

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80946; File No. SR–NASDAQ–2017–039]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Guggenheim Limited Duration ETF

June 15, 2017.

I. Introduction

On April 13, 2017, 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”)¹ and Rule 19b–4 thereunder,² a proposed rule change to list and trade the common shares of beneficial interest (“Shares”) of the Guggenheim Limited Duration ETF (“Fund”), a series of Claymore Exchange-Traded Fund Trust (“Trust”) under Nasdaq Rule 5735 (“Rule 5735”). The proposed rule change was published for comment in the **Federal Register** on May 3, 2017.³ On June 1, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The

Commission has not received any comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. The Exchange’s Description of the Proposed Rule Change, as Modified by Amendment No. 1

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 Exchange proposes to list and trade the Shares of the Fund under Rule 5735, which rule governs the listing and trading of Managed Fund Shares⁵ on the Exchange.⁶ The Shares will be

offered by the Fund, which will be an actively managed exchange-traded fund (“ETF”). The Fund is a series of the Trust. The Trust was established as a Delaware statutory trust on May 24, 2006. The Trust is registered with the Commission as an open-end management investment company and has filed a post-effective amendment to its registration statement on Form N–1A (the “Registration Statement”) with the Commission to register the Fund and its Shares under the 1940 Act and the Securities Act of 1933.⁷

Guggenheim Partners Investment Management, LLC will serve as the investment adviser (the “Adviser”) to the Fund. Guggenheim Funds Distributors, LLC will serve as the principal underwriter and distributor of the Fund’s Shares (the “Distributor”). The Bank of New York Mellon will act as the custodian, transfer agent and fund accounting agent for the Fund (the “Custodian”). MUFG Investor Services, LLC will serve as the administrator for the Fund (the “Administrator”).

Paragraph (g) of Rule 5735 provides that, if the investment adviser to an 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’s portfolio.⁸ In addition,

the Commission previously approved the listing and trading of other actively managed funds within the Guggenheim family of ETFs. *See, e.g.*, Security Exchange Act Release Nos. 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca–2011–11) (order approving listing of Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF); 76719 (December 21, 2015), 80 FR 248 (December 28, 2015) (SR–NYSEArca–2015–73) (order approving listing of Guggenheim Total Return Bond ETF). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

⁷ See Registration Statement for the Trust, filed on April 12, 2016 (File Nos. 333–134551 and 811–21906). The descriptions of the Fund and the Shares contained herein are based, in part, on information in 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. 29271 (May 18, 2010) (File No. 13534) (“Exemptive Order”).

⁸ 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 its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ *See* Securities Exchange Act Release No. 80540 (Apr. 27, 2017), 82 FR 20673.

⁴ In Amendment No. 1, which amended and replaced the original filing in its entirety, the Exchange: (i) Clarified that, if any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a registered broker-dealer, the sub-adviser will implement and maintain a fire wall with respect to its relevant personnel and/or its broker-dealer affiliate, if applicable, regarding access to information concerning the composition of and/or changes to the Fund’s portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio; (ii) clarified that the Fund may invest in both secured and unsecured bank loans; (iii) added that the Fund may invest in the following derivatives: Exchange-traded and OTC options on commodities and interest rates, and forwards on securities, commodities, indices, and futures; (iv) specified that the OTC total return swaps that the Fund will invest in will be total return swaps on securities, commodities, indices, and futures; (v) clarified that the exchange-traded and OTC credit default swaps in which the Fund may invest will be single name and index credit default swaps; (vi) clarified that the options on the Fund’s swap investments described in this filing will include both OTC and exchange-traded options; (vii) added that price information for exchange-traded step-up bonds will generally be available from the applicable exchange or from major market data vendors; and (viii) made technical changes to the proposed rule change. Amendment No. 1 is available on the Commission’s Web site at: <https://www.sec.gov/comments/sr-nasdaq-2017-039/nasdaq2017039-1782218-152905.pdf>.

⁵ A “Managed Fund Share” is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the “1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁶ The Commission approved Nasdaq Rule 5735 (formerly Nasdaq Rule 4420(o)) in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). There are already multiple actively managed funds listed on the Exchange; *see, e.g.*, Securities Exchange Act Release Nos. 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR–NASDAQ–2013–036) (order approving listing and trading of First Trust Senior Loan Fund); 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund); and 78533 (August 10, 2016), 81 FR 54634 (August 16, 2016) (SR–NASDAQ–2016–086) (order approving listing and trading of VanEck Vectors Long/Flat Commodity ETF). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.*, Securities Exchange Act Release No. 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR–NYSEArca–2012–139) (order approving listing and trading of First Trust Preferred Securities and Income ETF). Moreover,

paragraph (g) of Rule 5735 further requires that personnel who make decisions on such investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the investment company's portfolio.

Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i), which applies to index-based funds and requires "fire walls" between affiliated broker-dealers and investment advisers regarding the index-based fund's underlying benchmark index. Rule 5735(g), however, applies to the establishment of a "fire wall" between affiliated investment advisers and the broker-dealers with respect to the investment company's portfolio and not with respect to an underlying benchmark index, as is the case with index-based funds.

The Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer. The Adviser has therefore implemented and will maintain a fire wall with the Distributor with respect to the access of information concerning the composition and/or changes to the Fund's portfolio.

In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a different broker-dealer, or (b) any new adviser or any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, each will implement and maintain 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 Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Guggenheim Limited Duration ETF

The Fund will be an actively-managed ETF, and its investment objective is to

Advisers Act and Rule 204A-1 thereunder. 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.

seek to provide a level of income consistent with preservation of capital.

Principal Investments

The Fund will seek to achieve its investment objective by investing, under normal market conditions,⁹ at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in a diversified portfolio of "Debt Instruments" (as described below) of any interest rate, credit quality,¹⁰ maturity or duration; however, the Fund expects, under normal market conditions, to maintain a dollar-weighted average duration¹¹ of generally less than 3.5 years (the "80% Policy"). The 80% Policy may be represented by certain derivative instruments as discussed below,¹² and ETFs¹³ and exchange-traded and over-the-counter ("OTC") closed-end funds ("CEFs") (which may include ETFs and CEFs affiliated with the Fund), provided that such ETFs and CEFs invest substantially all of their assets in Debt

⁹The term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

¹⁰The Fund may hold fixed-income securities of any quality, rated or unrated, including those that are rated below-investment grade (also known as "high yield securities" or "junk bonds"), or if unrated, determined by the Adviser to be of comparable quality. If nationally recognized statistical rating organizations assign different ratings to the same security, the Fund will use the higher rating for purposes of determining the security's credit quality. However, the Fund will not invest more than 35% of its total assets in fixed-income securities that are rated below investment grade as described below under "Investment Restrictions."

¹¹Duration is a measure of the price volatility of a debt instrument as a result of changes in market rates of interest, based on the weighted average timing of the instrument's expected principal and interest payments. Duration differs from maturity in that it considers a security's yield, coupon payments, principal payments and call features in addition to the amount of time until the security matures. As the value of a security changes over time, so will its duration. The longer a security's duration, the more sensitive it will be to changes in interest rates.

¹²See "The Fund's Use of Derivatives," *infra*.

¹³The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG"), which includes all U.S. national securities exchanges, or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will not invest more than 20% of its net assets in leveraged or inverse-leveraged ETFs. The Fund will not invest in non-U.S. exchanged [sic]-listed ETFs.

Instruments. The Fund will, as described further below, invest in the following Debt Instruments: Corporate debt securities of U.S. and non-U.S. issuers, including corporate bonds;¹⁴ securities issued by the U.S. government or its agencies, instrumentalities or sponsored corporations (including those not backed by the full faith and credit of the U.S. government);¹⁵ inflation-indexed bonds issued by both governments and corporations;¹⁶ debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises ("Municipal Bonds");¹⁷ tender option bonds;¹⁸

¹⁴The Adviser expects that under normal market conditions the Fund will invest at least 75% of its corporate debt securities assets (including zero coupon and payment-in-kind securities) in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries.

¹⁵U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the "full faith and credit" of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

¹⁶Inflation-indexed bonds (other than municipal inflation-indexed bonds and certain corporate inflation-indexed bonds) are fixed income securities whose principal value is periodically adjusted according to the rate of inflation (e.g., Treasury Inflation Protected Securities ("TIPS")). Municipal inflation-indexed securities are municipal bonds that pay coupons based on a fixed rate plus the Consumer Price Index for All Urban Consumers ("CPI"). With regard to municipal inflation-indexed bonds and certain corporate inflation-indexed bonds, the inflation adjustment is reflected in the semi-annual coupon payment.

¹⁷Municipal Bonds are debt securities issued by or on behalf of states, local governments, territories and possessions of the United States and the District of Columbia and their political subdivisions, agencies, and instrumentalities, the payments from which, in the opinion of bond counsel to the issuer, are excludable from gross income for Federal income tax purposes, or that pay interest excludable from gross income for purposes of state and local income taxes of the designated state and/or allow the value of the Fund's shares to be exempt from state and local taxes of the designated state. The Fund will primarily invest in Municipal Bonds in developed countries, but may also invest in Municipal Bonds in emerging markets. The Fund will invest its Municipal Bond assets in issuances of at least \$10,000,000. The Fund may invest in Municipal Bonds of any quality, rated or unrated, including those that are rated below-investment grade, or if unrated, determined by the Investment Adviser to be of comparable quality. The Fund will primarily invest in investment-grade Municipal Bonds.

¹⁸Tender option bonds are created by depositing intermediate- or long-term, fixed-rate or variable rate, municipal bonds into a trust and issuing two classes of trust interests (or "certificates") with varying economic interests to investors. Holders of the first class of trust interests, or floating rate certificates, receive tax-exempt interest based on

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obligations of non-U.S. governments and their subdivisions, agencies and government-sponsored enterprises; obligations of international agencies or supranational entities; cash equivalents;¹⁹ agency²⁰ and non-agency mortgage-backed securities (“MBS”) and asset-backed securities (“ABS”);²¹ U.S.

short-term rates and may tender the certificate to the trust at par. As consideration for providing the tender option, the trust sponsor (typically a bank, broker-dealer, or other financial institution) receives periodic fees. The trust pays the holders of the floating rate certificates from proceeds of a remarketing of the certificates or from a draw on a liquidity facility provided by the sponsor. The Fund investing in a floating rate certificate effectively holds a demand obligation that bears interest at the prevailing short-term tax-exempt rate. The floating rate certificate is typically an eligible security for money market funds. Holders of the second class of interests, sometimes called the residual income certificates, are entitled to any tax-exempt interest received by the trust that is not payable to floating rate certificate holders, and bear the risk that the underlying municipal bonds decline in value.

¹⁹ Cash equivalents in which the Fund may invest will be U.S. Treasury Bills, investment grade commercial paper, cash, and Short Term Investment Funds (“STIFs”). STIFs are a type of fund that invests in short-term investments of high quality and low risk.

²⁰ Agency securities for these purposes generally includes securities issued by the following entities: Government National Mortgage Association (Ginnie Mae), Federal National Mortgage Association (Fannie Mae), Federal Home Loan Banks (FHLBanks), Federal Home Loan Mortgage Corporation (Freddie Mac), Farm Credit System (FCS) Farm Credit Banks (FCBanks), Student Loan Marketing Association (Sallie Mae), Resolution Funding Corporation (REFCORP), Financing Corporation (FICO), and the FCS Financial Assistance Corporation (FAC). Agency securities can include, but are not limited to, mortgage-backed securities.

²¹ The MBS in which the Fund may invest may also include residential mortgage-backed securities (“RMBS”), collateralized mortgage obligations (“CMOs”) and commercial mortgage-backed securities (“CMBS”). The ABS in which the Fund may invest include collateralized debt obligations (“CDOs”). CDOs include collateralized bond obligations (“CBOs”), collateralized loan obligations (“CLOs”) and other similarly structured securities. A CBO is a trust which is backed by a diversified pool of high risk, below investment grade fixed income securities. A CLO is a trust typically collateralized by a pool of loans, which may include domestic and foreign senior secured loans, senior unsecured loans, and subordinate corporate loans, including loans that may be rated below investment grade or equivalent unrated loans. Specifically, the Exchange notes that such ABS are bonds backed by pools of loans or other receivables and are securitized by a wide variety of assets that are generally broken into three categories: Consumer, commercial, and corporate. The consumer category includes credit card, auto loan, student loan, and timeshare loan ABS. The commercial category includes trade receivables, equipment leases, oil receivables, film receivables, rental cars, aircraft securitizations, ship and container securitizations, whole business securitizations, and diversified payment right securitizations. Corporate ABS include cash flow collateralization loan obligations, collateralized by both middle market and broadly syndicated bank loans. ABS are issued through special purpose vehicles that are bankruptcy remote from the issuer of the collateral. The credit quality of an ABS tranche depends on the performance of the

agency mortgage pass-through securities;²² repurchase agreements;²³ commercial instruments (including asset-backed commercial instruments);²⁴ zero-coupon and payment-in-kind securities;²⁵ convertible securities;²⁶ preferred

underlying assets and the structure. To protect ABS investors from the possibility that some borrowers could miss payments or even default on their loans, ABS include various forms of credit enhancement.

²² The Fund will seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of “to-be-announced” or “TBA transactions.” “TBA” refers to a commonly used mechanism for the forward settlement of U.S. agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. Most transactions in mortgage pass-through securities occur through the use of TBA transactions. TBA transactions generally are conducted in accordance with widely-accepted guidelines which establish commonly observed terms and conditions for execution, settlement and delivery.

²³ Repurchase agreements are fixed-income securities in the form of agreements backed by collateral. These agreements, which may be viewed as a type of secured lending by the Fund, typically involve the acquisition by the Fund of securities from the selling institution (such as a bank or a broker-dealer), coupled with the agreement that the selling institution will repurchase the underlying securities at a specified price and at a fixed time in the future (or on demand). The Fund may accept a wide variety of underlying securities as collateral for the repurchase agreements entered into by the Fund. Such collateral may include U.S. government securities, corporate obligations, equity securities, municipal debt securities, asset- and mortgage-backed securities, convertible securities and other fixed-income securities. Any such securities serving as collateral are marked-to-market daily in order to maintain full collateralization (typically purchase price plus accrued interest).

²⁴ Commercial instruments include commercial paper, master notes, asset-backed commercial paper and other short-term corporate instruments. Commercial paper normally represents short-term unsecured promissory notes issued in bearer form by banks or bank holding companies, corporations, finance companies and other issuers. Commercial paper may be traded in the secondary market after its issuance. Master notes are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. Master notes are generally illiquid and therefore subject to the Fund’s percentage limitations for investments in illiquid securities. Asset-backed commercial paper is issued by a special purpose entity that is organized to issue the commercial paper and to purchase trade receivables or other financial assets.

²⁵ Zero-coupon and payment-in-kind securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Payment-in-kind securities pay interest through the issuance of additional securities.

²⁶ Convertible securities include bonds, debentures, notes and other securities that may be converted into a prescribed amount of common stock or other equity securities at a specified price and time. The Fund may invest in convertible securities traded on an exchange or OTC. The convertible securities in which the Fund may invest will be converted into a prescribed amount of common stock or other equity securities (i) whose principal market is a member of the ISG, or (ii) subject to the Fund’s 10% limit on equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not

securities and step-up securities (such as step-up bonds);²⁷ bank capital;²⁸ bank instruments, including certificates of deposit (“CDs”),²⁹ time deposits and bankers’ acceptances from U.S. banks;³⁰ debtor-in-possession financings;³¹ participations in and assignments of bank loans or corporate loans, which loans include senior loans,³² syndicated bank loans, junior loans,³³ bridge

have a comprehensive surveillance sharing agreement.

²⁷ The preferred securities in which the Fund may invest include preferred stock, contingent capital securities, contingent convertible securities, capital securities, and hybrid securities of debt and preferred stock. The Fund may invest in preferred securities traded on an exchange or OTC. Preferred securities pay fixed or adjustable rate dividends to investors, and have “preference” over common stock in the payment of dividends and the liquidation of a company’s assets. The Fund will primarily invest in preferred securities that are either exchange-traded, or are Trade Reporting and Compliance Engine-eligible (“TRACE-eligible”) and settled via the Depository Trust Company (“DTC”). The Fund may invest in step-up bonds traded on an exchange or OTC.

²⁸ There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically preferred stock or contingent capital securities. Tier I securities are often perpetual or long-dated (with no maturity date). Tier II securities are typically subordinated debt securities.

²⁹ A CD is a negotiable interest-bearing instrument with a specific maturity.

³⁰ A bankers’ acceptance is a bill of exchange or time draft drawn on and accepted by a commercial bank.

³¹ Debtor-in-possession financing (“DIP financing”) is a special form of financing provided for companies in financial distress, typically during restructuring under corporate bankruptcy law (such as Chapter 11 bankruptcy under the U.S. Code). Usually, DIP financing is considered senior to all other debt, equity, and any other securities issued by the distressed company.

³² Senior loans are business loans made to borrowers that may be U.S. or foreign corporations, partnerships, or other business entities. The interest rates on senior loans periodically are adjusted to a generally recognized base rate such as the London Interbank Offered Rate (LIBOR) or the prime rate as set by the Federal Reserve. Senior loans typically are secured by specific collateral of the borrower and hold the most senior position in the borrower’s capital structure or share the senior position with the borrower’s other senior debt securities.

³³ The Fund may invest in secured and unsecured bank loans and junior loans.

loans,³⁴ unfunded commitments,³⁵ revolving credit facilities,³⁶ and participation interests.³⁷

With respect to Debt Instrument investments, the Fund may invest in restricted securities (Rule 144A and Regulation S securities³⁸), which are subject to legal restrictions on their sale.

In addition, with respect to Debt Instrument investments, the Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs and dollar rolls).

The Fund may also use leverage to the extent permitted under the 1940 Act by entering into reverse repurchase agreements and borrowing transactions (principally lines of credit) for investment purposes. The Fund's exposure to reverse repurchase agreements will be covered by securities having a value equal to or greater than such commitments. Under the 1940 Act, reverse repurchase agreements are

³⁴ Bridge loans are short-term loan arrangements (e.g., maturities that are generally less than one year) typically made by a borrower following the failure of the borrower to secure other intermediate-term or long-term permanent financing. A bridge loan remains outstanding until more permanent financing, often in the form of high yield notes, can be obtained. Most bridge loans have a step-up provision under which the interest rate increases incrementally the longer the loan remains outstanding so as to incentivize the borrower to refinance as quickly as possible. In exchange for entering into a bridge loan, the Fund typically will receive a commitment fee and interest payable under the bridge loan and may also have other expenses reimbursed by the borrower. Bridge loans may be subordinate to other debt and generally are unsecured.

³⁵ Unfunded commitments are contractual obligations pursuant to which the Fund agrees in writing to make one or more loans up to a specified amount at one or more future dates. The underlying loan documentation sets out the terms and conditions of the lender's obligation to make the loans as well as the economic terms of such loans. The portion of the amount committed by a lender that the borrower has not drawn down is referred to as "unfunded." Loan commitments may be traded in the secondary market through dealer desks at large commercial and investment banks although these markets are generally not considered liquid.

³⁶ Revolving credit facilities ("revolvers") are borrowing arrangements in which the lender agrees to make loans up to a maximum amount upon demand by the borrower during a specified term. As the borrower repays the loan, an amount equal to the repayment may be borrowed again during the term of the revolver. Revolvers usually provide for floating or variable rates of interest.

³⁷ The Fund normally will invest at least 75% of its bank loan or corporate loan assets, which includes senior loans, syndicated bank loans, junior loans, bridge loans, unfunded commitments, revolvers and participation interests, in issuances that have at least \$100 million par amount outstanding.

³⁸ The Fund will invest in Rule 144A securities that are TRACE-eligible.

considered borrowings. Although there is no limit on the percentage of Fund assets that can be used in connection with reverse repurchase agreements, the Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33 $\frac{1}{3}$ % of its assets.

Other Investments of the Fund

While under normal market conditions the Fund will invest at least 80% of its assets pursuant to the 80% Policy described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

The Fund may invest in exchange-traded and OTC hybrid instruments, which combine a traditional stock, bond, or commodity with an option or forward contract. Generally, the principal amount, amount payable upon maturity or redemption, or interest rate of a hybrid is tied (positively or negatively) to the price of some commodity, currency or securities index or another interest rate or some other economic factor ("underlying benchmark").³⁹

The Fund is permitted to invest in structured notes, which are debt obligations that also contain an embedded derivative component with characteristics that adjust the obligation's risk/return profile. Generally, the performance of a structured note will track that of the underlying debt obligation and the derivative embedded within it.

The Fund may invest in credit-linked notes, which are a type of structured note.⁴⁰

³⁹ Certain hybrid instruments may provide exposure to the commodities markets. These are derivative securities with one or more commodity-linked components that have payment features similar to commodity futures contracts, commodity options, or similar instruments. Commodity-linked hybrid instruments may be either equity or debt securities, and are considered hybrid instruments because they have both security and commodity-like characteristics. A portion of the value of these instruments may be derived from the value of a commodity, futures contract, index or other economic variable. The Fund would only invest in commodity-linked hybrid instruments that qualify, under applicable rules of the Commodity Futures Trading Commission, for an exemption from the provisions of the Commodity Exchange Act (7 U.S.C. 1).

⁴⁰ The difference between a credit default swap and a credit-linked note is that the seller of a credit-linked note receives the principal payment from the buyer at the time the contract is originated. Through the purchase of a credit-linked note, the buyer assumes the risk of the reference asset and funds this exposure through the purchase of the note. The buyer takes on the exposure to the seller to the full amount of the funding it has provided. The seller has hedged its risk on the reference asset without acquiring any additional credit exposure. The Fund has the right to receive periodic interest payments from the issuer of the credit-linked note at an

The Fund may invest in risk-linked securities ("RLS"), which are a form of derivative issued by insurance companies and insurance-related special purpose vehicles that apply securitization techniques to catastrophic property and casualty damages.⁴¹

The Fund may invest a portion of its assets in high-quality money market instruments, including money market mutual funds, on an ongoing basis to provide liquidity.

The Fund may invest in U.S. and foreign common stocks, both exchange-listed and OTC.

The Fund may gain exposure to commodities through the use of investments in exchange-traded products ("ETPs")⁴² and exchange-traded notes ("ETNs").⁴³

The Fund may invest in the securities of exchange-traded and OTC real estate investment trusts ("REITs").⁴⁴

Investment Restrictions of the Fund

The Fund may not invest more than 25% of the value of its net assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or

agreed-upon interest rate and a return of principal at the maturity date.

⁴¹ RLS are typically debt obligations for which the return of principal and the payment of interest are contingent on the non-occurrence of a pre-defined "trigger event." Depending on the specific terms and structure of the RLS, this trigger could be the result of a hurricane, earthquake or some other catastrophic event. Insurance companies securitize this risk to transfer to the capital markets the truly catastrophic part of the risk exposure. A typical RLS provides for income and return of capital similar to other fixed-income investments, but would involve full or partial default if losses resulting from a certain catastrophe exceeded a predetermined amount.

⁴² Such ETPs include Trust Issued Receipts (as described in Nasdaq Rule 5720); Commodity-Based Trust Shares (as described in Nasdaq Rule 5711(d)); Currency Trust Shares (as described in Nasdaq Rule 5711(e)); Commodity Index Trust Shares (as described in Nasdaq Rule 5711(f)); and Trust Units (Nasdaq Rule 5711(i)).

⁴³ ETNs include Linked Securities (as described in Nasdaq Rule 5710). The Fund will not invest more than 20% of its net assets in leveraged or inverse-leveraged ETPs and ETNs. The Fund will not invest in non-U.S. exchange-listed ETPs and ETNs.

⁴⁴ REITs are pooled investment vehicles which invest primarily in income producing real estate or real estate related loans or interests. REITs are generally classified as equity REITs, mortgage REITs or hybrid REITs. Equity REITs invest the majority of their assets directly in real estate property and derive income primarily from the collection of rents. Equity REITs can also realize capital gains by selling properties that have appreciated in value. Mortgage REITs invest the majority of their assets in real estate mortgages and derive income from the collection of interest payments. A hybrid REIT combines the characteristics of equity REITs and mortgage REITs, generally by holding both direct ownership interests and mortgage interests in real estate.

guaranteed by the U.S. government, its agencies or instrumentalities.⁴⁵

The Fund may invest up to 20% of its total assets in the aggregate in MBS and ABS that are privately issued, non-agency and non-government sponsored entity ("Private MBS/ABS"). Such holdings would be subject to the respective limitations on the Fund's investments in illiquid assets and high yield securities. The liquidity of such securities, especially in the case of Private MBS/ABS, will be a substantial factor in the Fund's security selection process.

The Fund may invest up to 20% of its total assets in the aggregate in participations in and assignments of bank loans or corporate loans, which loans include syndicated bank loans, junior loans, bridge loans, unfunded commitments, revolving and participation interests (but specifically do not include senior loans), in structured notes, in credit-linked notes, in risk-linked securities, in OTC REITs, and in OTC hybrid instruments. Such holdings would be subject to the respective limitations on the Fund's investments in illiquid assets and high yield securities. The liquidity of such securities will be a substantial factor in the Fund's security selection process.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including commercial instruments deemed illiquid by the Adviser.⁴⁶ 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 those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as

⁴⁵ See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

⁴⁶ In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

determined in accordance with Commission staff guidance.⁴⁷

The Fund may invest up to 35% of its total assets in high yield debt securities ("junk bonds"), which are debt securities that are rated below-investment grade by nationally recognized statistical rating organizations such as Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Rating Group ("S&P"), or Fitch Investor Services ("Fitch"), or are unrated securities that the Adviser believes are of comparable below-investment grade quality. The Fund may invest in defaulted or distressed securities that are in default at the time of investment or that default subsequent to purchase by the Fund, in which case the Adviser will determine in its sole discretion whether to hold or dispose of security, subject to the Fund's 35% limitation in high yield debt securities.

While the Fund will principally invest in debt securities listed, traded or dealt in developed markets, it may also invest in securities listed, traded or dealt in other countries, including emerging markets countries. Such securities may be denominated in foreign currencies. However, the Fund may not invest more than 35% of its total assets in debt securities and instruments that are economically tied to emerging market countries, as determined by the Adviser, and non-U.S. dollar denominated securities.⁴⁸

⁴⁷ Long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. See also Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); and 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release Nos. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

⁴⁸ Emerging market countries are countries with developing economies or markets and may include any country recognized to be an emerging market country by the International Monetary Fund, MSCI, Inc. or Standard & Poor's Corporation or recognized to be a developing country by the United Nations. Generally, the Fund considers an instrument to be economically tied to an emerging market country through consideration of some or all of the following factors: (i) Whether the issuer is the government of the emerging market country (or any political subdivision, agency, authority or instrumentality of such government), or is organized under the laws of the emerging market country; (ii) amount of the issuer's revenues that are attributable to the emerging market country; (iii) the location of the issuer's management; (iv) if the security is secured or collateralized, the country in

The Fund may not invest more than 10% of its net assets in the aggregate in equity securities and REITs whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Fund may not invest more than 20% of its net assets in bank capital.

The Fund will be considered diversified within the meaning of the 1940 Act.⁴⁹

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.⁵⁰

The Fund's investments will be consistent with the Fund's investment objective. The Fund's investments will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund will not be operated as a "leveraged ETF," *i.e.*, it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).⁵¹

The Fund's Use of Derivatives

The Fund proposes to seek certain exposures through derivative transactions as described below. The Fund may invest in the following derivative instruments: Foreign exchange forward contracts; exchange-traded futures on securities, commodities, indices, interest rates and currencies; exchange-traded and OTC options on securities, commodities, interest rates, currencies, interest rate futures contracts, and indices; exchange-traded and OTC interest rate and inflation swaps; exchange-traded and OTC cross-currency swaps; OTC total return swaps and forwards on securities, commodities, indices, and futures; exchange-traded and OTC credit default swaps (single name and index);

which the security or collateral is located; and/or (v) the currency in which the instrument is denominated or currency fluctuations to which the issuer is exposed.

⁴⁹ Under the 1940 Act, for a fund to be classified as a diversified investment company, at least 75% of the value of the fund's total assets must be represented by cash and cash items (including receivables), government securities, securities of other investment companies, and securities of other issuers, which for the purposes of this calculation are limited in respect of any one issuer to an amount (valued at the time of investment) not greater in value than 5% of the fund's total assets and to not more than 10% of the outstanding voting securities of such issuer.

⁵⁰ 26 U.S.C. 851.

⁵¹ The Fund's broad-based securities benchmark index will be the Bloomberg Barclays U.S. Aggregate Bond 1-3 Total Return Index.

and exchange-traded and OTC options on such swaps (“swaptions”).⁵²

Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.⁵³ The Fund may also engage in derivative transactions for speculative purposes to enhance total return, to seek to hedge against fluctuations in securities prices, interest rates or currency rates, to change the effective duration of its portfolio, to manage certain investment risks and/or as a substitute for the purchase or sale of securities or currencies.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund’s investment objective and policies. As described further below, the Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. The Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, the Fund will segregate or “ earmark ” assets determined to be liquid by the Adviser in accordance with procedures established by the Trust’s Board of Trustees (the “ Board ”) and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in

⁵² Options on swaps are traded OTC. In the future, in the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

⁵³ The Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will monitor the financial standing of counterparties on an ongoing basis. This monitoring may include information provided by credit agencies, as well as the Adviser’s credit analysts and other team members who evaluate approved counterparties using various methods of analysis, including but not limited to earnings updates, the counterparty’s reputation, the Adviser’s past experience with the broker-dealer, market levels for the counterparty’s debt and equity, the counterparty’s liquidity and its share of market participation.

its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund’s use of derivatives, may give rise to additional leverage, causing the Fund to be more volatile than if it had not been leveraged.⁵⁴ Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

The Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that the Fund would otherwise purchase. For example, the Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (e.g., differences in yields).

The Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (e.g., interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or “ tail risks ”) in the Fund.

The Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by “ selling protection ” against default or other credit events, or to hedge broad market credit risk by “ buying protection. ” Single name credit default swaps (CDS) can be used to allow the Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. The Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be more efficient than buying underlying securities of an

⁵⁴ To mitigate leveraging risk, the Adviser will segregate or “ earmark ” liquid assets or otherwise cover the transactions that may give rise to such risk.

index, potentially lowering transaction costs.

The Fund may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers or dealers to purchase or sell foreign currencies at a future date (“ forward contracts ”).⁵⁵

The Adviser believes that the use of derivatives will allow the Fund to selectively add diversifying sources of return from selling options. Option purchases and sales can also be used to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Option strategies can generate income or improve execution prices (e.g., covered calls).

In addition to the Fund’s use of derivatives in connection with its 80% Policy, under the proposal the Fund would seek to invest in derivative instruments not based on Debt Instruments, consistent with the Fund’s investment restrictions relating to exposure to those asset classes.

Valuation Methodology for Purposes of Determining Net Asset Value

The net asset value (“ NAV ”) of the Fund’s Shares will be determined by dividing the total value of the Fund’s portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding. Fund Shares will be valued as of the close of regular trading (normally 4:00 p.m., Eastern Time (“ E.T. ”)) (the “ NYSE Close ”) on each day the New York Stock Exchange (“ NYSE ”) is open (“ Business Day ”). Information that becomes known to the Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day. The Fund reserves the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, then based on quotes obtained from a quotation reporting system, established

⁵⁵ A foreign currency forward contract is a negotiated agreement between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate. The rate can be higher or lower than the spot rate between the currencies that are the subject of the contract.

market makers, or pricing services. Domestic and foreign fixed income securities and non-exchange-traded derivatives will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics. Exchange-traded options and options on futures will generally be valued at the settlement price determined by the applicable exchange.

Derivatives for which market quotes are readily available will be valued at market value. Local closing prices will be used for all instrument valuation purposes. Futures will be valued at the last reported sale or settlement price on the day of valuation. Swaps traded on exchanges such as the Chicago Mercantile Exchange (“CME”) or the Intercontinental Exchange (“ICE-US”) will use the applicable exchange closing price where available.

Foreign currency-denominated derivatives will generally be valued as of the respective local region’s market close.

With respect to specific derivatives:

- Currency spot and forward rates from major market data vendors⁵⁶ will generally be determined as of the NYSE Close.
- Exchange-traded futures will generally be valued at the settlement price of the relevant exchange.
- A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.
- Equity total return swaps will generally be valued using the actual underlying equity at local market closing, while bank loan total return swaps will generally be valued using the evaluated underlying bank loan price minus the strike price of the loan.
- Exchange-traded non-equity options (for example, options on bonds, Eurodollar options, and U.S. Treasury options), index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available.
- OTC and exchange-traded equity options will generally be valued on a basis of quotes obtained from a quotation reporting system, established market makers, or pricing services or at the settlement price of the applicable exchange.

- OTC foreign currency (FX) options will generally be valued by pricing vendors.
- All other OTC and exchange-traded swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, and CDX/CDS will generally be valued by pricing services or at the settlement price of the applicable exchange.

Exchange-traded equity securities (including common stocks, ETPs, ETFs, ETNs, CEFs, exchange-traded convertible securities, REITs, and preferred securities) will be valued at the official closing price or the last trading price on the exchange or market on which the security is primarily traded at the time of valuation. If no sales or closing prices are reported during the day, exchange-traded equity securities will generally be valued at the closing bid price on the exchange or market on which the security is primarily traded, or using other market information obtained from quotation reporting systems, established market makers, or pricing services. Investment company securities that are not exchange-traded will be valued at NAV. Equity securities traded OTC will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Structured notes, exchange-traded and OTC hybrids and RLS will be valued based on prices obtained from an independent pricing vendor such as IDC or Reuters or on the basis of prices obtained from brokers and dealers. Debt Instruments will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers.

If a foreign security’s value has materially changed after the close of the security’s primary exchange or principal market but before the NYSE Close, the security will be valued at fair value based on procedures established and approved by the Board. Foreign securities that do not trade when the NYSE is open will also be valued at fair value.

The Board has adopted policies and procedures for the valuation of the Fund’s investments (the “Valuation Procedures”). Pursuant to the Valuation Procedures, the Board has delegated to a valuation committee, consisting of representatives from Guggenheim’s investment management, fund administration, legal and compliance departments (the “Valuation Committee”), the day-to-day responsibility for implementing the Valuation Procedures, including, under most circumstances, the responsibility for determining the fair value of the

Fund’s securities or other assets. Valuations of the Fund’s securities are supplied primarily by pricing services appointed pursuant to the processes set forth in the Valuation Procedures. The Valuation Committee convenes monthly, or more frequently as needed and will review the valuation of all assets which have been fair valued for reasonableness. The Fund’s officers, through the Valuation Committee and consistent with the monitoring and review responsibilities set forth in the Valuation Procedures, regularly review procedures used by, and valuations provided by, the pricing services.

Debt securities with a maturity of greater than 60 days at acquisition will be valued at prices that reflect broker/dealer supplied valuations or are obtained from independent pricing services, which may consider the trade activity, treasury spreads, yields or price of bonds of comparable quality, coupon, maturity, and type, as well as prices quoted by dealers who make markets in such securities. Short-term securities with remaining maturities of 60 days or less will be valued at amortized cost, provided such amount approximates market value. Money market instruments will be valued at NAV.

Generally, trading in foreign securities markets is substantially completed each day at various times prior to the close of the NYSE. The values of foreign securities are determined as of the close of such foreign markets or the close of the NYSE, if earlier. All investments quoted in foreign currency will be valued in U.S. dollars on the basis of the foreign currency exchange rates prevailing at the close of U.S. business at 4:00 p.m. E.T. The Valuation Committee will determine the current value of such foreign securities by taking into consideration certain factors which may include those discussed above, as well as the following factors, among others: The value of the securities traded on other foreign markets, closed-end fund trading, foreign currency exchange activity, and the trading prices of financial products that are tied to foreign securities. In addition, under the Valuation Procedures, the Valuation Committee and the Adviser are authorized to use prices and other information supplied by a third party pricing vendor in valuing foreign securities.

Investments for which market quotations are not readily available will be fair valued as determined in good faith by the Adviser, subject to review by the Valuation Committee, pursuant to methods established or ratified by the Board. Valuations in accordance with these methods are intended to reflect

⁵⁶ Major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation, or other major data vendors.

each security's (or asset's) "fair value." Each such determination will be based on a consideration of all relevant factors, which are likely to vary from one pricing context to another.

Examples of such factors may include, but are not limited to: Market prices; sales price; broker quotes; and models which derive prices based on inputs such as prices of securities with comparable maturities and characteristics, or based on inputs such as anticipated cash flows or collateral, spread over Treasuries, and other information analysis.

Investments initially valued in currencies other than the U.S. dollar will be converted to the U.S. dollar using exchange rates obtained from pricing services. As a result, the NAV of the Fund's Shares may be affected by changes in the value of currencies in relation to the U.S. dollar. The value of securities traded in markets outside the United States or denominated in currencies other than the U.S. dollar may be affected significantly on a day that the NYSE is closed. As a result, to the extent that the Fund holds foreign (non-U.S.) securities, the NAV of the Fund's Shares may change when an investor cannot purchase, redeem or exchange shares.

Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each Business Day, before commencement of trading in Fund Shares on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, the Exchange or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association ("CTA") or other widely disseminated means an updated Intra-day Indicative Value ("IIV") for the Fund as calculated by a third party market data provider.

A third party market data provider will calculate the IIV for the Fund. For the purposes of determining the IIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- Foreign currency derivatives, including foreign exchange forward contracts, foreign exchange options and currency futures, may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps, inflation swaps and cross-currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- Credit default swaps (single name and index, such as, CDX/CDS) may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- OTC total return swaps and forwards (excluding foreign exchange forward contracts) may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options and swaptions may be valued intraday through option valuation models (e.g., Black-Scholes) or using exchange-traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of

derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information.

The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a "cash in lieu" amount when the Fund processes purchases or redemptions of creation units in-kind.

Creation and Redemption of Shares

Investors may create or redeem in Creation Unit size of 100,000 Shares or aggregations thereof ("Creation Unit") through an Authorized Participant ("AP"), as described in the Registration Statement. The size of a Creation Unit is subject to change. In order to purchase Creation Units of the Fund, an investor must generally deposit a designated portfolio of securities (the "Deposit Securities") (and/or an amount in cash in lieu of some or all of the Deposit Securities) per each Creation Unit constituting a substantial replication, or representation, of the securities included in the Fund's portfolio as selected by the Adviser ("Fund Securities") and generally make a cash payment referred to as the "Cash Component." The list of the names and the amounts of the Deposit Securities will be made available by the Fund's Custodian through the facilities of the National Securities Clearing Corporation ("NSCC") prior to the opening of business of the Exchange (9:30 a.m., E.T.). The Cash Component will represent the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.

Shares may be redeemed only in Creation Unit size at their NAV on a day the Exchange is open for business. The Fund's custodian will make available immediately prior to the opening of the Exchange, through the facilities of NSCC, the list of the names and the amounts of the Fund Securities that will be applicable that day to redemption requests in proper form. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to purchases of Creation Units. The creation/redemption order

cut-off time for the Fund will be 4:00 p.m. E.T.

Availability of Information

The Fund's Web site (www.guggenheiminvestments.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include the ticker symbol for the Shares, CUSIP and exchange information, along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior Business Day's reported NAV, closing price and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),⁵⁷ and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for the most recently completed calendar year and each of the four most recently completed calendar quarters since that year (or the life of the Fund if shorter).

On each Business Day, before commencement of trading in Shares in the Regular Market Session⁵⁸ on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio" as such term is 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.⁵⁹

In addition to disclosing the identities and quantities of the portfolio of securities and other assets in the Disclosed Portfolio, the Fund also will disclose on a daily basis on its Web site the following information, as applicable to the type of holding: Ticker symbol, if

any, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as, a type of swap), quantity held (as measured by, for example, par value, number of shares or units); identity of the security, index, or other asset or instrument underlying the holding, if any; for options, the options strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts or units); maturity date, if any; coupon rate, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site and information will be publicly available at no charge.

In addition, to the extent the Fund permits full or partial creations in-kind, a basket composition file, which will include the security names and share quantities to deliver (along with requisite cash in lieu) in exchange for Shares, together with estimates and actual Cash Components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket will equal a Creation Unit.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated by a major market data vendor per the terms of a data services agreement that will be finalized with the Adviser prior to the Fund's launch (the "IOPV Vendor"). Moreover, the Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service,⁶⁰ will be calculated by the IOPV Vendor based upon the sum of the current value for the components of the Disclosed Portfolio and the estimated cash amount per share of the Fund, divided by the total amount of outstanding Shares. The Intraday Indicative Value will be updated and widely disseminated by the IOPV Vendor and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be calculated based on the IOPV Vendor's calculations. If there is an issue or problem with any of the components of the calculation, the previously calculated Intraday Indicative Value will be disseminated until such issue or

problem is resolved. With respect to equity securities, if trading in a component of the Disclosed Portfolio is halted while the market is open, the last traded price for that security will be used in the calculation until trading resumes. If trading is halted before the market is open, the previous day's last sale price will be used. For components of the Disclosed Portfolio that are not U.S. listed, the last sale price is used, after being converted into U.S. Dollars, when the local market is open. When the local market closes, the closing price for the component of the Disclosed Portfolio continues to be updated by the applicable exchange rate.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Intraday executable price quotations on certain Debt Instruments and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. Additionally, the Trade Reporting and Compliance Engine ("TRACE") of the Financial Industry Regulatory Authority ("FINRA") will be a source of price information for corporate bonds, privately-issued securities (including Rule 144A securities), MBS, ABS, CDOs and CBOs to the extent transactions in such securities are reported to TRACE.⁶¹ Intra-day, executable price quotations on the securities and other assets held by the Fund, as well as closing price information, will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day and closing price information related to U.S. government securities, money market instruments (including money market mutual funds), and other short-term investments held by the Fund also will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by APs and other investors. Electronic Municipal Market Access ("EMMA") will be a source of price information for municipal bonds.

Information regarding market price and trading volume of the Shares will be continually available on a real-time

⁵⁷ The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

⁵⁸ See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

⁵⁹ 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.

⁶⁰ Currently, the Nasdaq Global Index Data Service ("GIDS") is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

⁶¹ Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year.

basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information will be available via the CTA high-speed line for the Shares and for the following U.S. exchange-traded securities: Common stocks, hybrid instruments, convertible securities, preferred securities, REITs, CEFs, ETFs, ETPs, and ETNs. Price information for foreign exchange-traded stocks will be available from the applicable foreign exchange and from major market data vendors. Price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Price information for OTC REITs, OTC common stocks, OTC preferred securities, OTC convertible securities, OTC step-up bonds, OTC CEFs, OTC options, money market instruments, forwards, structured notes, credit linked notes, risk-linked securities, OTC derivative instruments and OTC hybrid instruments will be available from major market data vendors. Price information for exchange-traded step-up bonds will generally be available from the applicable exchange or from major market data vendors. Price information for restricted securities, including Regulation S and Rule 144A securities, will be available from major market data vendors. Intraday and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or independent pricing services will be available for Debt Instruments.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, will be included in the Registration Statement. Investors also will be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Trust's Form N-CSR and Form N-SAR, each of which is filed twice a year, except the SAI, which is filed at least annually. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be

viewed on-screen or downloaded from the Commission's Web site at www.sec.gov.

Initial and Continued Listing of the Fund's Shares

The Shares will conform to the initial and continued listing criteria applicable to Managed Fund Shares, as set forth under Rule 5735. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3⁶² under the Exchange Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts of the Fund's Shares

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments 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. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is \$0.01.

⁶² See 17 CFR 240.10A-3.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁶³ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and such other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the ISG,⁶⁴ and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from such markets and other entities. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain Debt Instruments, and other debt securities held by the Fund reported to FINRA's TRACE.

In addition, the Exchange may obtain information regarding trading in the Shares and such other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not

⁶³ 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.

⁶⁴ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts and exchange-traded options contracts shall consist of futures contracts and exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members purchasing Shares from the Fund for resale to investors deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Exchange Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV

calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Exchange Act, in general, and Section 6(b)(5)⁶⁵ of the Exchange Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws and are adequate to properly monitor trading in the Shares in all trading sessions. The Adviser is affiliated with a broker-dealer and have implemented a fire wall with respect to

its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on an open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

FINRA may obtain information via ISG from other ISG exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund will limit its investments in illiquid securities or other illiquid assets to an aggregate amount of 15% of its net assets (calculated at the time of investment). The Fund also may invest directly in ETFs.

Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objective. The Fund's investments will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund will not be operated as a "leveraged ETF," *i.e.*, it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day that the Fund is traded, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market

⁶⁵ 15 U.S.C. 78(f)(b)(5).

transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Market Session. On each Business Day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Quotation and last sale information will be available via the CTA high-speed line for the Shares and for the following U.S. exchange-traded securities: common stocks, hybrid instruments, convertible securities, preferred securities, REITs, CEFs, ETFs, ETPs, and ETNs. Price information for foreign exchange-traded stocks will be available from the applicable foreign exchange and from major market data vendors. Price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Price information for OTC REITs, OTC common stocks, OTC preferred securities, OTC convertible securities, OTC step-up bonds, OTC CEFs, OTC options, money market instruments, forwards, structured notes, credit linked notes, risk-linked securities, OTC derivative instruments, and OTC hybrid instruments will be available from major market data vendors. Price information for exchange-traded step-up bonds will generally be available from the applicable exchange or from major market data vendors. Price information for restricted securities, including Regulation S and Rule 144A securities, will be available from major market data vendors. Intraday and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or

independent pricing services will be available for Debt Instruments.

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. Moreover, 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. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

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

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

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. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.⁶⁶ In particular, the Commission finds that

⁶⁶ 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).

the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,⁶⁷ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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 Exchange Act,⁶⁸ 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, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ Information LLC proprietary index data service,⁶⁹ will be calculated by the IOPV Vendor based upon the sum of the current value for the components of the Disclosed Portfolio and the estimated cash amount per share of the Fund, divided by the total amount of outstanding Shares, and will be updated and widely disseminated by the IOPV Vendor and broadly displayed at least every 15 seconds during the Regular Market Session.

On each Business Day, before commencement of trading in Shares in the Regular Market Session⁷⁰ on the Exchange, the Fund will disclose on its Web site the identities and quantities of the Disclosed Portfolio held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the

⁶⁷ 15 U.S.C. 78f(b)(5).

⁶⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁶⁹ See *supra* note 60.

⁷⁰ See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

Business Day.⁷¹ The list of the names and the amounts of the Deposit Securities will be made available by the Fund's Custodian through the facilities of the NSCC prior to the opening of business of the Exchange (9:30 a.m., E.T.). The Fund's Custodian will make available immediately prior to the opening of the Exchange, through the facilities of NSCC, the list of the names and the amounts of the Fund Securities that will be applicable that day to redemption requests in proper form.

The NAV of the Fund's Shares will be determined as of the NYSE Close on each Business Day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers.

Intraday executable price quotations on certain Debt Instruments and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. Additionally, FINRA's TRACE will be a source of price information for corporate bonds, privately-issued securities (including Rule 144A securities), MBS, ABS, CDOs and CBOs to the extent transactions in

such securities are reported to TRACE.⁷² Intra-day, executable price quotations on the securities and other assets held by the Fund, as well as closing price information, will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day and closing price information related to U.S. government securities, money market instruments (including money market mutual funds), and other short-term investments held by the Fund also will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors. EMMA will be a source of price information for municipal bonds.

Quotation and last sale information will be available via the CTA high-speed line for the following U.S. exchange-traded securities: Common stocks, hybrid instruments, convertible securities, preferred securities, REITs, CEFs, ETFs, ETPs, and ETNs. Price information for foreign exchange-traded stocks will be available from the applicable foreign exchange and from major market data vendors. Price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Price information for OTC REITs, OTC common stocks, OTC preferred securities, OTC convertible securities, OTC step-up bonds, OTC CEFs, OTC options, money market instruments, forwards, structured notes, credit linked notes, RLS, OTC derivative instruments, and OTC hybrid instruments will be available from major market data vendors. Price information for exchange-traded step-up bonds will generally be available from the applicable exchange or from major market data vendors. Price information for restricted securities, including Regulation S and Rule 144A securities, will be available from major market data vendors. Intraday and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or independent pricing services will be available for Debt Instruments. 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.

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 will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 including the trading pauses under Nasdaq Rules 4120(a)(11) and (12), or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,⁷³ and trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on an open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Exchange represents that the Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer, and has therefore implemented and will maintain a fire wall with the Distributor with respect to the access of information concerning the composition of and/or changes to the Fund's portfolio.⁷⁴

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. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to

⁷¹ 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. The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

⁷² Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year.

⁷³ These reasons may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments 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.

⁷⁴ See *supra* note 8.

detect violations of Exchange rules and applicable federal securities laws.⁷⁵

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities.

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

(1) The Shares will conform to the initial and continued listing criteria applicable to Managed Fund Shares, as set forth under Rule 5735.⁷⁶

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.⁷⁷ Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA 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.⁷⁸

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and such other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the ISG⁷⁹ and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from such markets and other entities.⁸⁰ In addition, the Exchange may obtain information regarding trading in the Shares and such other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁸¹ Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain Debt Instruments, and other debt securities held by the Fund reported to FINRA's TRACE.⁸²

(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 purchasing Shares from the Fund for resale to investors deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.⁸³

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A-3⁸⁴ under the Act.⁸⁵

(6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.⁸⁶

(7) The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.⁸⁷

(8) The Fund may not invest more than 25% of the value of its net assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities.⁸⁸

(9) The Fund may invest up to 20% of its total assets in the aggregate in Private MBS/ABS.⁸⁹

(10) The Fund may invest up to 20% of its total assets in the aggregate in participations in and assignments of bank loans or corporate loans, which loans include syndicated bank loans, junior loans, bridge loans, unfunded commitments, revolvers and participation interests (but specifically do not include senior loans), in structured notes, in credit-linked notes, in RLS, in OTC REITs, and in OTC hybrid instruments. Such holdings would be subject to the respective limitations on the Fund's investments in illiquid assets and high yield securities.⁹⁰

(11) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including commercial instruments deemed illiquid by the Adviser.⁹¹

(12) The Fund may invest up to 35% of its total assets in junk bonds. The Fund may invest in defaulted or distressed securities that are in default at the time of investment or that default subsequent to purchase by the Fund, in which case the Adviser will determine in its sole discretion whether to hold or dispose of security, subject to the

Fund's 35% limitation in high yield debt securities.⁹²

(13) The Fund may not invest more than 35% of its total assets in debt securities and instruments that are economically tied to emerging market countries, as determined by the Adviser, and non-U.S. dollar denominated securities.⁹³

(14) The Fund may not invest more than 10% of its net assets in the aggregate in equity securities and REITs whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.⁹⁴

(15) Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts and exchange-traded options contracts shall consist of futures contracts and exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.⁹⁵

(16) The Fund may not invest more than 20% of its net assets in bank capital.⁹⁶

(17) The Fund will not invest more than 20% of its net assets in leveraged or inverse-leveraged ETPs and ETNs.⁹⁷

(18) The Fund will not invest in non-U.S. exchange-listed ETPs and ETNs.⁹⁸

(19) The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges, or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange.⁹⁹

(20) The Adviser expects that under normal market conditions, the Fund will invest at least 75% of its corporate debt securities assets (including zero coupon and payment-in-kind securities) in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries.¹⁰⁰

(21) The Fund normally will invest at least 75% of its bank loan or corporate loan assets, which includes senior loans, syndicated bank loans, junior loans, bridge loans, unfunded commitments, revolvers and participation interests, in issuances that have at least \$100 million par amount outstanding.¹⁰¹

(22) The Fund's investments will not be used to enhance leverage.¹⁰²

(23) To limit the potential risk associated with such transactions, the Fund will segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Board and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its

⁷⁵ 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. See *supra* note 63.

⁷⁶ See Amendment No. 1, *supra* note 4, at 39–40.

⁷⁷ See *id.* at 40–41.

⁷⁸ See *id.* at 41.

⁷⁹ See *id.*

⁸⁰ See *id.* at 41–42.

⁸¹ See *id.* at 42.

⁸² See *id.*

⁸³ See *id.* at 42–43.

⁸⁴ See 17 CFR 240.10A–3.

⁸⁵ See Amendment No. 1, *supra* note 4, at 40.

⁸⁶ See *id.*

⁸⁷ See *id.*

⁸⁸ See *id.* at 17.

⁸⁹ See *id.*

⁹⁰ See *id.* at 18.

⁹¹ See *id.*

⁹² See *id.* at 19.

⁹³ See *id.* at 19–20.

⁹⁴ See *id.* at 20.

⁹⁵ See *id.* at 20.

⁹⁶ See *id.* at 20.

⁹⁷ See *id.* at 17.

⁹⁸ See *id.*

⁹⁹ See *id.* at 8.

¹⁰⁰ See *id.*

¹⁰¹ See *id.* at 14.

¹⁰² See *id.* at 21.

obligations under derivative instruments. These procedures have been 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.¹⁰³

(24) The Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33⅓% of its assets.¹⁰⁴

The Exchange also represents that all statements and representations made in the proposed rule change, as modified by Amendment No. 1 regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.¹⁰⁵

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 requirements of Nasdaq Rule 5735 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 Act¹⁰⁶ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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. Please include File Number SR-NASDAQ-2017-039 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2017-039. This file 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2017-039, and should be submitted on or before July 11, 2017.

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. Amendment No. 1 (1) clarified that if any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a registered broker-dealer, it will implement and maintain a fire wall with respect to its relevant

personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of and/or changes to the Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio; (2) clarified that the Fund may invest in both secured and unsecured bank loans; (3) added that the Fund may invest in exchange-traded and OTC options on commodities and interest rates, as well as forwards on securities, commodities, indices, and futures; (4) specified that the OTC total-return swaps that the Fund will invest in will be total-return swaps on securities, commodities, indices, and futures; (5) clarified that the exchange-traded and OTC credit default swaps in which the Fund may invest will be single name and index credit default swaps; (6) clarified that the options on the Fund's swap investments described in this filing will be may either OTC or exchange-traded options; (7) added that price information for exchange-traded step-up bonds will generally be available from the applicable exchange or from major market data vendors; and (8) made technical changes to the proposed rule change.

The Commission believes that Amendment No. 1 supplements the proposed rule change by providing clarification, specificity, and additional information and that Amendment No. 1 does not raise any novel regulatory issues. Amendment No. 1 supplements the proposed rule change by, among other things, clarifying the scope of the Fund's permitted investments and providing additional information about the availability of pricing information for the Fund's underlying assets. The changes and additional information in Amendment No. 1 helped the Commission to evaluate whether the listing and trading of the Shares would be consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,¹⁰⁷ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,¹⁰⁸ that the proposed rule change (SR-NASDAQ-2017-039), as modified by

¹⁰⁷ 15 U.S.C. 78s(b)(2).

¹⁰⁸ *Id.*

¹⁰³ See *id.* at 22-23.

¹⁰⁴ See *id.* at 15.

¹⁰⁵ See *id.* at 43-44.

¹⁰⁶ 15 U.S.C. 78f(b)(5).

Amendment No. 1 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁹

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-12894 Filed 6-19-17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80942; File No. SR-NSCC-2017-007]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Adopt a New Stock Options and Futures Settlement Agreement With the Options Clearing Corporation

June 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 1, 2017, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change has been filed by NSCC in connection with proposed changes relating to a new Stock Options and Futures Settlement Agreement (“New Accord”) between NSCC and The Options Clearing Corporation (“OCC,” collectively NSCC and OCC may be referred to herein as the “clearing agencies”), and proposed amendments to Procedures III and XV of

the Rules & Procedures of NSCC (“NSCC Rules”) to accommodate the proposed provisions of the New Accord, as described in greater detail below.⁴

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

OCC issues and clears U.S.-listed options and futures on a number of underlying financial assets including common stocks, currencies and stock indices. OCC’s Rules, however, provide that delivery of, and payment for, securities underlying certain physically settled stock options and single stock futures cleared by OCC are effected through the facilities of a correspondent clearing corporation (such as NSCC) and are not settled through the facilities of OCC. NSCC and OCC are parties to a Third Amended and Restated Options Exercise Settlement Agreement, dated February 16, 1995, as amended (“Existing Accord”),⁵ which governs the delivery and receipt of stock in the

settlement of put and call options issued by OCC (“Stock Options”) that are eligible for settlement through NSCC’s Continuous Net Settlement (“CNS”) Accounting Operation and are designated to settle on the third business day following the date the related exercise or assignment was accepted by NSCC (“Options E&A”). All OCC Clearing Members that intend to engage in Stock Options transactions are required to also be Members of NSCC or to have appointed or nominated an NSCC Member to act on its behalf.⁶

NSCC proposes to adopt a New Accord with OCC, which would provide for the settlement of certain Stock Options and delivery obligations arising from certain matured physically-settled stock futures contracts cleared by OCC (“Stock Futures”). Specifically, the New Accord would, among other things: (1) Expand the category of securities that are eligible for settlement and guaranty under the agreement to certain securities (including stocks, exchange-traded funds and exchange-traded notes) that (i) are required to be delivered in the exercise and assignment of Stock Options and are eligible to be settled through NSCC’s Balance Order Accounting Operation (in addition to its CNS Accounting Operation) or (ii) are delivery obligations arising from Stock Futures that have reached maturity and are eligible to be settled through NSCC’s CNS Accounting Operation or Balance Order Accounting Operation; (2) modify the time of the transfer of responsibilities from OCC to NSCC and, specifically, when OCC’s guarantee obligations under OCC’s By-Laws and Rules with respect to such transactions (“OCC’s Guaranty”) end and NSCC’s obligations under Addendum K of the NSCC Rules with respect to such transactions (“NSCC’s Guaranty”) begin (such transfer being the “Guaranty Substitution”); and (3) put additional arrangements into place concerning the procedures, information sharing, and overall governance processes under the agreement. Furthermore, NSCC proposes to make certain clarifying and conforming changes to the NSCC Rules as necessary to implement the New Accord.

The primary purpose of the proposed changes is to (1) provide consistent treatment across all expiries for

⁶ A firm that is both an OCC Clearing Member and an NSCC Member, or is an OCC Clearing Member that has designated an NSCC Member to act on its behalf is referred to herein as a “Common Member.”

⁴ Terms not defined herein are defined in the NSCC Rules, available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/nsccl_rules.pdf, or in OCC’s By-Laws and Rules, available at <http://optionsclearing.com/about/publications/bylaws.jsp>, as the context implies.

⁵ The Existing Accord and the proposed changes thereunder were previously approved by the Commission. See Securities Exchange Act Release No. 37731 (September 26, 1996), 61 FR 51731 (October 3, 1996) (SR-OCC-96-04 and SR-NSCC-96-11) (Order Approving Proposed Rule Change Related to an Amended and Restated Options Exercise Settlement Agreement Between the Options Clearing Corporation and the National Securities Clearing Corporation); Securities Exchange Act Release No. 43837 (January 12, 2001), 66 FR 6726 (January 22, 2001) (SR-OCC-00-12) (Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Creation of a Program to Relieve Strains on Clearing Members’ Liquidity in Connection With Exercise Settlements); and Securities Exchange Act Release No. 58988 (November 20, 2008), 73 FR 72098 (November 26, 2008) (SR-OCC-2008-18 and SR-NSCC-2008-09) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to Amendment No. 2 to the Third Amended and Restated Options Exercise Settlement Agreement).

¹⁰⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On June 1, 2017, NSCC filed this proposed rule change as an advance notice (SR-NSCC-2017-803) with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) of the Act, 17 CFR 240.19b-4(n)(1)(i). A copy of the advance notice is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>. The Options Clearing Corporation also has filed proposed rule change and advance notice filings with the Commission in connection with this proposal. See OCC filings SR-OCC-2017-013 and SR-OCC-2017-804.