



8011-01p  
SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72357; File No. SR-NASDAQ-2014-059)

June 10, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the Global X Commodities ETF of Global X Funds

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 May 28, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to list and trade the shares of Global X Commodities Strategy ETF (the “Fund”) of Global X Funds (the “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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the

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

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

places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares<sup>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 established as a Delaware statutory trust on March 6, 2008.<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement

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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 Trust will obtain from the Commission an order granting certain exemptive relief to the Trust under the 1940 Act (File No. 812-14241). 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).

on Form N-1A (“Registration Statement”) with the Commission.<sup>6</sup> The Fund will be a series of the Trust. The Fund will invest in, among other things, exchange-traded futures contracts and exchange-traded commodity-linked instruments held indirectly through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (referred to herein as the “Subsidiary”).

Global X Management Company LLC will be the investment adviser (the “Adviser”) and administrator to the Fund and will monitor the Fund’s investment portfolio. The Fund and the Adviser will contract with an investment sub-adviser (the “Sub-Adviser”) to provide day-to-day portfolio management for the Fund. SEI Investments Distribution Company (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. Brown Brothers Harriman (“Custodian”) will act as the custodian and transfer agent to the Fund.

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

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<sup>6</sup> See Registration Statement on Form N-1A for the Trust dated May 23, 2014 (File No. 811-22209). 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 the Sub-Adviser and their 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

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

#### Global X Commodities Strategy ETF

The Fund's investment objective will be to provide total return which exceeds that of the Credit Suisse Composite Commodities Index (the "Benchmark"),<sup>8</sup> consistent with prudent

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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>8</sup> The Benchmark is developed, maintained and sponsored by Credit Suisse International ("CS"). CS is not a U.S. registered broker-dealer, but CS is affiliated with a broker-dealer and, with respect to such broker-dealer affiliate, has implemented a fire

investment management. The Fund will pursue its objective by seeking to invest in commodity-linked futures in similar weightings to the Benchmark and other commodity-linked instruments, backed by an actively-managed, low volatility portfolio of fixed income instruments. The Fund will gain access to futures through the Subsidiary. The Fund will not be an “index tracking” ETF and will not be required to invest in all of the components of the Benchmark. However, through the Subsidiary, the Fund will generally seek to hold similar instruments to those included in the Benchmark and seek exposure to commodities included in the Benchmark. There can be no assurance that the Fund’s performance will exceed the performance of the Benchmark at any time.

The Fund will not be sponsored, endorsed, sold or promoted by CS. CS’s only relationship to the Fund will be the licensing of certain service marks and service names of CS and of the Benchmark, which will be determined, composed and calculated by CS without regard to the Adviser, the Sub-Adviser or the Fund. CS will have no obligation to take the needs of the Adviser, the Sub-Adviser or the Fund into consideration in determining, composing or calculating the Benchmark. The Benchmark is a monthly rebalancing, long-only commodity index composed of notional futures contracts on physical commodities. More specifically, the Benchmark is a fully collateralized futures index that offers multi-sector exposure to energy, industrial metals, precious metals, and agricultural commodities. Further, it is a total return index that measures the hypothetical returns on an uncollateralized investment in certain futures contracts, plus the interest that could be earned on the funds committed to a collateralized investment in such contracts.

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wall and procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Benchmark.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code.<sup>9</sup> As a whole, the Fund's investments will seek to exceed the investment returns of the Benchmark within the limitations of the federal tax requirements applicable to regulated investment companies.

### Principal Investments

### Fund's Investments

The Fund will be an actively-managed ETF that will seek to achieve a total return which exceeds that of the Benchmark. Under normal market conditions,<sup>10</sup> the Fund, will invest in exchange-traded commodity futures contracts and exchange-traded commodity-linked instruments<sup>11</sup> (collectively, "Commodities") through the Subsidiary. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. The remainder of the Fund's assets will be invested in: (1) short-term investment grade fixed income securities that include U.S. government and agency securities,<sup>12</sup> corporate debt obligations and repurchase

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<sup>9</sup> 26 U.S.C. 851.

<sup>10</sup> The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets, futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>11</sup> Exchange-traded commodity-linked instruments include: (1) ETFs that provide exposure to commodities as would be listed under Nasdaq Rules 5705 and 5735; and (2) pooled investment vehicles that invest primarily in commodities and commodity-linked instruments as would be listed under Nasdaq Rules 5710 and 5711(a)-(k). Such pooled investment vehicles are commonly referred to as "exchange traded funds" but they are not registered as investment companies because of the nature of their underlying investments.

<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

agreements;<sup>13</sup> (2) money market instruments;<sup>14</sup> (3) ETFs (other than those that are commodity-linked instruments)<sup>15</sup> and other investment companies registered under the 1940 Act, including exchange-traded closed-end funds, that provide exposure to commodities, equity securities and fixed income securities to the extent permitted under the 1940 Act and any applicable exemptive

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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> The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Trust’s Board of Trustees (the “Board”). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

<sup>14</sup> For the Fund’s purposes, money market instruments will include: short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a-7 of the 1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. In addition, the Fund may invest in commercial paper, which are short-term unsecured promissory notes. The Fund may additionally invest in commercial paper only if it has received the highest rating from at least one nationally recognized statistical rating organization or, if unrated, has been judged by the Adviser to be of comparable quality.

<sup>15</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 included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order obtained by the Trust and the Adviser from the Commission. See Investment Company Act Release No. 30454 (April 9, 2013) (File No. 812-14079). The ETFs in which the Fund may 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). While the Fund and the Subsidiary may invest in inverse commodity-linked instruments, the Fund and the Subsidiary will not invest in leveraged or inverse leveraged (e.g., 2X or -3X) commodity-linked instruments.

relief; (4) certain bank instruments<sup>16</sup>; and (5) cash and other cash equivalents. In addition, the Fund may enter into foreign currency transactions on a spot (i.e., cash) basis.

The Fund will not invest directly in Commodities. The Fund expects to primarily gain exposure to these investments by investing in the Subsidiary.

The Fund will use the fixed income securities as investments and to collateralize the Subsidiary's commodity exposure on a day-to-day basis.

The Fund's investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies.

#### Subsidiary's Investments

The Subsidiary will generally seek to make investments in Commodities. In this regard, under normal market conditions, the Subsidiary is expected, as a general matter, to invest in futures contracts in proportional weights and allocations that are similar to the Benchmark, as well as in other exchange-traded commodity-linked instruments.

The Subsidiary will be advised by the Sub-Adviser.<sup>17</sup> The Fund's investment in the

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<sup>16</sup> The Fund may invest in certificates of deposit issued against funds deposited in a bank or savings and loan association. In addition, the Fund may invest in bankers' acceptances, which are short-term credit instruments used to finance commercial transactions. The Fund also may invest in bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest.

<sup>17</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 Subsidiary will be wholly-owned and controlled by the Fund. Therefore, the Fund's ownership and control of the Subsidiary will prevent the Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer



Subsidiary is intended to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in the derivative instruments. The Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Commodities. The Subsidiary's investments will provide the Fund with exposure to domestic and international markets.

The Benchmark will include and the Subsidiary will have holdings in futures contracts that consist of only long positions in Commodities. The following table describes each of the commodities underlying the futures contracts included in the Benchmark as of May 23, 2014. The table also provides each instrument's trading hours, exchange and ticker symbol. The table is subject to change and the Subsidiary will not in all cases invest in the futures contracts included in the Benchmark.

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agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

| Commodity       | Exchange Code | Exchange Name <sup>18</sup>  | Trading Hours Pit (E.T.) | Trading Hours Electronic (E.T.) | Contract Symbol(s) |
|-----------------|---------------|------------------------------|--------------------------|---------------------------------|--------------------|
| WTI Crude Oil   | NYM           | New York Mercantile Exchange | 09:00-14:30              | 18:00-17:15                     | CL                 |
| WTI Crude Oil   | ICE           | ICE Futures Europe           | -                        | 20:00-18:00                     | T                  |
| Brent Crude Oil | ICE           | ICE Futures Europe           | -                        | 20:00-18:00                     | B                  |
| NY Harbor ULSD  | NYM           | New York Mercantile Exchange | 09:00-14:30              | 18:00-17:15                     | HO                 |
| Gasoil          | ICE           | ICE Futures Europe           | -                        | 20:00-18:00                     | G                  |
| RBOB Gasoline   | NYM           | New York Mercantile Exchange | 09:00-14:30              | 18:00-17:15                     | RB                 |

<sup>18</sup> All of the exchanges are Intermarket Surveillance Group (“ISG”) members except for the London Metal Exchange (“LME”), ICE Futures Europe, Commodity Exchange, NYSE LIFFE-Paris and NYSE LIFFE-London. The LME falls under the jurisdiction of the Financial Conduct Authority (“FCA”). The FCA is responsible for ensuring the financial stability of the exchange members’ businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activity, including conducting the arbitration proceedings under the LME arbitration regulations. With respect to the futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary’s futures contracts) of the futures contracts held by the Subsidiary 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.

| <b>Commodity</b>  | <b>Exchange Code</b> | <b>Exchange Name<sup>18</sup></b> | <b>Trading Hours Pit (E.T.)</b> | <b>Trading Hours Electronic (E.T.)</b> | <b>Contract Symbol(s)</b> |
|-------------------|----------------------|-----------------------------------|---------------------------------|----------------------------------------|---------------------------|
| Natural Gas       | NYM                  | New York Mercantile Exchange      | 09:00-14:30                     | 18:00-17:15                            | NG                        |
| Copper high grade | CMX                  | Commodity Exchange                | 08:10-13:00                     | 18:00-17:15                            | HG                        |
| Copper grade A    | LME                  | London Metal Exchange             | 06:40-12:00*                    | 20:00-14:00                            | CA                        |
| Zinc high grade   | LME                  | London Metal Exchange             | 06:40-12:00*                    | 20:00-14:00                            | ZS                        |
| Aluminium primary | LME                  | London Metal Exchange             | 06:40-12:00*                    | 20:00-14:00                            | AH                        |
| Nickel primary    | LME                  | London Metal Exchange             | 06:40-12:00*                    | 20:00-14:00                            | NI                        |
| Lead standard     | LME                  | London Metal Exchange             | 06:40-12:00*                    | 20:00-14:00                            | PB                        |
| Tin               | LME                  | London Metal Exchange             | 06:40-12:00*                    | 20:00-14:00                            | SN                        |
| Gold              | CMX                  | Commodity Exchange                | 8:20-13:30                      | 18:00-17:15                            | GC                        |
| Silver            | CMX                  | Commodity Exchange                | 08:25-13:25                     | 18:00-17:15                            | SI                        |
| Platinum          | NYM                  | New York Mercantile Exchange      | 08:20-13:05                     | 18:00-17:15                            | PL                        |

| <b>Commodity</b>    | <b>Exchange Code</b> | <b>Exchange Name<sup>18</sup></b> | <b>Trading Hours Pit (E.T.)</b> | <b>Trading Hours Electronic (E.T.)</b> | <b>Contract Symbol(s)</b> |
|---------------------|----------------------|-----------------------------------|---------------------------------|----------------------------------------|---------------------------|
| Palladium           | NYM                  | New York Mercantile Exchange      | 08:30-13:00                     | 18:00-17:15                            | PA                        |
| SRW Wheat           | CBT                  | Chicago Board of Trade            | 09:30-14:15                     | Sun-F 20:00-08:45<br>M-F 09:30-14:15   | W; ZW                     |
| HRW Wheat           | CBT                  | Chicago Board of Trade            | 09:30-14:15                     | Sun-F 20:00-08:45<br>M-F 9:30-14:15    | KW; KE                    |
| Euro. Milling Wheat | EOP                  | NYSE<br>LIFFE - Paris             | -                               | 04:45-12:30                            | EBM                       |
| Corn                | CBT                  | Chicago Board of Trade            | 09:30-14:15                     | Sun-F 20:00-08:45<br>M-F 09:30-14:15   | C; ZC                     |
| Soybeans            | CBT                  | Chicago Board of Trade            | 09:30-14:15                     | Sun-F 20:00-08:45<br>M-F 09:30-14:15   | S; ZS                     |
| Soybean Meal        | CBT                  | Chicago Board of Trade            | 09:30-14:15                     | Sun-F 20:00-08:45<br>M-F 09:30-14:15   | SM; ZM                    |
| Soybean Oil         | CBT                  | Chicago Board of Trade            | 09:30-14:15                     | Sun-F 20:00-08:45<br>M-F 09:30-14:15   | BO; ZL                    |
| Sugar #11           | NYB                  | ICE Futures US                    | -                               | 03:30-13:00                            | SB                        |
| Sugar #5            | LIF                  | NYSE<br>LIFFE - London            | -                               | 03:45-12:55                            | W                         |
| Cocoa               | NYB                  | ICE Futures US                    | -                               | 04:45-13:30                            | CC                        |
| Cocoa               | LIF                  | NYSE<br>LIFFE - London            | -                               | 04:30-11:50                            | C                         |

| <b>Commodity</b>      | <b>Exchange Code</b> | <b>Exchange Name<sup>18</sup></b> | <b>Trading Hours Pit (E.T.)</b> | <b>Trading Hours Electronic (E.T.)</b>   | <b>Contract Symbol(s)</b> |
|-----------------------|----------------------|-----------------------------------|---------------------------------|------------------------------------------|---------------------------|
| Coffee “C”<br>Arabica | NYB                  | ICE Futures US                    | -                               | 04:15-13:30                              | KC                        |
| Coffee<br>Robusta     | LIF                  | NYSE<br>LIFFE - London            | -                               | 04:00-12:30                              | RC                        |
| Cotton                | NYB                  | ICE Futures US                    | -                               | 21:00-14:20                              | CT                        |
| Live Cattle           | CME                  | Chicago<br>Mercantile<br>Exchange | 10:05-14:00                     | M 10:05 - F 14:55<br>(Halts 17:00-18:00) | LC; LE                    |
| Feeder<br>Cattle      | CME                  | Chicago<br>Mercantile<br>Exchange | 10:05-14:00                     | M 10:05 - F 14:55<br>(Halts 17:00-18:00) | FC; GF                    |
| Lean Hogs             | CME                  | Chicago<br>Mercantile<br>Exchange | 10:05-14:00                     | M 10:05 -F 14:55<br>(Halts 17:00-18:00)  | LH; HE                    |

As indicated above, the Benchmark will include and the Subsidiary will have holdings in futures contracts that consist of only long positions in Commodities. To be “long” means to hold or be exposed to a security or instrument with the expectation that its value will increase over time. Therefore, the Fund, through the Subsidiary, will benefit if a security or instrument increases in value. Conversely, the Fund, through the Subsidiary, will be adversely impacted if a security or instrument declines in value. The Fund through the Subsidiary may have a higher or lower exposure to any sector or component within the Benchmark at any time.

The Benchmark does not include, and the Fund and the Subsidiary will not invest in, options contracts, swaps or forward investments.

### 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. As a result of the instruments that will be indirectly held by the Fund, the Adviser will register as a commodity pool operator<sup>19</sup> and will also be a member of the National Futures Association (“NFA”). The Sub-Adviser will register as a commodity pool operator or commodity trading adviser, as required by CFTC regulations. The Fund and the Subsidiary will be subject to regulation by the CFTC and NFA and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools.

### Investment Restrictions

While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2X and -3X) of the Fund’s Benchmark.

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.<sup>20</sup>

The Subsidiary’s shares will be offered only to the Fund and the Fund will not sell shares of the Subsidiary to other investors. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary). The Fund will not purchase securities of

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<sup>19</sup> As defined in Section 1a(11) of the Commodity Exchange Act.

<sup>20</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

open-end or closed-end investment companies except in compliance with the 1940 Act or any applicable exemptive relief.<sup>21</sup>

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser.<sup>22</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. 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>23</sup>

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<sup>21</sup> See note 15.

<sup>22</sup> In reaching liquidity decisions, the Adviser may consider the following factors: 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 trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>23</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).

### Net Asset Value

The Fund's net asset value ("NAV") will be determined as of the close of trading (normally 4:00 p.m., Eastern time ("E.T.)) on each day the New York Stock Exchange ("NYSE") is open for business. The NAV of the Fund will be calculated by dividing the value of the net assets of such Fund (i.e., the value of its total assets, less total liabilities) by the total number of outstanding Shares, generally rounded to the nearest cent.

The Fund's and the Subsidiary's investments will be generally valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer), or (iii) based on amortized cost. The Fund and the Subsidiary may use various pricing services or discontinue the use of any pricing service. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation.

If available, debt securities and money market instruments with maturities of more than 60 days will typically be priced based on valuations provided by independent, third-party pricing agents. Such values will generally reflect the last reported sales price if the security is actively traded. The third-party pricing agents may also value debt securities at an evaluated bid price by employing methodologies that utilize actual market transactions, broker-supplied valuations, or other methodologies designed to identify the market value for such securities. Debt obligations with remaining maturities of 60 days or less may be valued on the basis of amortized cost, which approximates market value. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing, as described below.

Futures contracts will be valued at the settlement price established each day by the board



or exchange on which they are traded.

Redeemable securities issued by U.S. registered open-end investment companies will be valued at the investment company's applicable NAV, with the exception of ETFs, which will be priced as described below. In the case of shares of funds that are not traded on an exchange, a market valuation means such fund's published NAV per share.

Equity securities (including exchange-traded commodity-linked instruments, other ETFs, and closed-end funds) listed on a securities exchange, market or automated quotation system for which quotations are readily available (except for securities traded on the Exchange) will be valued at the last reported sale price on the primary exchange or market on which they are traded on the valuation date (or at approximately 4:00 p.m., E.T. if a security's primary exchange is normally open at that time). For a security that trades on multiple exchanges, the primary exchange will generally be considered to be the exchange on which the security generally has the highest volume of trading activity. If it is not possible to determine the last reported sale price on the relevant exchange or market on the valuation date, the value of the security will be taken to be the most recent mean between the bid and asked prices on such exchange or market on the valuation date. Absent both bid and asked prices on such exchange, the bid price may be used. For securities traded on the Exchange, the Exchange official closing price will be used. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing, as described below.

The prices for foreign instruments will be reported in local currency and converted to U.S. dollars using currency exchange rates. Exchange rates will be provided daily by recognized independent pricing agents.

In the event that current market valuations are not readily available or such valuations do not reflect current market values, the affected investments will be valued using fair value pricing pursuant to the pricing policy and procedures approved by the Board in accordance with the 1940 Act. The frequency with which the Fund's and the Subsidiary's investments are valued using fair value pricing will be primarily a function of the types of securities and other assets in which they invest pursuant to their respective investment objectives, strategies and limitations.

#### Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV<sup>24</sup> only in large blocks of Shares ("Creation Units") in transactions with authorized participants, generally including broker-dealers and large institutional investors ("Authorized Participants"). Creation Units are not expected to consist of less than 25,000 Shares. The Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the "Creation Basket"). In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to the difference (referred to as the "Cash Component").

Creations and redemptions must be made by an Authorized Participant or through a firm that is either a member of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company participant, that, in each case, must have executed an agreement that has been agreed to by the Distributor and the Fund's transfer agent with respect to creations and

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<sup>24</sup> The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m., E.T. (the "NAV Calculation Time"). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

redemptions of Creation Units. All standard orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the “Closing Time”) in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Distributor and only on a business day.

The Custodian, through the NSCC, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day.

#### Availability of Information

The Fund’s website ([www.globalxfunds.com](http://www.globalxfunds.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will include the Share’s ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) daily trading volume, the prior business day’s reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”)<sup>25</sup> and a

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<sup>25</sup> The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session<sup>26</sup> on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities, Commodities and other assets (the “Disclosed Portfolio” as defined in Nasdaq Rule 5735(c)(2)) held by the Fund and the Subsidiary that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>27</sup> 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, commodity or other asset or instrument underlying the holding, if any; 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 and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio (including the

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<sup>26</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., E.T.).

<sup>27</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.

Subsidiary's portfolio), will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service<sup>28</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.

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 securities and other assets held by the Fund and the Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information on the securities and other assets held by the Fund and the Subsidiary will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by Authorized Participants and other investors. More specifically, pricing information for Commodities, ETFs other than Commodities, and closed-end funds will be available on the exchanges on which they are traded and through subscription services. Pricing information for fixed income securities and money market instruments will be available through subscription services and/or broker-dealer firms. 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

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<sup>28</sup> Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

securities held by the Fund.

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's annual and semi-annual reports (together, "Shareholder Reports"), and its Form N-CSR and Form N-SAR, 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 downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). 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. 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.

Information relating to the Benchmark, including its constituents, weightings and changes to its constituents will be available on the website of CS.

#### 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>29</sup> under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be

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<sup>29</sup> See 17 CFR 240.10A-3.

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, Commodities 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., E.T. 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 FINRA on behalf of the Exchange, which

are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>30</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 in the Shares and in the exchange-traded securities, commodity-linked instruments and futures contracts held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG<sup>31</sup> and FINRA may obtain trading information regarding trading in the Shares and in the exchange-traded securities, commodity-linked instruments and futures contracts 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 in the exchange-traded securities, commodity-linked instruments and futures contracts 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

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<sup>30</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>31</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.



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 in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts) of the futures contracts held by the Subsidiary 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. All commodity-linked instruments in which the Subsidiary invests will be traded on ISG member markets

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 information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares

prior to or concurrently with the confirmation of a transaction; and (6) trading information.

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

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

## 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act 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 not registered as a broker-dealer and is not affiliated with a broker-dealer.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the exchange-traded securities, commodity-linked instruments and futures contracts 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 and in the exchange-traded securities, commodity-linked instruments and futures contracts 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 in the exchange-traded securities, commodity-linked instruments and futures contracts 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 in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts) of the futures contracts held by the Subsidiary 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. All commodity-linked instruments in which the Subsidiary invests will be traded on ISG member markets.

The Fund's investment objective will be to provide total return which exceeds that of the Benchmark, consistent with prudent investment management. The Fund will gain access to futures through the Subsidiary. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. The Fund will not invest directly in Commodities. While the Fund will

be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2X and -3X) of the Fund's Benchmark. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary).

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 and broadly disseminated 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 executable price quotations on the securities and other assets held by the Fund and the Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information on the securities and other assets held by the Fund and the Subsidiary will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by Authorized Participants and other investors. More specifically, pricing information for Commodities, ETFs other than Commodities, and closed-end funds will be available on the exchanges on which they are traded and through subscription services. Pricing information for fixed income securities and money market instruments will be available through subscription services and/or broker-dealer firms. Additionally, FINRA's TRACE will be a source of price information for certain fixed income securities held by the Fund.

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 in the Shares and in the exchange-traded securities, commodity-linked instruments and futures contracts 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 and in the exchange-traded securities, commodity-linked instruments and futures contracts held by the Fund and the Subsidiary from such markets and other entities. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

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

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

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

Written comments were neither solicited nor received.

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

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

regulatory organization consents, the Commission will:

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

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-059 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2014-059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-059 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>

Kevin M. O'Neill  
Deputy Secretary

[FR Doc. 2014-13932 Filed 06/13/2014 at 8:45 am; Publication Date: 06/16/2014]

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