

governing body of the Exchange and possess all of the powers necessary for the management of its business and affairs and the execution of its responsibilities as an SRO. In particular, the Exchange A&R By-laws will continue to provide that the Exchange Board shall consist of no fewer than seven or more than 25 directors.<sup>69</sup> In addition, the Exchange Board's composition at all times shall include the Chief Executive Officer of the Exchange, at least 50% Non-Industry Directors<sup>70</sup> (at least one of whom shall be an Independent Director<sup>71</sup>) and such number of ETP Holder Directors<sup>72</sup> as is necessary to comprise at least 20% of the Exchange Board.<sup>73</sup>

In connection with the Closing, the steps to transition the membership on the Exchange Board from the current directors to the post-Closing directors will conform to the requirements set forth in Article III, section 3.7 of the Exchange A&R By-laws. Furthermore, the Exchange A&R By-laws provides that any vacancy occurring in a committee shall be filled by the Chairman of the Board for the remainder of the term, with the approval of the Exchange Board.<sup>74</sup> Each committee shall be comprised of at least three people and may include persons who are not members of the Board; provided, however, that such committee members who are not also members of the Board shall only participate in committee actions to the extent permitted by law.<sup>75</sup>

The Commission finds that these provisions are consistent with the Act, and that they are intended to assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

<sup>69</sup> See Exchange A&R By-laws, Article III, section 3.2(a).

<sup>70</sup> The term "Non-Industry Director" is defined in Article I, section 1.1, para. N of the Exchange A&R By-laws as "a member of the [NSX] Board who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director."

<sup>71</sup> The term "Independent Director" is defined in Article I, section 1.1, para. I of the Exchange A&R By-laws as "a member of the [NSX] Board that the [NSX] Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, or any ETP Holder or any affiliate of any such ETP Holder, other than as a member of the Board."

<sup>72</sup> The term "ETP Holder Director" is defined in Article I, section 1.1, para. E(2) of the Exchange A&R By-laws as "a director who is an ETP Holder or a director, officer, managing member or partner of an entity that is, or is an affiliate of, an ETP Holder."

<sup>73</sup> See Exchange A&R By-laws, Article III, section 3.2(b).

<sup>74</sup> See Exchange A&R By-laws, Article V, section 5.2.

<sup>75</sup> See Exchange A&R By-laws, Article V, section 5.2.

#### 4. Changes to the Exchange Organizational Documents

In connection with the completion of the Transaction, the Exchange proposes certain amendments in the Exchange A&R Certificate and the Exchange A&R By-laws. In particular, the Exchange proposes to delete the language in Paragraph Fourth of the Exchange A&R Certificate that provides that the Exchange shall at all times be wholly owned by CBSX and replace that provision with one requiring that the Exchange at all times be wholly owned by NSX Holdings.<sup>76</sup>

In addition, with respect to the Exchange A&R By-laws, the Exchange proposes to replace all references to "CBSX" with references to "NSX Holdings."<sup>77</sup> Specifically, Article III, section 3.2(c) of the Exchange A&R By-laws will be amended to eliminate any requirements relating to CBSX and will provide that no two or more directors of the Exchange may be partners, officers or directors of the same person or be affiliated with the same person (or affiliated with the same person), unless such affiliation is with a national securities exchange or NSX Holdings.<sup>78</sup> In addition, the Exchange proposes to replace references to CBSX with references to NSX Holdings in section 10.2 of the Exchange A&R By-laws. The provision would provide that no members of the Holdings Board who are not also members of the Exchange Board, or any officers, staff, counsel or advisors of NSX Holdings who are not also officers, staff, counsel or advisors of the Exchange (or any committees of the Exchange), shall be allowed to participate in any meetings of the Exchange Board or any Exchange committee pertaining to the self-regulatory function of the Exchange, including disciplinary matters.<sup>79</sup> The Exchange states that these amendments are intended to prevent any undue influence or any perception of undue influence over the Exchange's self-regulatory functions by NSX Holdings.<sup>80</sup>

In addition, the Exchange proposes to delete section 10.1(b) in the Exchange A&R By-laws, which requires that for so long as CBSX controls the Exchange, the Exchange shall promptly inform the CBSX board of directors, in writing, in the event that the Exchange has, or experiences, a deficiency related to its ability to carry out its obligations as a national securities exchange under the Act, including if the Exchange does not

<sup>76</sup> See Notice, *supra* note 4, at 89.

<sup>77</sup> See Notice, *supra* note 4, at 89.

<sup>78</sup> See Notice, *supra* note 4, at 89.

<sup>79</sup> See Notice, *supra* note 4, at 89.

<sup>80</sup> See Notice, *supra* note 4, at 90.

have or is not appropriately allocating such financial, technological, technical and personnel resources as may be necessary or appropriate for the Exchange to meet its obligations under the Act.<sup>81</sup> According to the Exchange, upon the completion of the Transaction, such requirements will no longer apply because CBSX will have no ownership interest in the Exchange.<sup>82</sup>

Finally, the Exchange is proposing certain clarifying amendments, and other non-substantive conforming amendments to the Exchange A&R By-laws that are consistent with the changes described above.<sup>83</sup>

The Commission believes that the proposed changes to the organizational documents of the Exchange are consistent with the Act, and that they are intended to align the Exchange's governance and organizational structure with the proposed ownership by NSX Holdings.

### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>84</sup> that the proposed rule change (SR-NSX-2014-017), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>85</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2015-03515 Filed 2-19-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74272; File No. SR-Phlx-2015-15]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Remote Streaming Quote Traders

February 13, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the

<sup>81</sup> See Notice, *supra* note 4, at 89.

<sup>82</sup> See Notice, *supra* note 4, at 89-90.

<sup>83</sup> For a more detailed description of the non-substantive conforming amendments, see Notice, *supra* note 4, at 90 and Exhibit 5D to SR-NSX-2014-017.

<sup>84</sup> 15 U.S.C. 78s(b)(2).

<sup>85</sup> 17 CFR 200.30-3(a)(12).

“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2015, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Phlx Rule 507, entitled “Application for Approval as an SQT or RSQT or RSQTO and Assignment in Options” to increase the number of Remote Streaming Quote Traders (“RSQTs”) that may be affiliated with a Remote Streaming Quote Trader Organization (“RSQTOs”).

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.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 Phlx Rule 507, entitled “Application for Approval as an SQT or RSQT or RSQTO and Assignment in Options,” to increase the number of RSQTs that may be affiliated with RSQTOs. RSQTs are one of several types of Registered Options Traders (“ROT”) on the Exchange. ROTs are market makers that include Streaming

Quote Traders (“SQTs”),<sup>3</sup> RSQTs,<sup>4</sup> Directed Streaming Quote Traders (“DSQTs”), and Directed Remote Streaming Quote Traders (“DRSQTs”).<sup>5</sup>

Rule 507 is one of the numerous rules administered by the Exchange that deal with allocation and assignment of securities. These Rules generally describe the process for: Applying for an appointment as a specialist; allocating classes of options to specialist units and individual specialists; applying for an appointment as an SQT or RQT; as well as continuing performance obligations. The Rules also indicate, among other things, under what circumstances new allocations are made to specialists and assignments are determined for SQTs.<sup>6</sup>

<sup>3</sup> An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Rule 1014(b)(ii)(A).

<sup>4</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Rule 1014(b)(ii)(B).

<sup>5</sup> A DSQT is an SQT and a DRSQT is an RSQT that receives a Directed Order. Exchange Rule 1080(l)(i)(A) defines Directed Order as any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider and delivered to the Exchange via its electronic quoting, execution and trading system.

<sup>6</sup> See, e.g., Supplementary Material .01 to Rule 506 (specialist may not apply for a new allocation for a period of six months after an option allocation was taken away from the specialist in a disciplinary proceeding or an involuntary reallocation proceeding). Specifically, Rule 507 discusses the process of applying for approval as an RSQT or SQT on the Exchange and assignment of options to them. Under Rule 507, RSQTOs are Exchange member organizations while SQTs and RSQTs are Exchange members. Any member organization of the Exchange in good standing that satisfies the RSQTO readiness requirements will be approved as an RSQTO. RSQTOs may also be referred to as Remote Market Maker Organizations (“RMOs”) and RSQTs may also be referred to as Remote Market Makers (“RMMs”). Rule 507(a). No limit is placed on the number of member organizations that may become RSQTOs. Moreover, as many as three RSQT applicants affiliated with an RSQTO may be approved as an RSQT, to the extent that each such RSQT applicant is qualified as an ROT in good standing, and satisfies the five readiness requirements that are set out in Rule 507. There is no limit on the number of qualifying ROTs that may be approved as RSQTs, as long as the applicants are qualified as ROTs in good standing and satisfy the readiness requirements. No limit is placed on the number of member organizations that may become RSQTOs. Moreover, as many as three RSQT applicants affiliated with an RSQTO may be approved as an RSQT, to the extent that each such RSQT applicant is qualified as an ROT in good standing, and satisfies the five readiness requirements that are set out in Rule 507. There is no limit on the number of qualifying ROTs that may be approved as RSQTs, as long as the applicants are

The process for applying to be an RSQTO and applying for an assignment in options as an RQT or SQT is set forth in Rule 507. All new applicants for trading privileges will continue to be subject to the process for assignment described in Rule 507. The Exchange considers all applicants for assignment in options using the objective criteria set forth in Exchange Rule 507(b). The objective criteria are used by the Exchange in determining the most beneficial assignment of options for the Exchange and the public. Approved RSQTs have certain electronic quoting obligations via the Exchange’s electronic quoting and trading system, as well as restrictions, pertaining to the current market makers on the Exchange.<sup>7</sup> SQTs and RSQTs are subject to performance evaluations to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, efficient quote submission to the Exchange (including quotes submitted through a third party vendor), competition among market makers, observance of ethical standards, and administrative factors.<sup>8</sup>

The Exchange is not proposing to amend the process or procedure for applying to act as a market maker on the Exchange nor the obligations or performance evaluations that are conducted once appointed. The Exchange proposes to amend Rule 507(a) to increase the number of RSQTs that may be affiliated with an RSQTO from three to five RSQTs. The Exchange initially selected three RSQTs when the concept of an RSQTO was adopted because the Exchange believed that up to three RSQTs for each RSQTO organization would strike a proper balance with respect to the anticipated increase to support quoting and trading options in light of competition. The RSQTO concept was initially adopted in 2013.<sup>9</sup> At this time, the Exchange believes the number of RSQTs affiliated with an RSQTO can be increased to allow up to five RSQTs to be affiliated with an RSQTO, without a significant impact on message traffic, while allowing increased competition. The Exchange has allowed up to three RSQTs in the interim two years and at this time believes it has the adequate

qualified as ROTs in good standing and satisfy the readiness requirements.

<sup>7</sup> More than one RSQT may submit a quote in an assigned option, to the extent that each RSQT applies for and is approved as an RSQT affiliated with an RSQTO pursuant to Rule 507. See Rule 1014 (b)(ii)(B).

<sup>8</sup> See Rule 510.

<sup>9</sup> See Securities and Exchange [sic] Release No. 68689 (January 25 [sic], 2013), 78 FR 5518 (January 18 [sic], 2013) (SR-Phlx-2013-03).

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

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

capacity to propose the increased number of RSQTs to quote. The Exchange will continue to monitor the number of permitted RSQTs in relation to its capacity. The Exchange notes that the Maximum Number of Quoters ("MNQs") refers to the maximum number of participants that may be assigned in a particular equity option at any one time. The MNQ level for options trading on the Exchange is 30 for all equity options listed for trading on the Exchange.<sup>10</sup> This rule change will not impact the MNQ. Other options exchanges similarly impose higher limits on the number of total members that may quote electronically.<sup>11</sup> The Exchange represents that it has the system capacity to continue to support quoting and trading options subsequent to the effectiveness of this proposal. The Exchange represents that it has an adequate surveillance program in place for options that are quoted and traded on the Exchange and intends to continue application of those program procedures as necessary. Additionally, the Exchange is a member of the Intermarket Surveillance Group ("ISG") under the Intermarket Surveillance Group Agreement, dated June 20, 1994. ISG members coordinate surveillance and investigative information sharing for equity and options markets. Moreover, futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

The Exchange believes that the proposed rule change increasing the number of RSQTs that may be affiliated with RSQTOs will encourage competition, create additional trading opportunities and outlets and increase the depth of markets.

The Exchange is also proposing to delete rule text in Rule 507 related to

<sup>10</sup> See Commentaries .01 to .05 to Rule 507.

<sup>11</sup> The Chicago Board Options Exchange Incorporated ("CBOE") imposes an upper limit on the aggregate number of Trading Permit Holders that may quote electronically in each product during each trading session ("Class Quoting Limit" or "CQL"). The DPM or LMM(s) assigned to the product and Market-Makers who hold an appointment in the product are entitled to quote electronically in those products for as long as they maintain an appointment in those products. All other Market-Makers that request the ability to submit quotes electronically in the subject product will be entitled to quote electronically in that product in the order in which they so request provided the number of Trading Permit Holders quoting electronically in the product does not exceed the CQL. When the number of Trading Permit Holders in the product quoting electronically equals the CQL, all other Trading Permit Holders requesting the ability to quote electronically in that product will be wait-listed in the order in which they submitted the request. The CQL for products trading on the Hybrid Trading System is fifty (50). See CBOE Rule 8.3A.

RSQTO conversions. The rule text was originally adopted to provide guidance as to the initial manner and timeframe within which members were required to notify the Exchange of the names of the affiliated RSQTs. This language is no longer necessary and the Exchange proposes to delete the rule text.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>13</sup> in particular, in that it is 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, by enabling a greater number of RSQTs to be affiliated with an RSQTO.

The Exchange believes that this proposal does not engender unfair discrimination among specialists, specialist units, SQTs and RSQTs. This proposal to amend Rule 507 will be equally applicable to all members and member organizations at the Exchange. Increasing the number of RSQTs associated with an RSQTO is pro-competitive, because it adds depth and liquidity to the Exchange's markets by permitting additional participants to compete on the Exchange.

The Exchange believes that deleting the language concerning the RSQTO conversion period, which was initially implemented to provide a timeframe to permit member organizations to provide notification to the Exchange of up to three affiliated RSQTs, will clarify the Rule text by removing this language which is no longer necessary and is outdated.

## 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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal further promotes intra-market competition on the Exchange which should lead to tighter, more efficient markets to the benefit of market participants including public investors that engage in trading and hedging on the Exchange, and thereby make the Exchange a desirable market as compared to other options exchanges and therefore promoted inter-market competition.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(ii) [sic] of the Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-15 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-Phlx-2015-15. This file

<sup>14</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

number should be included on the subject line if email 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 Web site (<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 Web site 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 such 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-Phlx-2015-15, and should be submitted on or before March 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2015-03517 Filed 2-19-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74278; File No. SR-NYSEArca-2015-04]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Innovator IBD® 50 Fund Under NYSE Arca Equities Rule 8.600

February 13, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January

30, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On February 12, 2015, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission is publishing this notice, as modified by Amendment No. 1, to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): Innovator IBD® 50 Fund. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts 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 shares ("Shares") of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:<sup>5</sup> Innovator IBD®

<sup>4</sup> Amendment No. 1 replaces SR-NYSEArca-2015-004 and supersedes such filing in its entirety.

<sup>5</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) ("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 Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that

50 Fund ("Fund"). The Shares will be offered by Academy Funds Trust (the "Trust"),<sup>6</sup> an open-end management investment company.<sup>7</sup> The investment adviser to the Fund will be Innovator Management LLC (the "Adviser"). Penserra Capital Management LLC will be the Fund's sub-adviser ("Sub-Adviser"). Quasar Distributors, LLC (the "Distributor") will be the principal underwriter and distributor of the Fund's Shares. U.S. Bank, N.A. (the "Administrator" or "Custodian") will serve as the administrator, custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 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. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.<sup>8</sup> Commentary .06 to Rule

correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>6</sup> The Trust is registered under the 1940 Act. On October 9, 2014 and on December 19, 2014, the Trust filed with the Commission amendments to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and under the 1940 Act relating to the Fund (File Nos. 333-146827 and 811-22135) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31248 (September 9, 2014) (File No. 812-14308) ("Exemptive Order").

<sup>7</sup> The Commission has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF); and 65468 (October 3, 2011), 76 FR 62873 (October 11, 2011) (SR-NYSEArca-2011-51) (order approving Exchange listing and trading of TrimTabs Float Shrink ETF).

<sup>8</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 Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.