous basis throughout the day, the Indicative Optimized Portfolio Value (“IOPV”).

To be eligible to place orders with the Distributor to create and redeem Creation Units of the Fund, an Authorized Participant must be (1) a “Participating Party,” i.e., a broker-dealer or other participant in the Clearing Process through the Continuous Net Settlement System of the

NSCC; or (2) a DTC Participant; and, in either case, must have executed an agreement with the Distributor and the Transfer Agent (as it may be amended from time to time in accordance with its terms) with respect to the purchases and redemptions of Creation Units. All Creation Units of the Fund, however created, will be entered on the records of the Depository in the name of Cede & Co. for the account of a DTC Participant.

All orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on Nasdaq (“Closing Time”) (ordinarily 4:00 p.m., Eastern Time) on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the Fund as determined on such date.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor, only on a Business Day and only through a Participating Party or DTC Participant who has executed a Participant Agreement. In order to redeem Creation Units, an Authorized Participant must submit an order to redeem for one or more Creation Units. All such orders must be received by the Distributor in proper form no later than Closing Time in order to receive the day’s closing NAV per share.

To the extent the Fund’s redemptions are effected in-kind, the Administrator, through NSCC, makes available immediately prior to the opening of business on the Exchange (currently, 9:30 a.m., Eastern Time) on each day that the Nasdaq is open for business, the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day.

Unless cash redemptions are permitted or required for the Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities as announced by the Administrator on the Business Day of the request for redemption, plus cash in an amount equal to the difference

between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less the redemption transaction fee and applicable variable fees. Should the Fund Securities have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. The Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Fund Securities.

#### Availability of Information

The Fund's website ([www.vaneck.com](http://www.vaneck.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in Nasdaq Rule 5735(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>24</sup>

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<sup>24</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

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

In addition, a basket composition file, which includes the security names and quantities required to be delivered in exchange for the Fund’s Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via NSCC. The basket represents one Creation Unit of the Fund.

Also, for the Fund, an IOPV,<sup>25</sup> defined in Rule 5735(c)(3) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio (including the Subsidiary’s portfolio), will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service<sup>26</sup> will be based upon the

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<sup>25</sup> The IOPV will be based on the current value of the securities and other assets held by the Fund and the Subsidiary using market data converted into U.S. dollars at the current currency rates. The IOPV price will be based on quotes and closing prices from the securities’ local market and may not reflect events that occur subsequent to the local market’s close. Premiums and discounts between the IOPV and the market price may occur. The IOPV will not necessarily reflect the precise composition of the current portfolio of securities and assets held by a Fund at a particular point in time or the best possible valuation of the current portfolio. Therefore, the IOPV should not be viewed as a “real-time” update of a Fund’s NAV, which will be calculated only once a day. The quotations of certain Fund holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States.

<sup>26</sup> Currently, the NASDAQ OMX Global Index Data Service (“GIDS”) is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary

current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.

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

Intra-day, executable price quotations on the exchange-traded assets held by the Fund and the Subsidiary, including futures contracts, options on futures contracts, ETFs, ETNs, closed-end funds and foreign and domestic equity securities are expected to be available on the exchange on which they are traded. Intra-day, executable price quotations on swaps, money market funds, forward contracts, U.S. government securities, cash and other cash equivalents, treasury inflation-protected securities, sovereign debt obligations of non-U.S. countries and repurchase agreements will be available from major broker-dealer firms. Intra-day price information will also be available through subscription services, such as Bloomberg and Reuters. Additionally, the Trade Reporting and Compliance Engine (“TRACE”) of the Financial Industry Regulatory Authority (“FINRA”) will be a source of price information for certain fixed income securities held by the Fund.

Investors will also be able to obtain the Fund’s Statement of Additional Information (“SAI”), the Fund’s Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Fund’s SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or

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messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. Quotation and last sale information for any underlying exchange-traded equity will also be available via the quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans. Quotation and last sale information for any underlying exchange-traded options will also be available via the quote and trade service of their respective primary exchanges. Quotation and last sale information for any underlying exchange-traded futures contracts will be available via the quote and trade service of their respective primary exchanges.

Information on the Morningstar Long/Flat Commodity Index<sup>SM</sup> will be available on the Morningstar Indexes website ([www.indexes.morningstar.com](http://www.indexes.morningstar.com)).

#### Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A-3<sup>27</sup> under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the

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<sup>27</sup> See 17 CFR 240.10A-3.

NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

#### Trading Halts

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

#### Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is \$0.01.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority



(“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>28</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows, and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading information it can obtain relating to the Shares, other exchange-traded securities and other assets held by the Fund and the Subsidiary, which include exchange-traded commodity-related equity securities, exchange-traded futures contracts, exchange-traded options on futures contracts, ETNs, ETFs and exchange-traded closed-end funds, with other markets and other entities that are members of the ISG<sup>29</sup> and FINRA may obtain trading information regarding trading in the Shares, and such exchange-traded securities and other assets held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, and such exchange-traded securities and other assets held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which

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<sup>28</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>29</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

In addition, with respect to the exchange-traded futures contracts and options on futures contracts held, not more than 10% of the weight<sup>30</sup> of such futures contracts and options on futures contracts in the aggregate shall consist of instruments whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Not more than 10% of the equity securities (including shares of ETFs, closed-end funds, and commodity-related foreign and domestic equity securities) and ETNs in which the Fund may invest will be invested in securities that trade in markets that are not members of the ISG or are not parties to a comprehensive surveillance sharing agreement with the Exchange. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how and by whom the information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated;

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<sup>30</sup> To be calculated as the value of the contract divided by the total absolute notional value of the Fund's futures contracts.

(4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

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

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

#### Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in

compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

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

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

The Fund's and the Subsidiary's investments will be consistent with the Fund's investment objective and although certain investments will have a leveraging effect on the Fund,

the Fund will not seek leveraged returns. FINRA may obtain information via ISG from other exchanges that are members of ISG.

In addition, the Exchange may obtain information regarding trading in the Shares, other exchange-traded securities and other assets held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. With respect to the futures contracts held, not more than 10% of the weight<sup>31</sup> of such futures contracts and options on futures contracts in the aggregate shall consist of instruments whose principal trading market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Not more than 10% of the equity securities (including shares of ETFs and closed-end funds, and commodity-related foreign and domestic equity securities) and ETNs in which the Fund may invest will be invested in securities that trade in markets that not members of the ISG or are not parties to a comprehensive surveillance sharing agreement with the Exchange.

The Fund will invest up to 25% of its total assets in the Subsidiary as measured at each quarter-end of the Fund's fiscal year end. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will use the fixed-income securities as investments and to collateralize the Fund's or the Subsidiary's commodity exposure on a day-to-day basis. The Fund may also invest directly in ETFs and

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<sup>31</sup> To be calculated as the value of the contract divided by the total absolute notional value of the Fund's futures contracts.

exchange-traded closed-end funds, that provide exposure to commodities, equity securities and fixed income securities to the extent permitted under the 1940 Act.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio of the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. Intra-day price information will be available through subscription services, such as Bloomberg and Reuters.

The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of

market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading information it can obtain relating to the Shares, other exchange-traded securities and other assets held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares, other exchange-traded securities and other assets held by the Fund and the Subsidiary from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares, other exchange-traded securities and other assets held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, FINRA's TRACE will be a source of price information for certain fixed income securities held by the Fund. Furthermore, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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

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

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) by order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

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



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-086 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-2016-086. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website <http://www.sec.gov/rules/sro.shtml>. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. 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-2016-086 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

Brent J. Fields  
Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).