

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78533; File No. SR-NASDAQ-2016-086)

August 10, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade the Shares of the VanEck Vectors Long/Flat Commodity ETF

I. Introduction

On June 10, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the VanEck Vectors Long/Flat Commodity ETF (“Fund”) under Nasdaq Rule 5735. The Commission published notice of the proposed rule change in the Federal Register on June 30, 2016.<sup>3</sup> On July 15, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 78150 (Jun. 24, 2016), 81 FR 42768 (“Notice”).

<sup>4</sup> In Amendment No. 1 the Exchange clarified the usage of the defined terms used for commodities instruments in the portfolio and clarified the application of the percentage limitation on equity securities that trade in markets that are not members of the Intermarket Surveillance Group (“ISG”) or are not parties to a comprehensive surveillance sharing agreement with the Exchange. Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2016-086/nasdaq2016086-1.pdf>. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

## II. Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by VanEck Vectors ETF Trust ("Trust"), which was organized as a Delaware statutory trust on March 15, 2001.<sup>5</sup> The investment adviser and the administrator to the Fund will be Van Eck Absolute Return Advisers Corporation ("Adviser"), and the Fund currently does not intend to use a sub-adviser.<sup>6</sup> Van Eck Securities Corporation ("Distributor") will be the distributor of the Fund's Shares. The Bank of New York Mellon will act as the custodian of the Fund's assets and provide transfer agency and fund accounting services to the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including the Fund's portfolio holdings and investment restrictions.<sup>7</sup>

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<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission. See Registration Statement on Form N-1A for the Trust, dated November 12, 2015 (File Nos. 333-123257 and 811-10325). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 29571 (Jan. 24, 2011) (File No. 812-13601).

<sup>6</sup> According to the Exchange, the Adviser is not a broker-dealer, although it is affiliated with Van Eck Securities Corporation, 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 a 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 or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of, and changes to, the portfolio. In addition, personnel who make decisions on each Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

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

A. Exchange's Description of the Fund's Principal Investments

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. The Fund will seek 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 as set forth in "Other Investments" hereunder (collectively, "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").<sup>8</sup>

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

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distributions, and taxes, among other information, is included in the Notice, as modified by Amendment No. 1 thereto, and the Registration Statement, as applicable. See Notice, Amendment No. 1 to the proposed rule change, and Registration Statement, supra notes 3, 4, and 5, respectively, and accompanying text.

<sup>8</sup> The Subsidiary will be wholly-owned and controlled by the Fund and will be advised by the Adviser. The Exchange represents that 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. In addition, 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. 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.

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 prices to 12-month moving averages. The Fund's positions will be either long<sup>9</sup> or flat.<sup>10</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.<sup>11</sup>

B. Exchange's Description of the Fund's Non-Principal Investments

As noted above, the Fund intends to invest first in exchange-traded commodity futures contracts. However, in the event the Fund reaches the position limits applicable to one or more exchange-traded commodity futures 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

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<sup>9</sup> For the purposes of this filing, 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>10</sup> For the purposes of this filing, 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>11</sup> See Notice, supra note 3, 81 FR at 42770 (providing, in table format, detailed information relating to each of the commodity futures contracts in the Benchmark, including each instrument's trading hours, futures exchange, and ticker symbol). The Exchange represents that all of the futures exchanges represented in the Benchmark are members of ISG.

commodity futures contract during the last 30 minutes of its regular trading session, the Fund's intention is to invest first in commodity-based swap agreements cleared through a central clearing house or the clearing house's affiliate ("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 forward contracts on commodities, exchange-traded options on futures contracts, and commodity-based swaps other than Cleared Swaps (collectively, including Cleared Swaps, "Other Commodity 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 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 exchange-traded funds ("ETFs"),<sup>14</sup> exchange-traded closed end funds (to the extent permitted by the 1940 Act and certain exemptive relief issued in

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<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 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> 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

thereunder), and exchange-traded notes (“ETNs”) that provide exposure to commodities.<sup>15</sup> The Fund may also invest in commodity-related foreign and domestic equity securities.<sup>16</sup>

C. Exchange’s Descriptions of the Fund’s Investment Restrictions

According to the Exchange, 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. In addition, 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>17</sup> The Fund will monitor its portfolio liquidity on an

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Exchange. The Exchange represents that the Fund will not hold inverse, leveraged, and inverse leveraged ETFs. See Notice, supra note 3, 81 FR at 42770, n.14.

<sup>15</sup> 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 Exchange represents that the Fund will not hold inverse, leveraged, and inverse leveraged ETNs. See id.

<sup>16</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>17</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

ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. 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. 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.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>18</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Exchange Act,<sup>19</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

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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).

<sup>18</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>20</sup> which sets forth the finding of Congress 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. According to the Exchange, 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.

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

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<sup>20</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).



the end of the business day.<sup>21</sup> In addition, an estimated value of the Fund, defined in Exchange Rule 5735(c)(3) as “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio (including the Subsidiary’s portfolio), will be disseminated. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service<sup>22</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.<sup>23</sup> The NAV of the Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m. Eastern Time) on Nasdaq.<sup>24</sup> In addition, a basket composition file, which includes the security names and

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<sup>21</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). 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.

<sup>22</sup> The Exchange states that the NASDAQ OMX Global Index Data Service (“GIDS”) is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. See Notice, supra note 3, 81 FR at 42773, n.26.

<sup>23</sup> The Exchange represents that 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. See id. at 42773.

<sup>24</sup> According to the Exchange, 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,

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.

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

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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.

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.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. 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.<sup>25</sup> Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority<sup>26</sup> that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the

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<sup>25</sup> 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.

<sup>26</sup> Nasdaq Rule 5730(c)(4) defines “Reporting Authority.”

portfolio.<sup>27</sup> In addition, Nasdaq Rule 5735(g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Exchange states that the Adviser is affiliated with the Distributor, a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.<sup>28</sup>

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

(1) The Shares will conform to the initial and continued listing criteria under Nasdaq Rule 5735.<sup>29</sup>

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<sup>27</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

<sup>28</sup> See *supra* note 6. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("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 supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>29</sup> See Notice, *supra* note 3, 81 FR at 42774.

(2) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the FINRA on behalf of the Exchange, and 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.<sup>30</sup>

(3) 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, 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 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.<sup>31</sup>

(4) With respect to the exchange-traded commodity futures contracts and options on futures contracts (if applicable) held, not more than 10% of the weight of such futures contracts

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<sup>30</sup> See id. 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. See id. at 42774, n.28.

<sup>31</sup> See id. at 42774.

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. In addition, 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, in the aggregate, 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.

(5) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

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

(7) For initial and/or continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A-3 under the Exchange Act.<sup>32</sup>

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<sup>32</sup> See 17 CFR 240.10A-3.

(8) The Fund will not hold inverse, leveraged, and inverse leveraged ETFs or ETNs.<sup>33</sup>

(9) As noted above, the Fund (directly or indirectly through the Subsidiary) intends to invest principally in exchange-traded commodity futures contracts. Only in the event the Fund reaches the position limits applicable to one or more exchange-traded commodity futures 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 (other than Cleared Swaps).

(10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser.

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

The Commission notes that the Fund and the Shares must comply with the initial and continued listing criteria in Nasdaq Rule 5735 for the Shares to be listed and traded on the Exchange. In addition, the Exchange represents that 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

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<sup>33</sup> See supra notes 14 and 15.

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.<sup>34</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.<sup>35</sup> This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, as modified by Amendment No. 1 to the proposed rule change.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act<sup>36</sup> and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>34</sup> The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of a fund’s compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

<sup>35</sup> See id. at 42775.

<sup>36</sup> 15 U.S.C. 78f(b)(5).



IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>37</sup> that the proposed rule change (SR-NASDAQ-2016-086), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

Robert W. Errett  
Deputy Secretary

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<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</sup> 17 CFR 200.30-3(a)(12).