

Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting

the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-14533 Filed 6-20-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, June 25, 2014 at 10:00 a.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be:

The Commission will consider whether to adopt rules regarding the Application of "Security-based Swap Dealer" and "Major Security-based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities under the Securities Exchange Act of 1934 and Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: June 18, 2014.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-14695 Filed 6-19-14; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72411; File No. SR-NASDAQ-2014-040]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change Relating to the Listing and Trading of the Shares of the Calamos Focus Growth ETF of the Calamos ETF Trust

June 17, 2014.

#### I. Introduction

On April 21, 2014, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares ("Shares") of the Calamos Focus Growth ETF ("Fund") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on May 9, 2014.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

#### II. Description of the Proposed Rule Change

##### A. The Exchange's Proposal

The Exchange proposes to list and trade Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by Calamos ETF Trust ("Trust"), which is registered with the Commission as an investment company.<sup>4</sup> The Fund is a series of the Trust.

Calamos Advisors LLC will be the investment adviser ("Adviser") to the Fund. Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund's Shares, and State Street Bank and Trust will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 72096 (May 5, 2014), 79 FR 26789 ("Notice").

<sup>4</sup> The Trust has filed a registration statement on Form N-1A ("Registration Statement") with the Commission. See Initial Registration Statement on Form N-1A for the Trust, dated September 13, 2013 (File Nos. 333-191151 and 811-22887). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the 1940. Act See Investment Company Act Release No. 30653 (August 20, 2013) (File No. 812-14169) ("Exemptive Order").

The Exchange represents that the Adviser is not a broker-dealer, but is affiliated with Calamos Financial Services LLC, which is a broker-dealer. The Exchange states that the Adviser has implemented a fire wall with respect to its broker dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.<sup>5</sup> The Exchange also represents that the Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares, and that for initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>6</sup>

#### *B. The Exchange's Description of the Fund*

The Exchange has made the following additional representations and statements in describing the Fund and its investment strategy, including portfolio holdings and investment restrictions.

#### Principal Investments

According to the Exchange, the Fund's primary investment objective is to achieve long-term capital growth. The Fund will pursue its objective by investing primarily, *i.e.*, at least 80% of its assets under normal market conditions,<sup>7</sup> in U.S. exchange-listed equity securities. Under normal market conditions, the Fund will invest primarily in companies with market capitalization of greater than \$1 billion

<sup>5</sup> See Nasdaq Rule 5735(g). The Exchange states that, 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, [the Adviser, or the relevant adviser or sub-adviser,] will implement a fire wall with respect to its relevant personnel and its broker-dealer affiliate, if applicable, regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>6</sup> See 17 CFR 240.10A-3.

<sup>7</sup> The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the securities 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 periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash or cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objectives.

that the Adviser believes offer the best opportunities for growth.

When buying and selling growth-oriented securities, the Adviser will focus on the company's growth potential coupled with financial strength and stability. When selecting specific growth-oriented securities, the Adviser will combine its top-down macroeconomic views with individual security selection based on qualitative and quantitative research. The equity securities held by the Fund may include small- and mid-cap sized companies. The Fund may invest in equity securities issued by other registered investment companies (including money market funds).

The Fund may invest up to 25% of its assets in foreign securities. The Fund's investment in such stocks may be in the form of direct investments in non-U.S. securities that are listed on non-U.S. exchanges or in the form of American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs"), and European Depositary Receipts ("EDRs") (collectively, "Depositary Receipts").<sup>8</sup> With respect to its investments in exchange-listed common stocks and Depositary Receipts of non-U.S. issuers, the Fund will generally invest in securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG") or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The Fund will generally invest in sponsored Depositary Receipts that are listed on ISG member exchanges and that the Adviser deems as liquid at time of purchase. In certain limited circumstances, the Fund may invest in unlisted or unsponsored Depositary Receipts, Depositary Receipts listed on non-ISG member exchanges, or Depositary Receipts that the Adviser deems illiquid at the time of purchase or for which pricing information is not readily available.<sup>9</sup> The issuers of

<sup>8</sup> Depositary Receipts are receipts, typically issued by a bank or trust issuer, that evidence ownership of underlying securities issued by a non-U.S. issuer. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a non-U.S. issuer. For other forms of Depositary Receipts, the depository may be a non-U.S. or a U.S. entity, and the underlying securities may be issued by a non-U.S. or a U.S. issuer. Depositary Receipts are not necessarily denominated in the same currency as their underlying securities. Generally, ADRs, issued in registered form, are designed for use in the U.S. securities markets, and EDRs, issued in bearer form, are designed for use in European securities markets. GDRs are tradable both in the United States and in Europe and are designed for use throughout the world.

<sup>9</sup> Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in (1) unlisted or unsponsored Depositary Receipts; (2) Depositary Receipts not listed on an exchange that is a member

of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

#### Other Investments

While the Fund under normal circumstances will invest at least 80% of its assets in exchange-listed equity securities issued by U.S. companies, the Fund may invest the remaining assets in a variety of other securities and investments in support of its primary investment strategy, including, but not limited to: Equity securities traded over-the-counter;<sup>10</sup> convertible securities; synthetic convertible instruments; debt securities (including high-yield fixed-income securities, loan participations and assignments, inflation-indexed bonds, municipal bonds, U.S. Government obligations (including stripped securities),<sup>11</sup> and agency mortgage-backed securities); repurchase agreements; reverse repurchase agreements; exchange-traded options on exchange-traded securities, indexes, and currencies; money market instruments;<sup>12</sup> foreign currency forward contracts; futures contracts on securities indices and options on futures contracts on securities indices; warrants; and total-return swaps related to individual exchange-traded securities or securities indices. The Fund does not intend to

of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

<sup>10</sup> See Notice, *supra* note 3, 79 FR at 26791 (noting that not more than 10% of the net assets of the Fund, in the aggregate, will be invested in certain Depositary Receipts or in unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange).

<sup>11</sup> The term "stripped security," as used herein, means a security that evidences ownership in either the future interest payments or the future principal payments on underlying U.S. Government, mortgage, or other debt obligations. These securities generally are structured to make a lump-sum payment at maturity and do not make periodic payments of principal or interest.

<sup>12</sup> The term "money market instruments," as used herein, means: (i) Short-term obligations issued by the U.S. Government; (ii) short-term negotiable obligations of commercial banks, fixed time deposits and bankers' acceptances of U.S. and foreign banks, and similar institutions; (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc., or "A-1+" or "A-1" by Standard & Poor's, or, if unrated, of comparable quality, as the Adviser of the Fund determines; and (iv) money market mutual funds.

use these other investments to create a leveraged return on the Fund's portfolio.

#### Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities or 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 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.

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 does not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other registered investment companies.

Additional information regarding the Trust, Fund, and Shares, including investment strategies and restrictions, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share ("NAV"), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice, Registration Statement, and Exemptive Order, as applicable.<sup>13</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act;<sup>14</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and

manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission 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,<sup>17</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services and via the Consolidated Tape Association plans for the Shares. Similarly, quotation and last-sale information for any underlying exchange-traded products will also be available via the quote and trade services of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans or through the Options Price Reporting Authority, or equivalent services related to futures, as applicable.<sup>18</sup> In addition, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3))—which will be based upon the current value of the components of the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2))—will be available on the NASDAQ OMX Information LLC proprietary index data service<sup>19</sup> and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session.<sup>20</sup> On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, which will form the basis for the Fund's calculation of NAV at the end of the

business day.<sup>21</sup> The NAV of the Fund will be determined once each business day, normally as of the close of trading on the New York Stock Exchange (normally 4:00 p.m. Eastern time).<sup>22</sup> Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.<sup>23</sup> Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.<sup>24</sup> Intra-day, executable price quotations for the securities and other assets held by the Fund will be available from major broker-dealer firms

<sup>21</sup> On a daily basis, the Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund's Web site: (1) Ticker symbol (if applicable); (2) name of security and financial instrument; (3) number of shares (if applicable); (4) dollar value of securities and financial instruments held in the Fund; and (5) percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge. *See id.*

<sup>22</sup> *See id.* at 26791. The Exchange notes that, for purposes of calculating NAV, exchange-traded equities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; sponsored or unsponsored Depositary Receipts; or other exchange-traded securities will be valued at the official closing price on their principal exchange or board of trade, or, lacking any current reported sale at the time of valuation, at the mean between the most recent bid and asked quotations on its principal exchange or board of trade. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the exchange representing the principal market for the securities. Equity securities traded over-the-counter, convertible securities, synthetic convertible instruments, debt securities (including high-yield fixed-income securities, loan participations and assignments, inflation-indexed bonds, municipal bonds, U.S. Government obligations (including stripped securities), and agency mortgage-backed securities) will be valued at the mean between the most recent bid and asked quotations received from pricing services, but, if the most recent bid and asked quotations are not available, these securities will be valued in accordance with the Fund's fair valuation procedures. Repurchase agreements and reverse repurchase agreements are valued at cost. Money market instruments with maturities of less than 60 days will be valued at amortized cost; money market instruments with longer maturities will be valued at the mid-point of the bid-ask prices. Foreign currency forward contracts will be valued in U.S. dollars using an exchange price provided by a third party. Total-return swaps related to individual exchange-traded securities or securities indices will be valued at the mean between bid and asked prices provided by a dealer (which may be the counterparty). Investment company shares will be valued at NAV, unless the shares are exchange-traded, in which case they will be valued at the last sale or official closing price on the market on which they primarily trade. In addition, expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV.

<sup>23</sup> *See id.* at 26794.

<sup>24</sup> *See id.*

<sup>13</sup> *See* Notice, *supra* note 3; *see also* Registration Statement and Exemptive Order, *supra* note 4.

<sup>14</sup> 15 U.S.C. 78(f).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>18</sup> *See* Notice, *supra* note 3, 79 FR at 26794.

<sup>19</sup> According to the Exchange, the NASDAQ OMX Global Index Data Service offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for exchange-traded funds. *See id.* at 26793.

<sup>20</sup> *See id.*

or on the exchange on which they are traded, as applicable.<sup>25</sup> Specifically, intra-day price information on the securities and other assets held by the Fund will be available through subscription or free services that can be accessed by Authorized Participants and other investors: (a) Pricing information for exchange-traded equity securities; investment company securities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; sponsored or unsponsored Depositary Receipts; or other exchange-traded securities will be publicly available from the Web sites of the exchanges on which they trade, on public financial Web sites, and through subscription services such as Bloomberg and Thompson Reuters; (b) pricing information regarding over-the-counter equities (including Depositary Receipts and certain investment company securities); convertible securities; synthetic convertible instruments; debt securities (including high-yield fixed-income securities, loan participations and assignments, inflation-indexed bonds, municipal bonds, U.S. Government obligations (including stripped securities), and agency mortgage-backed securities); repurchase agreements; reverse repurchase agreements; money market instruments; and foreign currency forward contracts will be available through subscription services such as Markit, Bloomberg, and Thompson Reuters; and (c) pricing information on the reference index or security underlying total-return swaps will be available on Bloomberg.<sup>26</sup> In addition, a basket composition file, which includes the security names, amounts, and share quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via the National Securities Clearing Corporation. The basket will represent one "Creation Unit" of the Fund. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.<sup>27</sup>

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 Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>28</sup> Further, trading in the Shares will be subject to Nasdaq 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted.<sup>29</sup> The Exchange also may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>30</sup> Further, the Commission notes that the Reporting Authority 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.<sup>31</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.<sup>32</sup> The Exchange also states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition or changes to the portfolio.<sup>33</sup> The Financial Industry

<sup>28</sup> See *id.* at 26794.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.* See also Nasdaq Rule 5735(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). 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 or pause 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 also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. See Notice, *supra* note 3, 79 FR at 26794.

<sup>31</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

<sup>32</sup> See Notice, *supra* note 3, 79 FR at 26795.

<sup>33</sup> See *supra* note 5 and accompanying text. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with applicable federal securities laws as defined in Rule 204A-1(e)(4). Accordingly, procedures designed to prevent the

Regulatory Authority ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in the Shares; exchange-traded equities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; exchange-listed investment companies; or other exchange-traded securities with other markets and other entities that are ISG members, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares; exchange-traded equities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; exchange-listed investment companies; or other exchange-traded securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares; exchange-traded equities; futures contracts on securities indices and options on futures contracts on securities indices; warrants; exchange-traded options on exchange-traded securities, indexes, or currencies; exchange-listed investment companies; or other exchange-traded securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>34</sup> FINRA, on behalf of the Exchange, also is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

In support of this proposal, the Exchange has made representations, including:

(1) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the

communication and misuse of nonpublic information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>34</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>25</sup> See *id.* at 26793.

<sup>26</sup> See *id.* at 26794.

<sup>27</sup> See *id.* at 26793.

Exchange's existing rules governing the trading of equity securities.

(2) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

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

(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 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) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA,<sup>35</sup> on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(6) Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in: (a) Unlisted or unsponsored Depositary Receipts; (b) Depositary Receipts not listed on an exchange that is not a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (c) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange. In addition, all futures and options held by the Fund will be listed on an exchange

that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

(7) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.<sup>36</sup>

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

(9) The Fund will invest at least 80% of its assets under normal market conditions in U.S. exchange-listed equity securities. The Fund will invest primarily in companies with market capitalization of greater than \$1 billion that the Adviser believes offer the best opportunities for growth. The Fund may invest up to 25% of its assets in foreign securities.

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

(11) The Fund does not intend to use its other investments to create a leveraged return on the Fund's portfolio.

(12) The Fund's investments will be consistent with the Fund's investment objective.

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

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-NASDAQ-2014-040), be, and it hereby is, approved.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72407; File No. SR-NASDAQ-2014-064]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exercise Limits

June 17, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 11, 2014, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASDAQ proposes to correct rule text related to a NASDAQ Options Market ("NOM") Rule at Chapter III, Section 9, pertaining to Exercise Limits.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The purpose of the proposed rule change is to amend an error in rule text

<sup>35</sup> According to the Exchange, FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. See Notice, *supra* note 3 at 26794.

<sup>36</sup> 17 CFR 240.10A-3.

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

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

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

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