



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75975; File No. SR-NASDAQ-2015-089)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the 1-3 Month Enhanced Short Duration ETF, a Series of Plus Trust

September 24, 2015

I. Introduction

On July 29, 2015, The NASDAQ Stock Market LLC (“Exchange” or “NASDAQ”), filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the 1-3 Month Enhanced Short Duration ETF (“Fund”), a series of Plus Trust (“Trust”). The proposed rule change was published for comment in the **Federal Register** on August 19, 2015.³ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund, an actively managed exchange-traded fund (“ETF”), under NASDAQ Rule 5735, which governs the listing and trading of “Managed Fund Shares” on the Exchange. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 10, 2014.⁴ The Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75694 (August 13, 2015), 80 FR 50358 (“Notice”).

⁴ The Exchange represents that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 (“1940 Act”). See Investment Company Act Release

states that 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.⁵ New York Alaska ETF Management, LLC will be the investment adviser (“Adviser”) to the Fund.⁶ Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon (“BNY Mellon”) will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund’s portfolio holdings and investment restrictions.⁷

No. 31709 (July 8, 2015). The Exchange further represents that 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.

⁵ See Registration Statement on Form N-1A for the Trust filed on January 23, 2015 (File Nos. 333-201658 and 811-23019).

⁶ The Exchange represents that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

⁷ The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (“NAV”), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, supra notes 3 and 5, respectively.

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

The Fund's investment objective is to seek current income consistent with preservation of capital and daily liquidity. Under normal market conditions,⁸ the Fund will invest substantially all of its net assets (exclusive of collateral with respect to securities lending, repurchase, and reverse repurchase agreement transactions) in U.S. Treasury securities, which include bills, notes, and bonds issued by the U.S. Treasury, that have remaining maturities of greater than or equal to one month and less than three months.⁹ U.S. Treasury bills, notes, and bonds are direct obligations of the U.S. Treasury. U.S. Treasury bills have initial maturities of one year or less, U.S. Treasury notes have initial maturities from two to 10 years, and U.S. Treasury bonds have initial maturities of more than 10 years. While U.S. Treasury securities are supported by the full faith and credit of the U.S. government, such securities are nonetheless subject to credit risk, albeit minimal (*i.e.*, the risk that the U.S. government may be, or may be perceived to be, unable to make interest and principal payments).

In order to enhance income, the Fund intends to enter into securities lending, repurchase agreement, and/or reverse repurchase agreement¹⁰ transactions in an amount equal to not more

⁸ 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 or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In response to adverse market, economic, political, or other conditions, the Fund reserves the right to invest in cash, without limitation, as determined by the Adviser. In the event the Fund engages in these temporary defensive strategies that are inconsistent with its investment strategies, the Fund's ability to achieve its investment objectives may be limited.

⁹ The U.S. Treasury securities in which the Fund may invest will include variable rate U.S. Treasury securities, whose rates are adjusted daily (or at such other increment as may later be determined by the Department of the U.S. Treasury) to correspond with the rate paid on one-month or three-month U.S. Treasury securities, as applicable.

¹⁰ A "repurchase agreement" (also known as a repo) is the purchase of securities with the

than 33% of the Fund's total assets, consistent with the requirements of the 1940 Act.¹¹ The Fund may lend its portfolio of securities to broker/dealers, institutional investors, banks, and insurance and/or reinsurance companies located in the member countries of The Organization for Economic Co-operation and Development ("OECD").¹²

Securities lending allows the Fund to retain ownership of the securities loaned and, at the same time, to earn additional income. Loans will be made only to parties who have been reviewed and deemed satisfactory by the Adviser, pursuant to guidelines adopted by the Trust's Board of Trustees, and which provide collateral under master agreements issued by SIFMA (The Securities Industry and Financial Markets Association) or ISLA (International Securities Lending Association), which is either (i) 102% cash, or (ii) 102%-115% U.S. Treasury securities of the market value of the loaned securities. The collateral is marked-to-market daily. When the Fund lends portfolio securities, its investment performance will continue to reflect changes in the value of the securities loaned, and the Fund will also receive a fee or interest on the collateral.

The Fund also may enter into repurchase and reverse repurchase agreements with broker/dealers, institutional investors, banks, and insurance and/or reinsurance companies

agreement to sell the securities back at a higher price at a specific future date. A "reverse repurchase agreement" (also known as a reverse repo) is the sale of securities with the agreement to buy them back at a higher price at a specific future date. For the party that is selling the security and agreeing to repurchase it in the future, it is a reverse repo; for the party on the other end of the transaction that is buying the security and agreeing to sell in the future, it is a repurchase agreement.

¹¹ The Exchange represents that securities lending by funds may implicate certain sections of the 1940 Act. For example, the transfer of a fund's portfolio securities to a borrower implicates section 17(f) of the 1940 Act, which generally requires that a fund's portfolio securities be held by an eligible custodian. In addition, a fund's obligation to return collateral at the termination of a loan implicates Section 18 of the 1940 Act, which governs the extent to which a fund may incur indebtedness.

¹² A list of OECD members is available at:
<http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm>.

located in the member countries of the OECD. Repurchase transactions involve the purchase of securities with an agreement to resell the securities at an agreed-upon price, date, and interest payment. Reverse repurchase transactions involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment, and have the characteristics of borrowing. With respect to repurchase agreements and reverse repurchase agreements, proceeds (collateral) received under master agreements issued by SIFMA or ICMA (International Capital Markets Association) must be equal to or greater than the market value of the sold securities and (i) cash, (ii) U.S Treasury securities, or (iii) debt securities secured by U.S. Treasury securities (such debt securities typically will be issued pursuant to Rule 144A and will be secured by a pledge to the note holder of U.S. Treasury securities with a market value equal to or greater than the face value of the debt security). All collateral will have a maturity of three months or less. The collateral is marked-to-market daily and valued in accordance with the Fund's valuation procedures. The price paid to repurchase the security reflects interest accrued during the term of the agreement.

B. Exchange's Description of the Fund's Other Investments

In order to seek its investment objective, the Fund will not employ other strategies outside of the above-described "Principal Investments." The Exchange represents that the Fund will not use derivative instruments, including options, swaps, forwards, and futures contracts, both listed and over-the-counter. The Fund will not invest in leveraged, inverse, or leveraged inverse exchange-traded products and will not be operated as a "leveraged ETF" designed to seek a multiple of the performance of an underlying reference asset.

In addition, according to the Exchange, the Fund's securities lending and reverse repurchase agreement transactions will be made in accordance with the 1940 Act and consistent

with the Fund's investment objectives and policies, and will not be used to multiply the risks and returns of income producing assets. The Fund will comply with the regulatory requirements of the Commission to maintain assets as "cover," and maintain segregated accounts as needed.

With respect to the reverse repurchase agreements entered into by the Fund that involve obligations to make future payments to third parties, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will "set aside" liquid assets, or engage in other measures to "cover" open positions with respect to such transactions. These procedures will be adopted consistent with section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of reverse repurchase agreements, may give rise to leverage, causing the Fund's Shares to be more volatile than if they had not been leveraged.

C. Exchange's Description of the Fund's Investment Restrictions

Under normal market conditions, the Fund will invest substantially all, but not less than, 80% of its net assets (exclusive of collateral with respect to securities lending, repurchase, and reverse repurchase agreement transactions), plus any borrowings for investment purposes, in U.S. Treasury securities, which include bills, notes, and bonds issued by the U.S. Treasury, that have remaining maturities of greater than or equal to one month and less than three months.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including repurchase and reverse repurchase agreements maturing in more than seven days, and other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, 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 securities or other illiquid assets. Illiquid securities and other 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.

The Fund intends to qualify for, and to elect to be treated as, a regulated investment company under subchapter M of the Internal Revenue Code of 1986.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act¹³ and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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 Act,¹⁶ 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. Quotation and last-sale

¹³ 15 U.S.C. 78f.

¹⁴ 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).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii).

information for the Shares will be available via NASDAQ proprietary quote and trade services, as well in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans, as applicable. In addition, the Intraday Indicative Value,¹⁷ as defined in Nasdaq Rule 5735(c)(3), will be available on the NASDAQ OMX Information LLC proprietary index data service and will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session.¹⁸ On each business day, before commencement of trading in Shares in the Regular Market Session¹⁹ on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (“Disclosed Portfolio,” as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.²⁰ On a daily basis, the Disclosed Portfolio will include, as applicable, each portfolio security and other financial instruments of the Fund with the following information on the Fund’s website: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the

¹⁷ The Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio, as defined below.

¹⁸ 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 ETFs. GIDS provides investment professionals with the daily and historical information needed to track or trade NASDAQ OMX indexes, listed ETFs or third-party partner indexes and ETFs.

¹⁹ See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. Eastern Time (“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.).

²⁰ Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

type of holding); the identity of the security or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund's portfolio). The website information will be publicly available at no charge. In addition, the Fund's disclosure of securities lending transactions and repurchase and reverse repurchase agreements will include information regarding the income being accrued on such instruments/transactions expressed in a percentage relative to the NAV published by the Fund.

A basket composition file, which will include the security names and quantities of securities and other assets required to be delivered in exchange for Shares, if applicable, together with estimates and actual cash components, will be publicly disseminated prior to the opening of the Exchange via the National Securities Clearing Corporation. The basket will represent one "Creation Unit" of the Fund. The NAV will be determined on each business day as of the close of trading (ordinarily 4:00 p.m. E.T.) on the New York Stock Exchange, now under the umbrella of the Intercontinental Exchange.²¹ 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

²¹ NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing this amount by the total number of Shares outstanding. According to the Exchange, with respect to U.S. Treasury securities, which include bills, notes, and bonds issued by the U.S. Treasury, the Fund will value such securities at the price listed at the following sources: Bloomberg, TradeWeb, E-Speed, Tullett Prebon, the U.S. Treasury Department, and/or Interactive Brokers, with the hierarchy of such sources generally in the order listed. Securities lending transactions, repurchase agreements, and reverse repurchase agreements transactions will be valued at the combined value of (i) the value of the underlying Fund asset utilized in the transaction, and (ii) the relative realized profit value, added daily.

volume information for the Shares will be published daily in the financial section of newspapers. Intra-day, executable price quotations on U.S. Treasury securities are available through subscription services such as Bloomberg, TradeWeb, E-Speed, Tullett Prebon, the U.S. Treasury Department, and/or Interactive Brokers, which can be accessed by Authorized Participants²² and other investors. In addition, 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.

The Commission further 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 states that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer.²³ The Exchange will obtain a representation from the issuer of

²² To be eligible to place orders to create a Creation Unit of the Fund, an entity must be a Depository Trust Company ("DTC") participant, such as a broker-dealer, bank, trust company, clearing corporation, or certain other organization ("DTC Participant"). DTC acts as a securities depository for the Shares. The DTC Participant must have executed an agreement with respect to creations and redemptions of Creation Units ("Participant Agreement"). A DTC Participant that has executed a Participant Agreement is referred to as an "Authorized Participant."

²³ 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, which requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of their relationship with their clients as well as compliance with other applicable securities laws. Accordingly, investment advisers must have procedures designed to prevent the communication and misuse of non-public information, 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

the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in the Shares will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pause provisions under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,²⁴ and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority²⁵ 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 portfolio.²⁶ 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.²⁷ The Exchange further represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter

procedures adopted under subparagraph (i) above.

²⁴ These reasons may include: (1) the extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.

²⁵ Nasdaq Rule 5730(c)(4) defines “Reporting Authority.”

²⁶ See Nasdaq Rule 5735(d)(2)(B)(ii).

²⁷ The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

and detect violations of Exchange rules and applicable federal securities laws. Moreover, prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

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 be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"),²⁸ and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange, if applicable, may obtain information regarding trading in the Shares from markets and other entities that are members of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²⁸ For a list of the current members of ISG, see 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.

- (4) 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 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.
- (5) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.²⁹
- (6) Under normal market conditions, the Fund will invest substantially all, but in any event not less than 80%, of its net assets (exclusive of collateral with respect to securities lending, repurchase, and reverse repurchase agreement transactions) in U.S. Treasury securities, which include bills, notes, and bonds issued by the U.S. Treasury, that have remaining maturities of greater than or equal to one month and less than three months. In order to seek its investment objective, the Fund will not employ other strategies outside of the above-described “Principal

²⁹ See 17 CFR 240.10A-3.

Investments.”

- (7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including repurchase and reverse repurchase agreements maturing in more than seven days, and other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, 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 securities or other illiquid assets.
- (8) Loans will be made only to parties who have been reviewed and deemed satisfactory by the Adviser, pursuant to guidelines adopted by the Trust’s Board of Trustees, and which provide collateral under master agreements issued by SIFMA or ISLA, which is either (i) 102% cash, or (ii) 102%-115% U.S. Treasury securities of the market value of the loaned securities. With respect to repurchase agreements and reverse repurchase agreements, proceeds (collateral) received under master agreements issued by SIFMA or ICMA must be equal to or greater than the market value of the sold securities and (i) cash, (ii) U.S Treasury securities, or (iii) debt securities secured by U.S. Treasury securities. All collateral will have a maturity of three months or less.
- (9) The Fund may enter into securities lending, repurchase agreement, and/or reverse repurchase agreement transactions in an amount equal to not more than 33% of the Fund’s total assets, consistent with the requirements of the 1940 Act.

- (10) The Fund's investments will be consistent with its investment objective. The Fund will not use derivative instruments, including options, swaps, forwards, and futures contracts, both listed and over-the-counter. The Fund will not invest in leveraged, inverse, or leveraged inverse exchange-traded products and will not be operated as a "leveraged ETF" designed to seek a multiple of the performance of an underlying reference asset.
- (11) The Fund's securities lending and reverse repurchase agreement transactions will be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies, and will not be used to multiply the risks and returns of income producing assets. The Fund will comply with the regulatory requirements of the Commission to maintain assets as "cover," and maintain segregated accounts as needed. With respect to the reverse repurchase agreements entered into by the Fund that involve obligations to make future payments to third parties, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will "set aside" liquid assets, or engage in other measures to "cover" open positions with respect to such transactions. These procedures will be adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of reverse repurchase agreements, may give rise to leverage, causing the Fund's Shares to be more volatile than if they had not been leveraged.

(12) A minimum of 50,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund. 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.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act³⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-NASDAQ-2015-089), be, and it hereby is, approved.

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

Robert W. Errett
Deputy Secretary

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³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).