SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Investors Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify the Resting Price of Discretionary Peg Orders


On November 30, 2018, the Investors Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder, a proposed rule change to modify the resting price of discretionary orders. The proposed rule change was published for comment in the Federal Register on December 19, 2018. The Commission has received one comment on the proposal.

Section 19(b)(2) of the Act provides that, within 45 days of publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 2, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, designates March 19, 2019, as the date by which the Commission shall either approve the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–IXEX–2018–23). For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Eduardo A.Aleman,
Deputy Secretary.


I. Introduction

On October 17, 2018, 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”) and Rule 19b–4 thereunder, a proposed rule change to list and trade shares (“Shares”) of the BrandywineGLOBAL—Global Total Return ETF (the “Fund”), a series of Legg Mason ETF Investment Trust (“Trust”), under Nasdaq Rule 5735 (Managed Fund Shares). The proposed rule change was published for comment in the Federal Register on November 5, 2018. On December 7, 2018, pursuant to Section 19(b)(2) of the Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. On December 13, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.

The proposed rule change in its entirety, as modified by Amendment No. 1, in its entirety, and Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment Nos. 1 and 2, in their entirety, and Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, To List and Trade Shares of the BrandywineGLOBAL—Global Total Return ETF

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3, To List and Trade Shares of the BrandywineGLOBAL—Global Total Return ETF

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

Eduardo A. Aleman,
Deputy Secretary.


4. See letter from Joanna Mallers, Secretary, FIA Principals Traders Group to Brent J. Fields, Secretary, Office of the Secretary, Securities and Exchange Commission, dated January 22, 2019.
6. Id.
11. See Securities Exchange Act Release No. 84747, 83 FR 63915 (Dec. 12, 2018). The Commission designated February 3, 2019, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. 8 17 CFR 200.30–3(a)(31).
10 In Amendment No. 3, the Exchange: (1) Provided that the Fund will not invest more than 5% of its total assets in warrants traded on the over-the-counter (“OTC”); (2) clarified that no more than 10% of the Fund’s total assets will be invested in listed Equity-Related Warrants (as defined below) or other exchange-listed securities or Exchange-Traded Derivatives (as defined below) that are listed on an exchange that is not a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange does not have a comprehensive surveillance sharing agreement; (3) clarified that the Fund’s investments in Equity-Related Warrants will not comply with the generic listing requirements for equity securities set forth in Nasdaq Rule 5735 but will be subject to the limits described in (1) above if traded OTC, or (2) above if listed on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement; (4) clarified that no more than 25% of the total assets of the Fund will be invested in Debt (as defined below) or fixed income or equity securities of issuers in any one industry (excluding securities of sovereign issuers); (5) clarified that the Fund’s investments in convertible fixed income securities and convertible preferred securities will comply with the applicable generic listing standards for fixed income securities set forth in Nasdaq Rule 5735 and will be limited to 20% of the Fund’s total assets; (6) clarified that the Fund will generally disapprove of convertible fixed income securities and convertible preferred securities prior to conversion; however, in the event that such securities held by the Fund were to convert, the equity or fixed income securities into which such securities are converted would comply with the applicable generic listing standards set forth in Nasdaq Rule 5735; (7) clarified that for purposes of the proposed rule change, the terms “fixed income weight of the portfolio” and “weight of the fixed income portion of the portfolio” include all fixed income securities and Debt held by the Fund, as well as derivatives held by the Fund that provide exposure to fixed income securities or Debt; (8) stated that price information is generally not available for OTC warrants, and these instruments will be subject to the Fund’s fair valuation procedures unless the Fund is able to secure price information from market data vendors or broker-dealers; (9) provided additional justification as to why the listing and trading of the Shares is consistent with the Act even though certain of the Fund’s proposed holdings would not meet the generic listing standards for Managed Fund Shares set forth in Nasdaq Rule 5735; and (10) made other clarifications, corrections, and technical changes. Amendment No. 3 is available at https://www.sec.gov/comments/sr-nasdaq-2018-080/srnasdaq2018080-4860703-177326.pdf.
approving the proposed rule change, as modified by Amendment Nos. 1, 2 and 3, on an accelerated basis.

II. Exchange’s Description of the Proposal, as Modified by Amendment Nos. 1, 2 and 3

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be an exchange-traded fund (“ETF”) that is actively-managed. The Shares will be offered by the Trust, which was established as a Maryland statutory trust on June 8, 2015. The Exchange notes that other actively-managed, broad market fixed-income ETFs have been previously approved by the SEC prior to the adoption of “generic” listing standards for actively-managed ETFs.

2. Market Participation

The Fund will be listed on the Exchange under Nasdaq Rules 5705 and 5721. The Shares will be listed on the Exchange under Nasdaq Rule 5705(b)(5)(A)(ii); however, paragraph (g) in connection with the establishment and maintenance of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable investment company’s portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Manager nor the Sub-Adviser is a broker-dealer, but each is affiliated with the Distributor, a broker-dealer, and has implemented and will maintain a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

In addition, personnel who make decisions on the Fund’s portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s portfolio. In the event (a) the Manager or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new investment adviser or any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and maintain a firewall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable.

Paragraph (g) further requires that personnel who make decisions on the 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)(ii); however, paragraph (g) in connection with the establishment and maintenance of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable investment company’s portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Manager nor the Sub-Adviser is a broker-dealer, but each is affiliated with the Distributor, a broker-dealer, and has implemented and will maintain a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

In addition, personnel who make decisions on the Fund’s portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s portfolio. In the event (a) the Manager or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new investment adviser or any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and maintain a firewall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable.

Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Manager and the Sub-Adviser, as registered investment advisers, and the relevant personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. Rule 204A–1 requires investment advisers (such as the Manager and the Sub-Adviser) 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 the Manager and the Sub-Adviser must be consistent with the Advisers Act and Rule 204A–1 thereunder. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser (such as the Manager and the Sub-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) adopted 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.

The Trust is registered with the Commission as an investment company under the 1940 Act and has filed a registration statement on Form N–1A (“Registration Statement”) with the Commission with respect to the Fund. The Fund will be a series of the Trust. The Fund intends to qualify each year as a regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.

Legg Mason Partners Fund Advisor, LLC will be the investment adviser to the Fund (the “Manager”). Brandywine Global Investment Management, LLC will serve as the sub-adviser to the Fund (the “Sub-Adviser”). Legg Mason Investor Services, LLC (the “Distributor”) will be the distributor of the Fund’s Shares. The Manager, the Sub-Adviser and the Distributor are wholly-owned subsidiaries of Legg Mason, Inc. (“Legg Mason”). An entity that is not affiliated with Legg Mason, and which is named in the Registration Statement, will act as the administrator, accounting agent, custodian, and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain 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. In addition, paragraph (g) further requires that personnel who make decisions on the 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. In the event (a) the Manager or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new investment adviser or any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and maintain a firewall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable.

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In addition, paragraph (g) further requires that personnel who make decisions on the 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. In the event (a) the Manager or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new investment adviser or any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and maintain a firewall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable.

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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.

**BrandywineGLOBAL—Global Total Return ETF**

**Principal Investments**

The investment objective of the Fund will be to seek to maximize total return, consisting of income and capital appreciation. Although the Fund may invest in securities and Debt (as defined below) of any maturity, the Fund will normally maintain an effective duration as set forth in its prospectus. Effective duration seeks to measure the expected sensitivity of market price to changes in interest rates, taking into account the anticipated effects of structural complexities (for example, some bonds can be prepaid by the issuer).

Under **Normal Market Conditions,** the Fund will seek to achieve its investment objective by investing at least 80% of its assets in a portfolio comprised of U.S. or foreign fixed income securities; U.S. or foreign Debt (as defined below); ETFs that provide exposure to such U.S. or foreign fixed income securities, Debt or other Principal Investments (defined below); derivatives that provide exposure up to 80% of the Fund’s total assets. See also infra note 113. No more than 10% of the assets of the Fund will be invested in Exchange-Traded Derivatives and exchange-listed securities whose principal market is an OTC market or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

**Investment Restrictions.**

See infra "Investment Restrictions."
ETFs that provide exposure to fixed income securities, which consist of Work Out Securities, foreign currencies (together, the "Principal Investments") and the equity elements of the Principal Investments, which consist of Work Out Securities, Options, Warrants and Non-Convertible Preferred Securities, are referred to as the "Principal Investment Equities." the "Principal Investment Equities." The Manager or Sub-Adviser (as applicable) may select from any of the following types of fixed income securities: (i) U.S. or foreign corporate debt securities, including notes, bonds, debentures, trust preferred securities, and commercial paper issued by corporations, trusts, limited partnerships, limited liability companies and other types of non-governmental legal entities; (ii) U.S. government securities, including obligations of, or guaranteed by, the U.S. government, its agencies or government-sponsored entities (other than MBS described below); (iii) sovereign debt securities, which include fixed income securities issued by governments, agencies or instrumentalities and their political subdivisions, securities issued by government-owned, controlled or sponsored entities, interests in entities organized and operated for the purpose of restructuring the investment instruments issued by such entities, Brady Bonds, and fixed income securities issued by supranational entities such as the World Bank; (iv) municipal securities, which include general obligation bonds, revenue bonds, housing authority bonds, private activity bonds, industrial development bonds, residual interest bonds, tender option bonds, tax and revenue anticipation notes, bond anticipation notes, tax-exempt commercial paper, municipal leases, participation certificates and custodial receipts; (v) zero coupon securities, which are securities that pay no interest during the life of the obligation but are issued at prices below their face value; (vi) pay-in-kind securities, which have a stated coupon, but the interest is generally paid in the form of obligations of the same type as the underlying pay-in-kind securities (e.g., bonds) rather than in cash; (vii) deferred interest securities, which are obligations that generally provide for a period of delay before the regular payment of interest begins and are issued at a significant discount from face value; (viii) U.S. or foreign structured notes and indexed securities, including securities that have demand, tender or put features, or interest rate reset features; (ix) U.S. or foreign inflation-indexed or inflation-protected securities, which are fixed income securities that are structured to provide protection against inflation and whose principal value or coupon is periodically adjusted according to the rate of inflation and which include, among others, treasury inflation protected securities; and (x) fixed income securities issued by securitization vehicles ("Securitized Products"). Securitized Products include: (A) U.S. or foreign mortgage-backed securities ("MBS"), which are securities that represent direct or indirect participations in, or are collateralized by and payable from, mortgage loans secured by real property and which may be issued or guaranteed by government-sponsored entities ("GSEs") such as Fannie Mae (formally known as the Federal National Mortgage Association) or Freddie Mac (formally known as the Federal Home Loan Mortgage Corporation) or issued or guaranteed by agencies of the U.S.

As defined in Rule 6710(m) of the Financial Industry Regulatory Authority, Inc. ("FINRA"), the term Securitized Products means a security collateralized by any type of financial asset, such as a loan, a lease, a mortgage, or a secured or unsecured receivable, and includes but is not limited to an asset-backed security as defined in Section 3(a)(79)(A) of the Act, a synthetic asset-backed security, any residual tranche or interest of any security specified above, which tranche or interest is a fixed income security for purposes of FINRA Rule 6700 and Rule 6701 and Rule 6710. Consistent with the requirements applicable to other fixed income securities listed pursuant to this proposed rule change, Securitized Products are subject to limits set forth in Rule 5735(b)(1)(B) and Rule 6710. Limits on the amount of total assets of the Fund, the Fund's interests in Equity-Related Warrants may be traded OTC or on an exchange, subject to limits. See infra notes 28, 29 and 46 and supra note 25.

Cash equivalents consist of the following, all of which have maturities of less than 360 days: U.S. government securities; certificates of deposit issued against funds deposited in a bank or savings and loan association; bankers' acceptances (which are short-term credit instruments used to finance commercial transactions); repurchase agreements and reverse repurchase agreements; and bank time deposits (which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest). Cash equivalents also consist of money market funds registered under the 1940 Act and money market funds that are not registered under the 1940 Act but that comply with Rule 2a-7 under the 1940 Act (together, "Money Market Funds"). Money market instrument ETFS and commercial paper, which are short-term unsecured promissory notes, having maturities of 360 days or less. The Exchange notes that, while the Fund treats commercial paper having maturities of 360 days or less as cash equivalents for the purposes of the 80% Principal Investments measure, the Fund will apply the definition of cash equivalents in Nasdaq Rule 5735(b)(1)(C) (which is limited to instruments with maturities of less than three months) for purposes of compliance with Nasdaq Rule 5735(b)(1) and will comply with the applicable requirements of Nasdaq Rule 5735(b)(1) with respect to all commercial paper held by the Fund. Investments in cash equivalents that are Money Market Funds will be made in accordance with Rule 12d1-1 under the 1940 Act.

For purposes of this proposed rule change, Fixed-Income Related Warrants are treated as fixed income securities and not as Principal Investment Equities. Fixed-Related Warrants will be subject to and comply with the generic listing requirements for fixed income securities rather than the requirements applicable to equity securities.

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The Manager and Sub-Adviser will manage the Fund to ensure that the weight of Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities (which are more frequently traded solely in the OTC market) together does not exceed 15% of the Fund's assets. Equity-Related Warrants that are listed on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement, together with all other exchange-listed securities and Exchange-Traded Derivatives held by the Fund that are listed on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement, are limited to 10% of the Fund's total assets. Equity-Related Warrants together with all other Warrants traded in the OTC market are limited to 5% of the Fund's total assets. See infra "Investment Restrictions." Brady Bonds are debt securities issued under the framework of the Brady Plan as a means for debtors to restructure their outstanding external obligations.

A supranational entity is a bank, commission or company established or financially supported by the national government of one or more countries to promote reconstruction or development. 32
government, such as the Government National Mortgage Association (“Ginnie Mae”); 34 (B) U.S. or foreign asset-backed securities (“ABS”) 35 and (C) U.S. or foreign collateralized debt obligations (“CDOs”). 36

The securities in which the Fund invests may pay fixed, variable or floating rates of interest, or, in the case of instruments such as zero coupon bonds, do not pay current interest but are issued at a discount from their face values. Securitized Products in which the Fund will invest make periodic payments of interest and/or principal on underlying pools of mortgages, in the case of MBS, loans, leases and receivables other than real estate, in the case of ABS, and government and corporate bonds or non-real estate related loans, in the case of CDOs. The Fund may also invest in stripped Securitized Products, which represent the right to receive either payments of principal or payments of interest on real estate receivables. Interests in CDOs and ABS will not be stripped so as to provide the right to receive only payments of principal or payments of interest.

Investments by the Fund in debt instruments that are not characterized as “securities” under applicable case law (“Debt”). 37 are comprised primarily of the following: (i) U.S. or foreign loans made by banks and participations in such loans, loans made by commercial non-bank lenders and participations in such loans, loans made by governmental entities and participations in such loans and/or other extensions of credit, such as guarantees made by any of the foregoing lenders; and (ii) U.S. or foreign loans on real estate secured by mortgages and participations in such loans. Debt may be partially or fully secured by collateral supporting the payment of interest, principal, or unsecured and/or subordinated to other instruments. 38 Debt may relate to

34 MBS include collateralized mortgage obligations (“CMOs”), which are debt obligations collateralized by mortgage loans or mortgage pass-through securities. Typically, CMOs are collateralized by Ginnie Mae, Fannie Mae or Freddie Mac certificates, but they may also be collateralized by whole loans or pass-through securities issued by other issuers (i.e., issuers other than U.S. government agencies or GSEs) (referred to as “Private MBS”). Payments of principal and of interest on the mortgage-related instruments issued by the MBS, and any reinvestment income thereon, provide the funds to pay debt service on the CMOs. In a CMO, a series of bonds or certificates is issued in multiple classes. Each class of CMOs, often referred to as a “tranche” of securities, is issued at a specified fixed or floating coupon rate and has a stated maturity or final distribution date.

35 As defined by FINRA Rule 6710(cc), ABS are Securitized Products in connection with which the securities issued, which may be issued by either a U.S. or foreign governmental entity or fixed income portion of the Fund’s portfolio.

36 For purposes of this proposed rule change, CDOs are excluded from the definition of ABS and, for purposes of this proposed rule change only, are comprised exclusively of collateralized loan obligations (“CLOs”) and collateralized bond obligations (“CBOs”). CLOs are securities issued by a trust or other special purpose entity that are collateralized by a pool of loans by U.S. banks and participations in loans by U.S. banks that are unsecured or secured by collateral other than real estate. CBOs are securities issued by a trust or other special purpose entity that are backed by a diversified pool of fixed income securities issued by U.S. or foreign governmental entities or fixed income securities issued by U.S. or corporate issuers. CDOs are distinguishable from ABS because they are collateralized by bank loans or by corporate or government fixed income securities and not by consumer loans and other loans made by non-bank lenders, including student loans. For purposes of this proposed rule change, CDOs will not be subject to the 20% limit set forth in Nasdaq Rule 5735(b)(1). For the Exchange believes that the 10% limit on the Fund’s holdings in CDOs will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation. See infra “Investment Restrictions.”

37 Although bank loans are included as “fixed income securities” for purposes of the “generic” listing requirements of Nasdaq Rule 5735(b)(1), the types of bank loans in which the Fund invests are not treated as “securities” under applicable case law and, as a result, the Fund intends to treat bank loans as Debt and not as fixed income securities. See, e.g., Banco Espanol de Despacho v. Security Pacific National Bank, 973 F.2d 512 (9th Cir. 1993), cert. denied, 509 U.S. 903 (1993). Accordingly, the Fund will not seek to comply with the parameters on investments in fixed income securities under Nasdaq Rule 5735(b)(1)(B) with respect to the Fund’s holdings in bank loans, but instead will comply with the alternative limitations applicable to Debt with respect to such holdings, as set forth herein. See infra “Investment Restrictions.”

38 As discussed infra in “Investment Restrictions,” at least 75% of the Fund’s investments fixed income securities (including convertible fixed income and convertible preferred securities) and Debt (together constituting the fixed income weight of the portfolio) shall have a minimum principal amount outstanding of $100 million or more. In addition, consistent with the Fund’s Registration Statement, the following diversification requirements will apply: during Normal Market Conditions, the Fund: (i) will not invest more than 25% of its total assets in Debt or fixed income securities held by the Fund, will maintain 50% of more of its assets in that country; (iii) maintains 50% or more of its assets in that country. In addition, no more than 30% of the Debt and fixed income securities held by the Fund, will be below investment grade; and (iii) no more than 25% of the total assets of the Fund will be invested in Debt or fixed income or equity securities of issuers in any one industry (excluding securities of sovereign issuers).

39 The risk management uses of derivatives will include managing (i) investment-related risks, (ii) risks due to fluctuations in security prices, interest rates, or currency changes rates; (iii) risks due to the credit-worthiness of an issuer, and (iv) the effective duration of the Fund’s portfolio.

40 See also infra “The Fund’s Use of Derivatives.”

41 The term “Treasury Securities” has the organized under the laws of, or has a principal office in, the country; (iii) derives 50% or more of its total revenue or profit from goods produced, services made or services performed in the country; or (D) maintains 50% or more of its assets in that country. In addition, no more than 30% of the Debt and fixed income securities held by the Fund, will be below investment grade; and (iii) no more than 25% of the total assets of the Fund will be invested in Debt or fixed income or equity securities of issuers in any one industry (excluding securities of sovereign issuers).
Fund’s use of derivatives and to serve as collateral, the Fund may also hold significant amounts of Treasury Securities, cash and cash equivalents and, in the case of derivatives that are payable in a foreign currency, the foreign currency in which the derivatives are payable.

The Fund may, without limitation, enter into repurchase arrangements and borrowing and reverse repurchase arrangements, purchase and sale contracts,42 buybacks43 and dollar rolls44 and spot currency transactions. The Fund may also, subject to required margin and without limitation, purchase securities and other instruments under when-issued, delayed delivery, to be announced or forward commitment transactions, where the securities or instruments will not be delivered or paid for immediately.45 To the extent required under applicable federal securities laws (including the 1940 Act), rules, and interpretations thereof, the Fund will “set aside” liquid assets or engage in other measures to “cover” open positions in connection with the foregoing types of transactions, as well as derivative transactions.

Other Investments

Under Normal Market Conditions, the Fund will seek its investment objective by investing at least 80% of its assets in a portfolio of the Principal Investments. The Fund may invest its remaining assets exclusively in: (i) U.S. or foreign exchange-listed 46 or over-the-counter convertible fixed income and convertible preferred securities;47 and (ii) OTC Derivatives and Exchange-Traded Derivatives for which the underlying reference asset is not a Principal Investment.48

The Fund’s Use of Derivatives

The types of derivatives in which the Fund may invest and the reference assets for such derivatives are described in greater detail in “Principal Investments” and “Other Investments” infra. Notwithstanding, the Fund will primarily be traded on exchanges that are ISG members or exchanges with which the Exchange has a comprehensive surveillance sharing agreement. The Fund may, however, invest up to 10% of the assets of the Fund in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement. For purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives.

The Fund will limit the weight of its investments in OTC Derivatives to 10% of the assets of the Fund, with the exception of Interest Rate Derivatives 49

44 A purchase and sale contract is a legally-binding agreement between an issuer of fixed income securities and an investor establishing the terms under which the investor will provide debt financing to the issuer. Such agreements include terms and conditions such as the terms of the bonds, call rights, negative covenants and notice requirements.

45 A buyback refers to a TBA transaction that incorporates a special feature for addressing a failure by the seller to deliver the mortgages promised under the contract. A buyback feature typically provides that, in the event a TBA seller fails to deliver the MBS that is the subject of the transaction to the TBA buyer on the scheduled settlement date, the TBA buyer will be entitled to close-out its payment obligations by either (i) selling the deliverable MBS back to the seller at a price established under the buyback or (ii) accepting as the seller of its right to receive the specified MBS from the third-party entity that failed to deliver the MBS to the TBA seller.

46 A dollar roll transaction is a simultaneous sale and purchase of an Agency Pass-Through Mortgage-Backed Security (as defined in FNMA Rule 6710(v), which is the only reference security for such transaction) for different settlement dates, where the initial seller agrees to take delivery, upon settlement of the re-purchase transaction, of the same or substantially similar securities. See FNMA Rule 6710(g).

47 FNMA Rule 4210 is scheduled to begin requiring broker-dealers to impose margin requirements on investors in TBAs and certain other delayed delivery transactions beginning March 25, 2019.

48 A “purchase and sale contract is a legally-binding agreement between an issuer of fixed income securities and an investor establishing the terms under which the investor will provide debt financing to the issuer. Such agreements include terms and conditions such as the terms of the bonds, call rights, negative covenants and notice requirements. See infra “Investments in OTC Derivatives” section below. As is the case with respect to the Fund’s investments in OTC Derivatives and Exchange-Traded Derivatives for which the underlying reference asset is a Principal Investment, the Fund will invest in OTC Derivatives and Exchange-Traded Derivatives whose underlying reference asset is not a Principal Investment in order to (i) provide exposure to non-Principal Investments instruments; (ii) to risk manage the Fund’s holdings; and/or (iii) to enhance returns.

49 “Interest Rate Derivatives” are comprised of interest rate swaps, swaptions (i.e., options on interest rate swaps), rate options and other similar derivatives, and may be Exchange-Traded Derivatives or OTC Derivatives. As reflected in statistics compiled by the Bank for International Settlements, as of June 30, 2017 there were approximately $416 trillion (notional amount) of total interest rate contracts outstanding in the over-the-counter markets alone (not including interest rate swaps). In the derivatives market, the market is wide, deep and liquid. See https://www.bis.org/statistics/d7_rep.pdf (accessed November 2017). Interest Rate Derivatives may trade on trading platforms that are not ISG members or that are not subject to a comprehensive surveillance sharing agreement with the Exchange. Holdings in Exchange-Traded Derivatives (together with exchange-listed securities) that are listed on an exchange that is not an ISG member or on a market with which the Exchange does not have a comprehensive surveillance sharing agreement are limited to 10% of the Fund’s assets.

50 “Currency Derivatives” are comprised of deliverable forwards, which are agreements between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate, non-deliverable forwards, which are agreements to pay the difference between the exchange rates specified for two currencies at a future date, swaps and options on currencies, and similar currency or foreign exchange derivatives. As reflected in statistics compiled by the Bank for International Settlements, as of June 30, 2017 there were approximately $37 trillion (notional amount) of total foreign exchange contracts outstanding in the over-the-counter markets alone (not including foreign exchange swaps). In the derivatives market, the market is wide, deep and liquid. See https://www.bis.org/statistics/d7_rep.pdf (accessed November 2017). Currency Derivatives may trade on trading platforms that are not ISG members or that are not subject to a comprehensive surveillance sharing agreement with the Exchange. Holdings in Exchange-Traded Derivatives (together with exchange-listed securities) that are listed on an exchange that is not an ISG member or on a market with which the Exchange does not have a comprehensive surveillance sharing agreement are limited to 10% of the Fund’s assets.

51See Securities Exchange Act Release No. 80657 (May 11, 2017), 62 FR 23702 (May 17, 2017) (SR-NYSEArca2017-09) (adopting as a condition to listing of the fund’s assets (calculated on the basis of aggregate gross notional value) to be invested in over-the-counter derivatives that are used to reduce currency, interest rate, or credit risk arising from the fund’s investments, including forwards, over-the-counter options, and over-the-counter swaps).

52 Trading in foreign exchange markets averaged $5.1 trillion per day in April 2016, and all of that trading activity was in derivatives contracts such as currency or foreign exchange forwards, options and swaps (with the other 33% consisting of spot transactions). See Bank for International Settlements, Triennial Central Bank Survey, Foreign Exchange Turnover in April 2016, available at http://www.bis.org/publ/ffe16px.pdf (accessed November 2017). Trading in OTC interest rate
than most non-government or government-guaranteed securities). Based on the data compiled by the Sub-Adviser in respect to its liquidity policy, these derivatives are among the most liquid investments traded. In addition, most Interest Rate Derivatives traded by the Fund are centrally cleared by regulated clearing firms, and Interest Rate and Currency Derivatives are subject to trade reporting, and other robust regulation. Given the size of the trading market and the regulatory oversight of the markets, the Exchange believes that Interest Rate and Currency Derivatives are not readily subject to manipulation. The Exchange also believes that allowing the Fund to risk manage its portfolio through the use of Interest Rate and Currency Derivatives without limit is necessary to allow the Fund to achieve its investment objective and protect investors.

For purposes of the 10% limit applicable generally to OTC Derivatives (other than Interest Rate and Currency Derivatives), the weight of such OTC Derivatives will be calculated based on the mark-to-market value of such OTC Derivatives. The mark-to-market methodology is consistent with the methodology proposed by the SEC in proposed Rule 18f-4 for the purposes of asset coverage requirements and in keeping with disclosures regarding compliance with Section 18 of the 1940 Act made by other registered investment companies and reviewed by the SEC staff for a number of years. In that regard, the SEC expressly noted in the Derivatives Rule Proposing Release that reliance on a mark-to-market valuation of a derivatives position for purposes of calculating the required coverage amount “would generally correspond to the amount of the fund’s liability with respect to the derivatives transaction” and, therefore, be consistent with the appropriate valuation of the derivatives transaction.

The mark-to-market value is also the measure on which collateral posting is based under the Master Agreement published by the International Swaps and Derivatives Association, Inc. ("ISDA"), which is the predominant agreement used to trade derivatives. This value measures gain and loss to the Fund of the Fund’s derivatives positions on a daily basis, as well as on a net basis across all transactions covered by a master netting agreement and, as a result, accurately reflects the actual economic exposure of the Fund to the counterparty on each derivative (as compared to notional amount, which may overstate or understate economic risk). The Fund may choose not to make use of derivatives.

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. As described above, the Fund will use derivatives to (i) provide exposure to the Principal Investments, (ii) risk manage the Fund’s holdings, and/or (iii) enhance returns, such as through covered call strategies. The Fund will not use derivatives for the purpose of seeking leveraged returns or performance that is the multiple or inverse multiple of a benchmark. The Fund will enter into derivatives only with counterparties that the Fund reasonably believes are financially and operationally able to perform the contract or instrument, and the Fund will collect collateral from the counterparty in accordance with credit considerations and margining requirements under applicable law.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund’s investment objective and policies. To limit the potential risk (including leveraging risk) associated with such transactions, the Fund will segregate or “earmark” assets determined to be liquid by the Manager and/or the Sub-Adviser in accordance with procedures established by the Board and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into 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 its offering documents, including leveraging risk. Leveraging risk is the risk that transactions of the Fund, including the Fund’s use of derivatives, may give rise to additional leverage.

The risk management uses of derivatives will include managing (i) investment-related risks, (ii) risks due to fluctuations in securities prices, interest rates, or currency exchange rates, (iii) risks due to the credit-worthiness of an issuer, and (iv) the effective duration of the Fund’s portfolio.

The Fund will seek, where practicable, to trade with counterparties whose financial status is such that the risk of default is reduced. The Sub-Adviser will monitor the financial standing of counterparties on an ongoing basis. This monitoring may include reliance on information provided by credit agencies or credit analysts employed by the Sub-Adviser. The analysis may include earnings updates, the counterparty’s reputation, past experience with the deal, the counterparty’s debt and equity, credit default swap levels for the counterparty’s debt, the liquidity provided by the counterparty and its share of market participation.
strategies to meet the Fund’s investment objectives. 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. Options strategies can generate income or improve execution prices (e.g., covered calls).

Investment Restrictions
At least 75% of the Fund’s investments in Debt and fixed income securities shall have a minimum principal amount outstanding of $100 million or more.

The Fund may invest up to 15% of its assets in Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities. The Fund will not invest in equity securities other than Principal Investment Equities.\(^{62}\) Principal Investment Equities consist of (i) Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities, which are subject to the 15% limit noted above and (ii) shares of ETFs that provide exposure to fixed income securities, Debt or other Principal Investments, which are subject to no limits. The Fund will not invest more than 5% of its total assets in Fixed-Income Related Warrants and Equity-Related Warrants traded OTC. While the Fund will invest principally in fixed income securities and Debt that are, at the time of purchase, investment grade, the Fund may invest up to 30% of its assets in below investment grade fixed income securities and Debt. For these purposes, “investment grade” is defined as investments with a rating at the time of purchase in one of the four highest rating categories of at least one nationally recognized statistical ratings organization (“NRSRO”) (e.g., BBB- or higher by S&P Global Ratings (“S&P”), and/or Fitch Ratings (“Fitch”), or Baa3 or higher by Moody’s Investors Service, Inc. (“Moody’s”)).\(^{63}\) Unrated fixed income securities or Debt may be considered investment grade if, at the time of purchase, and under Normal Market Conditions, the applicable Sub-Adviser determines that such securities are of comparable quality based on a fundamental credit analysis of the unrated security or Debt instrument and comparable NRSRO-rated securities.

The Fund may invest in fixed income or equity securities and Debt issued by both U.S. and non-U.S. issuers (including issuers in emerging markets). Consistent with the Fund’s Registration Statement, the following diversification requirements will apply: During Normal Market Conditions, the Fund: (i) Will not invest more than 25% of its total assets in securities or Debt in any one foreign country, other than the United States, Canada, the United Kingdom, Japan, Australia and member countries of the European Union, or denominated in any one currency, other than the U.S. dollar, the Canadian dollar, the British pound, the yen, the Australian dollar, or the euro; and (ii) will have “economic exposure” to at least three countries. “Economic exposure” means that an issuer of a security or a borrower in respect to Debt: (A) Will have a class of securities whose principal securities market is in the country; (B) is organized under the laws of, or has a principal office in, the country; (C) derivates 50% or more of its total revenue or profit from goods produced, sales made or services provided in the country; or (D) maintains 50% of more of its assets in that country. The Fund will invest more than 20% of the fixed income portion of the Fund’s portfolio\(^{64}\) in ABS/Private MBS or more than 10% of the Fund’s total assets in CDOs.\(^{65}\) The Fund will also not

\(^{62}\) The convertible fixed income securities and convertible preferred securities will generally be held and disposed of prior to conversion, and in that respect will be treated as fixed income securities rather than equity. Consistent with treatment as fixed income securities, convertible fixed income securities and convertible preferred securities will comply with the tests set forth in Nasdaq Rule 5735(b)(1)(B) and be limited to 20% of the total assets of the Fund. In the unlikely event that any of the convertible fixed income securities or convertible preferred securities held by the Fund were to be converted, then the Fund would comply with the tests set forth in Nasdaq Rule 5735(b)(1)(A) in respect to equity stock into which such instruments are converted or Nasdaq Rule 5735(b)(1)(B) in respect to fixed income securities into which such instruments are converted. In addition, no more than 10% of such convertible fixed income and convertible preferred securities or Exchange Traded Derivatives on such securities, together with all other listed securities and Exchange Traded Derivatives on which the Fund will invest, will be traded on an exchange that is not an ISG member or an exchange with which the Exchange has comprehensive surveillance sharing agreement.

\(^{63}\) For the avoidance of doubt, if a security or Debt is rated by multiple NRSROs and receives different ratings, the Fund will treat the security or Debt as being rated in the highest rating category received from any one NRSRO. If a security or Debt is not rated, the Fund may determine its rating by reference to other securities issued by the issuer or comparable NRSRO-rated securities.

\(^{64}\) The Exchange notes that the terms “fixed income weight of the portfolio” and “weight of the fixed income portion of the Fund” are used synonymously in Nasdaq Rule 5735. For purposes of this proposed rule change, these terms include all fixed income securities and Debt held by the Fund as well as derivatives held by the Fund that provide exposure to fixed income securities or Debt.

\(^{65}\) As discussed above, CDOs would be excluded from the 20% limit on ABS/Private MBS but would be subject to a separate limit of 10%, measured with respect to the total assets of the Fund. See supra.
invest more than 20% of its total assets in Debt that is unsecured and subordinated.

The Fund may not concentrate its investments (i.e., invest more than 25% of the value of its total assets) in Debt of borrowers in any one industry or in fixed income or equity securities of issuers in any one industry (excluding securities of sovereign issuers) as provided in the Registration Statement.66 The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment).67 Including Rule 144A securities deemed illiquid by the Manager or the Sub-Adviser.68 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 determined in accordance with Commission staff guidance.69

As noted in “The Fund’s Use of Derivatives,” the Fund’s investments in derivatives will be consistent with the Fund’s investment objective and will not be used for the purpose of seeking leveraged returns or performance that is the multiple or inverse multiple of a benchmark (although derivatives have embedded leverage). Although the Fund will be permitted to borrow as permitted under the 1940 Act, it 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 an underlying reference index). The Fund may engage in frequent and active trading of portfolio securities, Debt, and derivatives to achieve its investment objective.

Under Normal Market Conditions, the Fund will satisfy the following requirements, on a continuous basis: (i) Component fixed income securities and Debt that in the aggregate account for at least 75% of the fixed income weight of the Fund’s portfolio each shall have a minimum original principal amount outstanding of $100 million or more; (ii) no fixed income security held in the portfolio (excluding Treasury Securities and GSE-sponsored securities) will represent more than 30% of the fixed income weight of the Fund’s portfolio, and the five most heavily weighted portfolio securities (excluding Treasury Securities and GSE-sponsored securities) will not in the aggregate account for more than 65% of the fixed income weight of the Fund’s portfolio; and (iii) the Fund’s portfolio of fixed income securities (excluding exempted securities) will include a minimum of 13 non-affiliated issuers.70 Under Normal Market Conditions, the Fund will also satisfy the following requirements, on a continuous basis measured at the time of purchase: (x) At least 75% of the Fund’s investments in fixed income securities issued by emerging market issuers shall have a minimum original principal amount outstanding of $200 million or more; and (y) at least 75% of the Fund’s investments in Debt shall be in senior loans with an initial deal size of $100 million or greater.71

Those exchange-listed securities and Exchange-Traded Derivatives held by the Fund that are listed and traded on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement are limited to 10% of the Fund’s assets.

In addition, the Fund will impose the limits described in the following section, which describes differences between the “generic” listing requirements of Nasdaq Rule 5735(b)(1) and those applicable to the Fund.

66 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). For these purposes and above, Debt is comprised of loans that do not constitute securities (consistent with applicable case law) whereas fixed income securities would include loans and other fixed income instruments that are characterized as securities under applicable case law. See supra note 37.

67 See Rule 22e–4(b)(1)(i). “No fund or In-Kind ETF may acquire any illiquid investment if, immediately after the acquisition, the fund or In-Kind ETF would have invested more than 15% of its net assets in illiquid investments that are assets, with emphasis added.

68 In reaching liquidity decisions, the Manager or Sub-Adviser (as applicable) 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 and 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).

69 Long-standing Commission guidelines have required investment companies to hold no more than 15% of their net assets in 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 No. 5847 (October 21, 1975), 35 FR 9988 (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). The Commission also recently adopted Rule 22e–4 under the 1940 Act, which requires that each registered open-end management investment company, including ETFs but not including money market mutual funds, to establish a liquidity risk management program that includes limitations on illiquid investments. See Investment Company Act Release No. 32143 (October 13, 2016), 81 FR 8244 (November 18, 2016). Under Rule 22e–4, a fund’s portfolio security is illiquid if it cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment. See 17 CFR 270.22e–4(a)(8).

70 These requirements are consistent with the “generic” listing requirements of Nasdaq Rule 5735(b)(1)(B)(iii), which require: (i) For fixed income securities, that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio have a minimum principal amount outstanding of $100 million or more (see Nasdaq Rule 5735(b)(1)(B)(ii)); (ii) for component fixed-income securities (excluding Treasury Securities and GSE-sponsored securities) that no component represent more than 30% of the fixed income weight of the portfolio (see Nasdaq Rule 5735(b)(1)(B)(ii)); (iii) the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE-sponsored securities) not in the aggregate account for more than 65% of the fixed income weight of the portfolio; and (iv) that an underlying portfolio (excluding exempted securities) that includes fixed income securities include a minimum of 13 non-affiliated issuers (see Nasdaq Rule 5735(b)(1)(B)(iii)); Nasdaq Rule 5735(b)(1)(B)(iv) includes the following requirement: component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) From issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; or (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country. Nasdaq Rule 5735(b)(1)(B)(v) requires: non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

71 The Exchange notes that Nasdaq Rule 5735(b)(1)(P) provides that, to the extent that derivatives are used to gain exposure to individual fixed income securities or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Nasdaq Rule 5735(b)(1)(B). The Exchange proposes, however, as further described below, that for the purposes of the requirements in this paragraph and any requirements under Nasdaq Rule 5735(b)(1), the Fund will use the mark-to-market value of its derivatives rather than gross notional value.
Proposes that, except as otherwise provided herein, for the purposes of any applicable requirements under Nasdaq Rule 5735(b)(1), and any alternative requirements proposed by the Exchange, the Fund will use the mark-to-market value of its derivatives in calculating the weight of such derivatives or the exposure that such derivatives provide to their reference assets. The Exchange believes that this alternative requirement is appropriate because the mark-to-market value is a more accurate measurement of the actual exposure incurred by the Fund in a transaction with a derivatives position. 78

(ii) The Fund will not comply with the requirement that securities comprising at least 90% of the fixed income weight of the Fund’s portfolio meet one of the criteria in Nasdaq Rule 5735(b)(1)(iv) in respect to its investments in ABS/Private MBS. 79 Instead, ABS/Private MBS will be limited to 20% of the weight of the fixed income portion of the Fund’s portfolio. 80 Other than ABS/Private MBS, which do not meet the criteria in Nasdaq Rule 5735(b)(1)(iv) but will be subject to the 20% limit on aggregate holdings in ABS/Private MBS, all fixed income securities held by the Fund (which, for purposes of this proposed rule change, include convertible fixed income and convertible preferred securities) will satisfy this 90% requirement. As a result, other than ABS/Private MBS, which will not satisfy the 90% requirement, and CDOs, which will be excluded from the requirement in Nasdaq Rule 5735(b)(1)(v) and, instead, be limited to 10% of the total assets of the Fund, all fixed income securities held by the Fund will comply with all of the requirements of Nasdaq Rule 5735(b)(1)(v). The Exchange believes that this exception is appropriate for the reasons stated below. 81

(iii) The Exchange has classified bank loans as Debt for purposes of this proposed rule change and not as “fixed income securities” as they are classified in Nasdaq Rule 5735(b)(1)(B). As a result, the Fund’s investments in bank loans will comply with the limitations or restrictions applicable to the Fund’s investments in Debt as set forth herein with respect to such holdings and not with the restrictions for fixed income securities set forth in Nasdaq Rule 5735(b)(1)(i)—(v). The Exchange believes that this exception is appropriate for the reasons stated below in this proposed rule change. 82

(iv) The Fund will not comply with the equity requirements in Nasdaq Rules 5735(b)(1)(A)(i) and

72 The Exchange notes that, while the Fund treats commercial paper having maturities of 360 days or less as bank loans for the purpose of this proposed rule, it treats all commercial paper whether having maturities of 360 days or less or not as OTC derivatives. The Exchange notes that, in general, the Fund will not hold commercial paper for more than 30 days, and that the Fund will use the mark-to-market value of its outstanding common equity held by non-affiliates of $700 million or more as such term is defined in Nasdaq Rules 5735(c)(6) and 5710, respectively.

73 Nasdaq Rule 5735(b)(1)(B) provides that, to the extent that listed or over-the-counter derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Nasdaq Rules 5735(b)(1)(A) and 5735(b)(1)(B), respectively.
5735(b)(1)(A)(iii) with respect to the Fund’s investment in Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants traded OTC [sic]. Instead, the Exchange proposes that the weight of Non-Convertible Preferred Securities, Work Out Securities and Equity-Related Warrants in the Fund’s portfolio shall together not exceed 15% of the Fund’s assets. In addition, the Fund will not invest more than 5% of its total assets in Fixed-Income Related Warrants and Equity-Related Warrants traded OTC. The Exchange believes that these alternative limitations are appropriate in light of the fact that the Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities are providing debt-oriented exposures or are received in connection with the Fund’s previous investment in Debt or fixed income securities, and all of the other equity securities held by the Fund will comply with the requirements of Nasdaq Rule 5735(b)(1)(A). In addition, by limiting the Fund’s investment in all warrants traded OTC, which in most cases are not subject to publicly-reported price feeds, the Fund believes it will ensure that the portfolio remains liquid and transparent.

(v) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(E) that no more than 20% of the assets in the Fund’s portfolio may be invested in over-the-counter derivatives. Instead, the Exchange proposes that there shall be no limit on the Fund’s investment in Interest Rate and Currency Derivatives, and the weight of all OTC Derivatives other than Interest Rate and Currency Derivatives shall not exceed 10% of the Fund’s assets. For purposes of this 10% limit on OTC Derivatives, the weight of such OTC Derivatives will be calculated based on the mark-to-market value of such OTC Derivatives. The Exchange believes that this exception for Interest Rate and Currency Derivatives is appropriate for the reasons stated below in this proposed rule change.88

(vi) The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(i) that at least 90% of the weight of the Fund’s holdings in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options and swaps for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. Instead, the Exchange proposes that no more than 10% of the assets of the Fund will be invested in Exchange-Traded Derivatives and exchange-listed securities 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. For purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives. The Exchange believes that this exception is appropriate for the reasons stated below in this proposed rule change.89

The Exchange believes that, notwithstanding the fact that the Fund will not meet a limited number of “generic” listing requirements for equity securities, Equity-Related Warrants will not comply with the generic listing requirements for equity securities but will be subject to limits if traded OTC or on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement. See supra notes 25, 28, 29 and 46.

See infra notes 120–123 and accompanying text.

87 Other equities consist of ETFs (including money market ETFs) that provide exposure to fixed income securities, Debt and other Principal Investments. The weight of such ETFs in the Fund’s portfolio shall not be limited. As noted above, Fixed-Income Related Warrants are treated as fixed income securities for purposes of this proposed rule change and will be subject to the generic listing requirements for fixed-income securities, rather than the generic listing requirements for equity securities. Equity-Related Warrants will not comply with the generic listing requirements for equity securities but will be subject to limits if traded OTC or on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement. See supra notes 25, 28, 29 and 46.

88 See infra “Statutory Basis.”

89 The “Group of Seven” or G–7 countries consist of the United States, Canada, France, Germany, Italy, Japan and the United Kingdom.

90 See infra note 124 and accompanying text.
will be able to appropriately monitor and surveil trading in the underlying investments, including those that do not meet the “generic” listing requirements. The Exchange also notes that the parameters around the Fund’s portfolio holdings are generally consistent with the parameters approved by the Commission prior to adoption of “generic” listing requirements for actively-managed ETFs. In addition, the Fund will be well diversified. For these reasons, the Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund.

As further described in “Statutory Basis,” deviations from the generic requirements are necessary for the Fund to achieve its investment objective and efficiently manage the risks associated with its investments, and any possible risks have been fully mitigated and addressed through the alternative limits proposed by the Exchange. In addition, many of the changes requested are generally consistent with previous filings approved by the Commission.

69 See, e.g., Securities Exchange Act Release Nos. 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (SR–NYSEArca–2015–73) (granting approval for the listing of shares of the Guggenheim Total Return Bond ETF, 66241 (February 3, 2014), 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (granting approval for the listing of shares of the PMICO Total Return Exchange Traded Fund (now known as the PMICO Active Bond Exchange-Traded Fund)); and 72666 (July 24, 2014), 79 FR 44224 (July 30, 2014) (SR–NYSEArca–2013–122) (granting approval to the use of derivatives by the PMICO Total Return Exchange Traded Fund (now known as the PMICO Active Bond Exchange-Traded Fund)). The investments of the Guggenheim Total Return Bond ETF include a wide variety of U.S. and foreign fixed income instruments (including Private ABS/MBS, preferred securities, cash equivalents, other ETFs and listed and over-the-counter derivatives and are managed in a manner that appears to be generally consistent with that proposed for the Fund. Consistent with this made in this proposed rule change, the Commission’s approval of the listing of shares of the Guggenheim Total Return Bond ETF did not include many of the conditions imposed by the generic listing standards under Nasdaq Rule 5735; the Commission’s approval did not impose limits regarding the total notional size of the ETF’s investment in over-the-counter derivatives, did not impose concentration limits on the ETF’s investment in listed derivatives and did not require compliance with the same criteria as the fixed income criteria in Nasdaq Rule 5735(b)(1)(B). The order approving investments in derivatives by the PMICO Total Return Exchange Traded Fund described investments in both over-the-counter and listed derivatives, but it did not impose limits regarding the total notional size of the ETF’s investments in over-the-counter derivatives, did not impose concentration limits on the ETF’s investments in listed derivatives, and did not impose limitations on listed derivatives whose principal market is not a member of ISG or a market with which its listing exchange does not have a comprehensive surveillance sharing agreement.


The Fund’s administrator will calculate the Fund’s net asset value (“NAV”) per Share as of the close of regular trading (normally 4:00 p.m., Eastern time) on the New York Stock Exchange or close of regular trading (normally 4:00 p.m., Eastern time) on the New York Stock Exchange on the business day before the business day on which the NAV per Share will be calculated for the Fund by taking the value of the Fund’s total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share (although creations and redemptions will be processed using a price denominated to the fifth decimal point, meaning that rounding to the nearest cent may result in different prices in certain circumstances).

Impact on Arbitrage Mechanism

The Manager and the Sub-Adviser believe that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability for authorized participants (“APs”) 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 Manager and the Sub-Adviser do not believe that there will be any significant impact on 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” transfer when the Fund processes purchases or redemptions of creation units in-kind.

Creation and Redemption of Shares

The Fund will issue Shares of the Fund at NAV only to APs and only in aggregations of at least 50,000 shares (each aggregation is called a “Creation Unit”) or multiples thereof, on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any Business Day, of an order in proper form. A “Business Day” is defined as any day that the Trust is open for business, including as required by Section 22(e) of the 1940 Act.

Although the Fund reserves the right to issue Creation Units on a partial or fully “in-kind” basis, the Fund expects that it will primarily issue Creation Units solely for cash. As a result, APs seeking to purchase Creation Units will generally be required to transfer to the Fund cash in an amount equal to the value of the Creation Unit(s) purchased and the applicable transaction fee. To the extent that the Fund elects to issue Creation Units on an “in-kind” basis, the applicable AP will be required to deposit with the Fund a designated portfolio of securities and/or instruments (the “Deposit Securities”) that will conform pro rata to the holdings of the Fund (except in the circumstances described in the Fund’s Statement of Additional Information (the “SAI”) and/or an amount of cash. If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Securities or Redemption Securities (defined below) exchanged for the Creation Unit, the party conveying the instruments with the lower value will pay to the other an amount in cash equal to that difference (the “Cash Component”). Together, the Deposit Securities and the Cash Component will constitute the “Fund Deposit,” which
will represent the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Fund also expects to effect redemptions of Creation Units primarily on a cash basis, although it reserves the right to effect redemption on a partial or wholly “in-kind” basis. In connection with a cash redemption, the AP will be required to transfer to the Fund, Creation Units and cash equal to the transaction fee. To the extent that the Fund elects to utilize an “in-kind” redemption, it will deliver to the redeeming AP, in exchange for a Creation Unit, securities and/or instruments that will conform pro rata to the holdings of the Fund (“Redemption Securities”) plus the Cash Component.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must have executed an agreement with the Distributor, subject to acceptance by the transfer agent, with respect to creations and redemptions of Creation Units. Each such entity (an AP) must be (i) a broker-dealer or other participant in the clearing process through the continuous net settlement system of the National Securities Clearing Corporation (“NSCC”) or (ii) a Depository Trust Company participant.

When the Fund permits Creation Units to be issued principally or partially in-kind, the Fund will cause to be published, through the NSCC, on each Business Day, at or before 9:00 a.m. E.T., the identity and the required principal amount or number of each Deposit Security and the amount of the Cash Component (if any) to be included in the current Fund Deposit (based on information at the end of the previous Business Day). All orders to create Creation Units must be received by the Distributor within a one-hour window from 9:00 a.m. E.T. to 10:00 a.m. E.T. on a given Business Day in order to receive the NAV determined on the Business Day on which the order was placed. Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form on a Business Day and only through an AP. The Fund will not redeem Shares in amounts less than a Creation Unit unless the Fund is being liquidated.

When the Fund permits Creation Units to be redeemed principally or partially in-kind, the Fund will cause to be published, through the NSCC, at or before 9:00 a.m. E.T. on each Business Day, the identity of the Redemption Securities and/or an amount of cash that will be applicable to redemption requests received in proper form on that day. The Redemption Securities will be identical to the Deposit Securities.

In order to redeem Creation Units of the Fund, an AP must submit an order to redeem for one or more Creation Units. All such orders must be received by the Distributor within a one-hour window from 9:00 a.m. E.T. to 10:00 a.m. E.T. on a given Business Day in order to receive the NAV determined on the Business Day on which the order was placed.

Availability of Information

The Fund’s website (www.leggmason.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will include the Shares’ ticker, CUSIP and exchange information, along with additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior Business Day’s NAV per share and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV per share (the “Bid/Ask Price”), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV per share; and (2) a table showing the number of days during the current calendar year, and the most recently completed calendar quarter since that year (or the life of Fund, if shorter). The most recent NAV per Share calculation for the Fund is published, through the NSCC, at or before 9:00 a.m. E.T. on a given Business Day in order to receive the NAV determined on the Business Day.

On each Business Day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (the “Disclosed Portfolio” as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the Business Day. The Fund’s disclosure of derivative positions in the Disclosed Portfolio will include subsequent information for market participants to use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund’s website the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding), the identity of the security 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 percentage weighting of the holding in the Fund’s portfolio. The website information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the Nasdaq Information LLC proprietary index data service, will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendor and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices provided by a dealer who makes a market in those instruments. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a “real time” update of the NAV per Share of the Fund, which is calculated only once a day.

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 Business Day. Information regarding the previous day’s closing price and trading volume information for the Shares will be

Footnotes:

44 The Bid/Ask Price of the Fund will be determined using the midpoint 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.

45 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. to 4:15 p.m. to 8 p.m., E.T. (T).

46 Under accounting procedures to be followed by the Fund, trades made on the prior Business Day (“T”) will be booked and reflected in NAV on the current Business Day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

97 See Nasdaq Rule 5735(c)(2).

98 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.
published daily in the financial section of newspapers. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the Business Day on brokers’ computer screens and other electronic services. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association (“CTA”) plans for the Shares and for the following U.S. securities, to the extent that they are exchange-listed securities: Work Out Securities, Non-Convertible Preferred Securities, warrants, convertible fixed income and convertible preferred securities and ETFs. Price information for U.S. exchange-listed options will be available via the Options Price Reporting Authority and for other U.S. Exchange-Traded Derivatives will be available from the applicable listing exchange and from major market data vendors. Price information for TRACE-Eligible Securities or transactions not otherwise subject to TRACE reporting is generally available from major market data vendors and broker-dealers. For most of the U.S. dollar denominated corporate bonds, GSE-sponsored securities, Securitized Products and other U.S. dollar denominated fixed income securities in which the Fund invests, price information will be available from TRACE and EMMA (as defined below).100 For those instruments for which FINRA does not disseminate price information from TRACE, such as CDOs and fixed income securities denominated in foreign currencies, pricing information will generally be available from major market data vendors and broker-dealers. Money Market Funds are typically priced once each Business Day and their prices will be available through the applicable fund’s website or from major market data vendors.

For other exchange-listed securities (to be comprised primarily of ETFs, warrants and structured notes which may include exchange-listed securities of both U.S. and non-U.S. issuers), equities traded in the over-the-counter market (including Work Out Securities, and Non-Convertible Preferred Securities), Exchange-Traded Derivatives (including U.S. or foreign), OTC Derivatives, Debt and fixed income securities (including convertible fixed income and convertible preferred securities), and the small number of Securitized Products that are not reported to TRACE,101 intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Price information for such securities and instruments will also be available from feeds from major market data vendors, published or other public sources, or online information services. Price information is generally not available for OTC warrants, and these instruments will be subject to the Fund’s fair valuation procedures unless the Fund is able to secure price information from market data vendors or broker dealers. As noted above, TRACE will be a source of price information for most of the U.S. dollar denominated corporate bonds, GSE-sponsored securities, Securitized Products and other U.S. dollar denominated fixed income securities in which the Fund invests. Intraday and other price information related to foreign government securities, Money Market Funds, and other cash equivalents that are traded over-the-counter and other Non-TRACE Eligible Securities as well as prices for Treasury Securities, CDOs, commercial mortgage-backed securities, or CMOs purchased through transactions that do not qualify for periodic dissemination by FINRA will be available through major market data vendors, such as Bloomberg, Markit, IDC and Thomson Reuters, which can be accessed by APIs and other investors. Electronic Municipal Market Access ("EMMA") will be a source of price information for municipal bonds. Pricing for repurchase transactions and reverse repurchase agreements entered into by the Fund are not publicly reported. Prices are determined by negotiation at the time of entry with counterparty brokers, dealers and banks. Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings’ disclosure policies, distributions and taxes will be included in the Registration Statement. Investors will also be able to obtain the SAI, the Fund’s annual and semi-annual reports (together, “Shareholder Reports”), and its Form N–CSR and Form N–SAR, filed twice a year, except the SAI, which is filed at least annually. The Fund’s SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or

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100 For the definition of “TRACE-Eligible Security,” see FINRA Rule 6750(a).

101 FINRA generally disseminates information on all transactions in TRACE-Eligible Securities, including those effected pursuant to Rule 144A of the Securities Act, immediately upon receipt of the transaction report. Exceptions to this dissemination schedule are: (i) in respect to CMOs transacted pursuant to Rule 144A under the Securities Act, where the transaction value is $1 million or more and there have been five or more transactions of $1 million or more in the period reported by at least two different market participant identifiers (where FINRA will disseminate reported by at least two different market participant identifiers (where FINRA will disseminate price information from TRACE, such as CDOs and fixed income securities denominated in foreign currencies, pricing information will generally be available from major market data vendors and broker-dealers. Money Market Funds are typically priced once each Business Day and their prices will be available through the applicable fund’s website or from major market data vendors. Money Market Funds are typically priced once each Business Day and their prices will be available through the applicable fund’s website or from major market data vendors.

For other exchange-listed securities (to be comprised primarily of ETFs, warrants and structured notes which may include exchange-listed securities of both U.S. and non-U.S. issuers), equities traded in the over-the-counter market (including Work Out Securities, and Non-Convertible Preferred Securities), Exchange-Traded Derivatives (including U.S. or foreign), OTC Derivatives, Debt and fixed income securities (including convertible fixed income and convertible preferred securities), and the small number of Securitized Products that are not reported to TRACE, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Price information for such securities and instruments will also be available from feeds from major market data vendors, published or other public sources, or online information services. Price information is generally not available for OTC warrants, and these instruments will be subject to the Fund’s fair valuation procedures unless the Fund is able to secure price information from market data vendors or broker dealers. As noted above, TRACE will be a source of price information for most of the U.S. dollar denominated corporate bonds, GSE-sponsored securities, Securitized Products and other U.S. dollar denominated fixed income securities in which the Fund invests. Intraday and other price information related to foreign government securities, Money Market Funds, and other cash equivalents that are traded over-the-counter and other Non-TRACE Eligible Securities as well as prices for Treasury Securities, CDOs, commercial mortgage-backed securities, or CMOS purchased through transactions that do not qualify for periodic dissemination by FINRA will be available through major market data vendors, such as Bloomberg, Markit, IDC and Thomson Reuters, which can be accessed by APIs and other investors. Electronic Municipal Market Access ("EMMA") will be a source of price information for municipal bonds. Pricing for repurchase transactions and reverse repurchase agreements entered into by the Fund are not publicly reported. Prices are determined by negotiation at the time of entry with counterparty brokers, dealers and banks. Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings’ disclosure policies, distributions and taxes will be included in the Registration Statement. Investors will also be able to obtain the SAI, the Fund’s annual and semi-annual reports (together, “Shareholder Reports”), and its Form N–CSR and Form N–SAR, filed twice a year, except the SAI, which is filed at least annually. The Fund’s SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or

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circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

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

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.\textsuperscript{106} 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 the exchange-listed securities and instruments held by the Fund (including exchange-listed equities and Exchange-Traded Derivatives) with other markets and other entities that are members of ISG\textsuperscript{105} and with which the Exchange has comprehensive surveillance sharing agreements,\textsuperscript{106} and FINRA and the Exchange both may obtain information regarding trading in the Shares, the exchange-listed securities, derivatives and other instruments held by the Fund from markets and other entities that are members of ISG, which include securities and futures exchanges and swap execution facilities, or with which the Exchange has in place a comprehensive surveillance sharing agreement.\textsuperscript{107} Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for most of the fixed income securities held by the Fund through reporting on FINRA’s TRACE and, with respect to municipal securities, EMMA.

The majority of the Fund’s investments in exchange-listed, equity securities (\textit{i.e.}, Non-Convertible-Preferred Securities, Equity-Related Warrants and ETFs) will constitute securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Up to 10\% of the Fund’s assets may be held in exchange-listed securities and Exchange-Traded Derivatives that are listed and traded on markets that are not members of ISG or 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 in respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Indicative Value and the Disclosed Indicative Value will not be calculated or publicly disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

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 Act.

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

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.
In addition, personnel who make decisions on the Fund’s portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s portfolio. In the event (a) the Manager or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new investment adviser or any new sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund’s portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Fund’s investments, including derivatives, will be consistent with the Fund’s investment objectives, applicable legal requirements and applicable federal securities laws and 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.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain 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. In addition, paragraph (g) further requires that personnel who make decisions on the 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): however, paragraph (g) in connection with the establishment and maintenance of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable investment company’s portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Manager nor the Sub-Adviser is a broker-dealer, but each is affiliated with the Distributor, a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.
The Fund will not comply with the requirement that securities comprising at least 90% of the fixed income weight of the Fund’s portfolio meet one of the criteria in Nasdaq Rule 5735(b)(1)(B)(iv) in respect to its investments in ABS/Private MBS.\textsuperscript{114} Instead, ABS/Private MBS will be limited to 20% of the weight of the fixed income portion of the Fund’s portfolio.\textsuperscript{115} The Exchange proposes, in the alternative, to require the Fund to ensure that all of the investments in the fixed income portion of the Fund’s portfolio, other than ABS/Private MBS, comply with the 90% requirement in Nasdaq Rule 5735(b)(1)(B)(iv).\textsuperscript{116} The Exchange believes that this alternative limitation is appropriate because Nasdaq Rule 5735(b)(1)(B)(iv) does not appear to be designed for structured finance vehicles such as ABS/Private MBS, and the overall weight of ABS/Private MBS held by the Fund will be limited to 20% of the fixed income portion of the Fund’s portfolio, as described above. As discussed above, although ABS/Private MBS will be excluded for the purposes of compliance with Nasdaq Rule 5735(b)(1)(B)(iv), the Fund’s portfolio is consistent with the statutory standard as a result of the diversification provided by the investments and the Sub-Adviser’s selection process, which closely monitors investments to ensure maintenance of credit and liquidity standards and relies on the higher investment levels in these instruments during periods of U.S. economic strength.

As discussed above, the Exchange has determined to make an exception solely in respect of the Fund such that CDOs will not be deemed to be included in the definition of ABS for purposes of the limitation in Nasdaq Rule 5735(b)(1)(B)(v) and, as a result, will not be subject to the restriction on aggregate holdings of ABS/Private MBS contained in such Rule, which limits such holdings to no more than 20% of the weight of the fixed income portion of the Fund’s portfolio. However, the Fund’s holdings in CDOs will be limited such that they do not account, in the aggregate, for more than 10% of the total assets of the Fund. The Exchange believes that the 10% limit on the Fund’s holdings in CDOs will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation.

The Exchange has classified bank loans as Debt for purposes of this proposed rule change and not as “fixed income securities” as they are classified in Nasdaq Rule 5735(b)(1)(B). As a result, the Fund’s investments in bank loans will comply with the limitations or restrictions applicable to the Fund’s investments in Debt as set forth herein with respect to such holdings and not with the restrictions for fixed income securities set forth in Nasdaq Rule 5735(b)(1)(B)(i)–(v).\textsuperscript{117} The Exchange believes that this approach is appropriate given that the “generic” listing requirements in Nasdaq Rule 5735(b)(1)(B) generally appear to be tailored to fixed income instruments that are “securities”, as defined in the Act, rather than loans and other debt instruments that are not characterized as “securities” under applicable case law.

The Fund will not meet the equity requirements in Nasdaq Rule 5735(b)(1)(A) with respect to Non-Convertible Preferred Securities, Work Out Securities and Equity-Related Warrants.\textsuperscript{118} Instead, the Exchange proposes that the weight of Non-Convertible Preferred Securities, Work Out Securities and Equity-Related Warrants in the Fund’s portfolio shall together not exceed 15% of the Fund’s assets. The Fund will also not invest more than 5% of its total assets in the Fixed-Income Related Warrants and Equity-Related Warrants traded OTC. The Exchange believes that these alternative limitations are appropriate in light of the fact that the Non-Convertible Preferred Securities, Equity-Related Warrants and Work Out Securities are providing debt-oriented exposures or are received in connection with the Fund’s previous investment in Debt or fixed income securities, and all of the other equity securities held by the Fund will comply with the requirements of Nasdaq Rule 5735(b)(1)(A).\textsuperscript{119} In addition, by limiting the Fund’s investment in all warrants traded OTC, which in most cases are not subject to publicly-reported price feeds, the Fund believes it will ensure that the portfolio remains liquid and transparent.

The Fund will not meet the requirement in Nasdaq Rule 5735(b)(1)(E) that no more than 20% of the assets in the Fund’s portfolio may be invested in over-the-counter derivatives. Instead, The Exchange proposes that there shall be no limit on the Fund’s investment in Interest Rate and Currency Derivatives, and the weight of all OTC Derivatives other than Interest Rate and Currency Derivatives shall not exceed 10% of the Fund’s assets. For purposes of this 10% limit on OTC Derivatives, the weight of such OTC Derivatives will be calculated based on the mark-to-market value of such OTC Derivatives. The Exchange believes that this exception for Interest Rate and Currency Derivatives, which is generally consistent with the requirement in a previous filing for the listing of an ETF approved by the Commission,\textsuperscript{120} is appropriate in light of the fact that Interest Rate and Currency Derivatives are among the most liquid investment instruments (including not only derivatives but also securities) in the

\textsuperscript{114} See supra note 79.

\textsuperscript{115} See supra note 80 and accompanying text.

\textsuperscript{116} For purposes of this requirement, the weight of the Fund’s exposure to any fixed income securities referenced in derivatives shall be calculated based on the contract’s mark-to-market value of such derivatives. CDOs, in which the Fund invests, would comply with the 90% requirement in Nasdaq Rule 5735(b)(1)(B)(iv) but would be limited in amount to 10% of the Fund’s total assets. The Exchange believes that the 10% limit on the Fund’s holdings in CDOs will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation.

\textsuperscript{117} For a listing of such restrictions, see supra “Investment Restraints.”

\textsuperscript{118} As noted above, convertible fixed income securities and convertible preferred securities are treated as fixed income securities for purposes of this proposed rule change and will be subject to a limit of 20% of the total assets of the Fund. See supra “Application of Generic Listing Requirements” section (ii) and note 81. Equity-Related Warrants may be traded either on an exchange or OTC, subject to the requirement that no more than 10% of the Fund’s total assets will be invested in exchange-listed securities or Exchange-Traded Derivatives that are listed on an exchange that is not an ISG-member or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement. See supra notes 25, 28, 29 and 46.

\textsuperscript{119} See Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR-NYSEArca—2017-09) (approving up to 50% of the fund’s assets (calculated on the basis of aggregate gross notional value) to be invested in over-the-counter derivatives that are used to reduce currency, interest rate, or credit risk arising from the fund’s investments, including forwards, over-the-counter options, and over-the-counter swaps).
market\textsuperscript{121} (and the instruments are even more liquid than most non-government or government-guaranteed securities). Based on the data compiled by the Sub-Adviser in respect to its liquidity policy, these derivatives are among the most liquid investment instruments traded. In addition, most Interest Rate Derivatives traded by the Fund are centrally cleared by regulated clearing firms, and Interest Rate and Currency Derivatives are subject to trade reporting,\textsuperscript{122} and other robust regulation.\textsuperscript{123} Given the size of the trading market and the regulatory oversight of the markets, the Exchange believes that Interest Rate and Currency Derivatives are not readily subject to manipulation. The Exchange also believes that allowing the Fund to risk manage its portfolio through the use of Interest Rate and Currency Derivatives without limit is necessary to allow the Fund to achieve its investment objective and protect investors.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(ii) that at least 90% of the weight of the Fund’s holdings in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. Instead, the Exchange proposes that no more than 10% of the assets of the Fund will be invested in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or is not a market with which the Exchange has a comprehensive surveillance sharing agreement. For purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives. The Exchange believes that this alternative limitation is appropriate because the overall limit on Exchange-Traded Derivatives and exchange-listed securities 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 will still be low relative to the overall size of the Fund.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(ii) that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the Fund’s portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the Fund’s portfolio (including gross notional exposures). Instead, the Exchange proposes that the Fund will comply with the concentration requirements in Nasdaq Rule 5735(b)(1)(D)(ii) except with respect to the Fund’s investment in Eurodollar and G–7 Sovereign Futures and Options. The Fund may maintain significant positions in Eurodollar and G–7 Sovereign Futures and Options, and such investments will not be subject to the concentration limits provided in Nasdaq Rule 5735(b)(1)(D)(ii). For purposes of these requirements, the weight of the applicable Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives. The Manager has indicated that obtaining exposure to these investments through futures contracts is often the most cost efficient method to achieve such exposure. The Exchange notes that Eurodollar and G–7 Sovereign Futures and Options are highly liquid investments\textsuperscript{124} and are not subject to

\textsuperscript{121} Trading in foreign exchange markets averaged $5.1 trillion per day in April 2016, and 67% of this trading activity was in derivatives contracts such as currency or foreign exchange forwards, options and swaps (with the other 33% consisting of spot transactions). See Bank for International Settlements, Triennial Central Bank Survey, Foreign Exchange Turnover in April 2016, available at http://www.bis.org/publ/rpf16fx.pdf (accessed November 2017). Trading in OTC interest rate derivatives averaged $2.7 trillion per day in April 2016. See Bank for International Settlements, Triennial Central Bank Survey, OTC Interest Rate Derivatives Turnover in April 2016, available at http://www.bis.org/publ/rpf16ir.pdf (accessed November 2017).

\textsuperscript{122} Transactions in Interest Rate and Currency Derivatives are required to be reported to a swap data repository, and transactions in Interest Rate Derivatives and certain Currency Derivatives (i.e., Currency Derivatives other than Exclude Currency Derivatives) are not excluded from the definition of a “swap”, as described below) are also publicly reported pursuant to rules issued by the CFTC. See 17 CFR parts 45 and 46. Pursuant to Section 4a(7)(E) of the CEA and a related determination by the Department of the Treasury, Excluded Currency Derivatives are excluded from the definition of a “swap” under the CEA. See Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 77 FR 69694 (Nov. 20, 2012).

\textsuperscript{123} However, as noted above, transactions in such Excluded Currency Derivatives are required to be reported to a swap data repository, but they are not subject to the public reporting requirements.

\textsuperscript{124} See CME Group, Interest Rate Futures Liquidity Metrics Reach New Highs (October 6, 2017), available at http://www.cmegroup.com/en-us/education/interest-rate-liquidity-metrics-reach-new-highs.html (accessed November 2017) (providing statistics regarding liquidity and open interest in futures and options on eurodollars and Treasury Securities, excluding the first three quarters of 2017, eurodollar futures and options traded through CME Group had an average daily open interest of approximately 53 million contracts and futures and options on Treasury Securities had an average daily open interest of approximately 15 million contracts); The Montreal Exchange, Statistics for Interest Rate Derivatives, Index Derivatives and Equity Derivatives (September 2017), available at https://www.m-x.ca/f_stats_en/1709_stats_en.pdf (accessed November 2017) (providing statistics regarding liquidity and open interest in futures and options on Canadian sovereign debt, including that, as of September 2017, the open interest in futures and options on Canadian sovereign debt traded on the Montreal Exchange was approximately 560,000 contracts); EurEx Exchange, Benchmark Fixed Income Derivatives, available at https://www.eurexchange.com/blob/115654/4c51e4b8c7355457b3bf46a0c0e8f711/d/data/factsheet_eurex_benchmark_fixed_income_derivatives.pdf (accessed November 2017) (providing statistics regarding liquidity and open interest in futures and options on German sovereign debt, including that, as of July 2015, the open interest in futures on German sovereign debt traded on EurEx was approximately 3,000,000 contracts and the open interest in options on German sovereign debt futures traded on EurEx was approximately 3,000,000 contracts); EurEx Exchange, Exchange Euro-FTP Futures, Italian Government Bond Futures, available at http://www.eurexchange.com/blob/115624/6a1281939d15ddbab960af40da6f11dc/data/factsheet_eurex_euro_ftp_futures_on_italian_government_bonds.pdf (accessed November 2017) (providing statistics regarding liquidity and open interest in futures and options on French sovereign debt, including that, as of July 2017, the open interest in futures on long-term and short-term Italian sovereign debt traded on EurEx was approximately 450,000 and 270,000 contracts, respectively); EurEx Exchange, Euro-OAT Derivatives, Italian Government Bond Futures and Options, available at http://www.eurexchange.com/blob/115652/48198ec57775b3b0ac44dc5a39ed0de/data/factsheet_eurex_euro_oat_futures_on_french_government_bonds.pdf (accessed November 2017) (providing statistics regarding liquidity and open interest in futures on French sovereign debt, including that, as of July 2017, the open interest in futures on long-term French sovereign debt traded on EurEx was approximately 600,000 contracts); Intercontinental Exchange, Gilt Futures Overview, available at https://www.icex.com/markets-and-products/futures/Gilt-Futures-Overview.pdf (accessed November 2017) (providing statistics regarding liquidity and open interest in futures on British sovereign debt, including that, as of the third quarter of 2014, the open interest in futures on long-term British sovereign debt traded on the Intercontinental Exchange was approximately 400,000 contracts); Osaka Exchange, Japan Government Bond Futures & Options, available at http://www.jpx.co.jp/english/derivatives/products/jgb/gb-futures/vd/freqepp00000039t64.html?JGB_FUT_ _E.pdf (accessed November 2017) (providing statistics regarding liquidity and open interest in futures and options on Japanese sovereign debt, including that as of July 2016, the open interest in futures on 10-year Japanese sovereign debt traded

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the same concentration risks as Exchange-Traded Derivatives referencing other assets because of such liquidity. Further, the Exchange notes that the significantly diminished risk of Treasury Securities is reflected in their exclusion from the concentration requirements applicable to fixed income securities in Nasdaq Rule 5735(b)(1)(B)(ii). The Exchange proposes that the Fund will comply with the concentration requirements in Nasdaq Rule 5735(b)(1)(D)(ii) except with respect to the Fund’s investment in Eurodollar and G–7 Sovereign Futures and Options. The Exchange believes that this alternative limitation is appropriate to provide the Fund with sufficient flexibility and because of the highly liquid and transparent nature of Eurodollar and G–7 Sovereign Futures and Options. Further, as described above, the G–7 Sovereign Futures and Options in which the Fund invests will be listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement.

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 Business 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 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 the Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website 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 the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the Business Day on brokers’ computer screens and other electronic services. 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 and for the following U.S. securities, to the extent they are exchange-listed: Work Out Securities, Non-Convertible Preferred Securities, warrants, convertible fixed income and convertible preferred securities and ETFs. Price information for U.S. exchange-listed options will be available via the Options Price Reporting Authority and for other U.S. Exchange-Traded Derivatives will be available from the applicable listing exchange and from major market data vendors. Price information for restricted securities will be available from major market data vendors, broker-dealers and trading platforms, as well as for most fixed income securities sold in transactions under Rule 144A under the Securities Act, from TRACE and EMMA. Money Market Funds are typically priced once each Business Day and their prices will be available through the applicable fund’s website or from major market data vendors.

For other exchange-listed securities (to be comprised primarily of ETFs, warrants and structured notes and which may include exchange-listed securities of both U.S. and non-U.S. issuers), equities traded in the over-the-counter market (including Work Out Securities and Non-Convertible Preferred Securities), Exchange-Traded Derivatives (including U.S. or foreign), OTC Derivatives, Debt and fixed income securities (including convertible fixed income and convertible preferred securities), and the small number of Securitized Products that are not reported to TRACE, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Price information is generally not available for OTC warrants, and these instruments will be subject to the Fund’s fair valuation procedures unless the Fund is able to secure price information from market data vendors or broker dealers. TRACE will be a source of price information for most of the U.S. dollar-denominated corporate bonds, GSE-sponsored securities, Securitized Products and other U.S. dollar-denominated fixed income securities in which the Fund invests. Intraday and other price information related to foreign government securities, Money Market Funds, and other cash equivalents that are traded over-the-counter and other Non-TRACE Eligible Securities as well as prices for Treasury Securities, CDOs, commercial mortgage-backed securities, or CMOs purchased through transactions that do not qualify for periodic dissemination by FINRA will be available through major market data vendors, such as Bloomberg, Markit, IDC and Thomson Reuters, which can be accessed by APs and other investors. EMMA will be a source of price information for municipal bonds. Pricing for repurchase transactions and reverse repurchase agreements entered into by the Fund are not publicly reported. Prices are determined by negotiation at the time of entry with counterparty brokers, dealers and banks.

The Fund’s website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. 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 the 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

125 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. For fixed income securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

126 Broker-dealers that are FINRA member firms have an obligation to report transactions in TRACE-Eligible Securities to TRACE. For the definition of “TRACE-Eligible Security,” see FINRA Rule 6710(a).

127 See supra note 100.
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 ETF that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed ETF 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 proposed rule change, as modified by Amendment Nos. 1, 2 and 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2 and 3, is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

As discussed above, the Fund will not comply with a number of the generic requirements in the initial and continued listing standards for Managed Fund Shares set forth in Nasdaq Rule 5735(b)(1). The Exchange states that it will be able to appropriately monitor and surveil trading in the underlying investments, including those that do not meet the generic listing requirements. The Exchange also states that any risks that may arise due to the Fund not meeting certain of the generic listing requirements are mitigated and addressed through alternative limits on the Fund proposed by the Exchange. In addition, the Exchange states that the Fund will be well diversified.

With respect to its investments in derivatives, the Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1) regarding the use of aggregate gross notional value of derivatives when calculating the weight of such derivatives or the exposure that such derivatives provide to underlying reference assets. Instead, the Exchange proposes that, for the purposes of any applicable requirements under Nasdaq Rule 5735(b)(1) and any alternative requirements proposed by the Exchange, the Fund will use the mark-to-market value of derivatives in calculating the weight of such derivatives or the exposure that such derivatives provide to their reference assets. The Exchange states its belief that mark-to-market value is a more accurate measurement of the actual exposure incurred by the Fund in connection with a derivatives position. In addition, the Exchange states that the proposed mark-to-market methodology for valuing derivatives positions is consistent with other Commission proposals and policies and is the measure on which collateral posting is based under the ISDA Master Agreement.

With respect to its investments in ABS/Private MBS, the Fund will not meet the generic listing requirement that securities comprising at least 90% of the fixed income weight of the Fund’s portfolio meet one of the criteria set forth in Nasdaq Rule 5735(b)(1)(B)(v). The Exchange represents that all fixed income securities held by the Fund other than ABS/Private MBS will comply with the 90% requirement under Nasdaq Rule 5735(b)(1)(B)(iv). In addition, the Exchange notes that the Fund’s investment portfolio will be diverse, and that the Sub-Adviser closely monitors investments to ensure maintenance of credit and liquidity standards.

The Exchange states that the Fund’s investments in ABS/Private MBS will, in accordance with Nasdaq Rule 5735(b)(1)(B)(v), be limited to 20% of the weight of the fixed income portion of the Fund’s portfolio, except with respect to CDOs. As discussed above, for purposes of this Fund, the Exchange will exclude CDOs from the definition of “ABS” and, as a result, CDOs will not be subject to the 20% limitation on aggregate ABS/Private MBS holdings pursuant to Rule 5735(b)(1)(B)(v). In the alternative, the Exchange represents that the Fund’s investments in CDOs will be limited to 10% of the total assets of the Fund, which the Exchange explains will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation.

For purposes of this Fund, the Exchange proposes to classify bank loans as Debt rather than “fixed income securities” (as they are classified in Nasdaq Rule 5735(b)(1)(B)). As a result, the Fund’s investments in bank loans would comply with the proposed limitations applicable to investments in Debt set forth above rather than with the restrictions for fixed income securities set forth in Nasdaq Rule 5735(b)(1)(B)(i)–(v).

The Fund will not comply with the listing requirements related to investments in equities set forth in Nasdaq Rule 5735(b)(1)(A) with respect to its investments in Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants. Instead, the Exchange represents that: (i) The weight of Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants in the Fund’s portfolio in the aggregate will not exceed 15% of the Fund’s assets; (ii) the Fund will not invest more than 5% of its total assets in Fixed-Income Related Warrants and Equity-Related Warrants that are traded Outside, and (iii) all Fund other than ABS/Private MBS will comply with the 20% requirement under Nasdaq Rule 5735(b)(1)(B)(iv). In addition, the Exchange notes that the Fund’s investment portfolio will be diverse, and that the Sub-Adviser closely monitors investments to ensure maintenance of credit and liquidity standards.

states that for purposes of this requirement, the weight of the Fund’s exposure to any fixed income securities referenced in derivatives held by the Fund would be calculated based on the mark-to-market value of such derivatives.

The Exchange states that the Fund’s investments in ABS/Private MBS will, in accordance with Nasdaq Rule 5735(b)(1)(B)(v), be limited to 20% of the weight of the fixed income portion of the Fund’s portfolio, except with respect to CDOs. As discussed above, for purposes of this Fund, the Exchange will exclude CDOs from the definition of “ABS” and, as a result, CDOs will not be subject to the 20% limitation on aggregate ABS/Private MBS holdings pursuant to Rule 5735(b)(1)(B)(v). In the alternative, the Exchange represents that the Fund’s investments in CDOs will be limited to 10% of the total assets of the Fund, which the Exchange explains will help to ensure that the Fund maintains a diversified portfolio and will mitigate the risk of manipulation.
and Exchange-Traded Derivatives held by the Fund that are listed and traded on a non-ISG member exchange or an exchange with which the Exchange does not have a comprehensive surveillance sharing agreement ("CSSA") will be limited to 10% of the Fund’s net assets. The Exchange believes these alternative limitations are appropriate because the Non-Convertible Preferred Securities, Work Out Securities, and Equity-Related Warrants will provide debt-oriented exposures or are received in connection with the Fund’s previous investments in Debt or fixed income securities.

In addition, the Exchange states that because in most cases OTC-traded warrants are not subject to publicly-reported price feeds, limiting these investments to 5% of the assets will help to ensure the Fund’s portfolio remains liquid and transparent.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(E) that no more than 20% of the assets in the Fund’s portfolio may be invested in over-the-counter derivatives. Instead, the Exchange proposes that there would be no limit on the Fund’s investments in Interest Rate and Currency Derivatives, and that the aggregate weight of all OTC Derivatives other than Interest Rate and Currency Derivatives will not exceed 10% of the Fund’s assets.

The Exchange states that allowing the Fund to invest an unlimited amount of its assets in Interest Rate and Currency Derivatives is necessary to allow the Fund to risk manage its portfolio. In addition, the Exchange states its belief that Interest Rate and Currency Derivatives are not readily subject to manipulation given the size, liquidity, and regulatory oversight of the trading market for such instruments.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(i) that at least 90% of the weight of the Fund’s holdings in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG, or for which the principal market is a market with which the Exchange has a CSSA. Instead, the Exchange proposes that no more than 10% of the net assets of the Fund will be invested in Exchange-Traded Derivatives and exchange-listed securities whose principal market is not a member of ISG or is not a market with which the Exchange has a CSSA.

The Exchange believes that this alternative limit is appropriate because, relative to the overall size of the Fund, the Fund’s investment in non-ISG/CSSA derivatives and exchange-listed securities will be small.

Finally, the Exchange states that the Fund may maintain significant positions in Eurodollar and G–7 Sovereign Futures and Options, and that as a result, the Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(D)(ii) that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets not exceed 30% of the weight of the Fund’s portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset not exceed 65% of the weight of the Fund’s portfolio (including gross notional exposures). The Exchange states that Eurodollar and G–7 Sovereign Futures and Options are highly liquid investments and are not subject to the same concentration risks as Exchange-Traded Derivatives referencing other assets because of such liquidity. In addition, the Exchange represents that the G–7 Sovereign Futures and Options in which the Fund will invest will be listed on an exchange that is an ISG member or an exchange with which the Exchange has a CSSA.

The Exchange represents that the Fund will comply with the concentration requirements in Nasdaq Rule 5735(b)(1)(D)(ii) except with respect to its investments in Eurodollar and G–7 Sovereign Futures and Options.

Other than as described above, the Fund will meet all the requirements of Nasdaq Rule 5735. For the reasons articulated by the Exchange above, the Commission believes that these proposed initial and continued listing requirements, including the alternative limitations on the Fund’s proposed holdings described above, are designed to mitigate the potential for manipulation of the Shares.

The Commission finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress’s 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 ("UTPs") and the CTA plans. Further, as required by Nasdaq Rule 5735(d)(2)(A), 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 vendor at least every 15 seconds during the Exchange’s Regular Market Session. 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. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, the Fund’s website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Quotation and last sale information for exchange-listed Work Out Securities, Non-Convertible Preferred Securities, warrants, convertible fixed income securities and convertible preferred securities, and ETFs will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the UTP and the CTA plans. Price information for U.S. exchange listed options will be available via the Options Price Reporting Authority and price information for other U.S. Exchange-Traded Derivatives will be available from the applicable listing exchange and from major market data vendors. Price information for TRACE-Eligible Securities sold in transactions under Rule 144A under the Securities Act will generally be available through TRACE and information regarding transactions in non-TRACE-Eligible Securities or transactions not otherwise subject to TRACE reporting will be available from

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142 See infra notes 148–149 and accompanying text.

143 See supra "Statutory Basis."

144 See id.

145 As discussed above, for purposes of this 10% limit on OTC Derivatives, the weight of such OTC Derivatives would be calculated based on the mark-to-market value of such OTC Derivatives.

146 See supra "Statutory Basis."

147 See id.

148 As discussed above, for purposes of this 10% limit, the weight of such Exchange-Traded Derivatives will be calculated based on the mark-to-market value of such Exchange-Traded Derivatives.

149 See supra "Statutory Basis."

150 See id. and accompanying text.

151 See supra note 124 and accompanying text.

152 See supra "Statutory Basis."

153 See supra note 98.

major market data vendors and broker-dealers. For most of the U.S. dollar denominated corporate bonds, GSE-sponsored securities, Securitized Products, and other U.S. dollar denominated fixed income securities in which the Fund invests, price information will be available from TRACE and EMMA. For those instruments for which FINRA does not disseminate price information from TRACE, such as CDOs and fixed income securities denominated in foreign currencies, pricing information will be available from major market data vendors and broker-dealers. For other exchange-listed securities (to be comprised primarily of ETFs, warrants, and structured notes and which may include exchange-listed securities of both U.S. and non-U.S. issuers), equities traded in the OTC market (including Work Out Securities and Non-Convertible Preferred Securities), Exchange-Traded Derivatives (including U.S. or foreign), OTC Derivatives, Debt, fixed income securities (including convertible fixed income and convertible preferred securities), and Securitized Products that are not reported to TRACE, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Price information for such securities and instruments will also be available from fees from major market data vendors, published or other public sources, or online information services. Intraday and other price information related to foreign government securities, Money Market Funds, and other cash equivalents that are traded OTC, and other Non-TRACE Eligible Securities, as well as prices for Treasury Securities, CDOs, commercial mortgage-backed securities, or CMOs purchased through transactions that do not qualify for periodic dissemination by FINRA will be available through major market data vendors, such as Bloomberg, Markit, IDC, and Thomson Reuters, which can be accessed by APIs and other investors. Price information for Money Market Funds will also be available through the applicable fund’s website or from major market data vendors. Pricing information for repurchase transactions and reverse repurchase agreements entered into by the Fund is not publicly reported. Price information is generally not available for OTC warrants, and these instruments will be subject to the Fund’s fair valuation procedures unless the Fund is able to price information from market data vendors or broker-dealers.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that it will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, the Exchange represents that on each Business Day, before commencement of trading in the Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website 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, and that this website information will be available free of charge. Further, trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of a fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that neither the Manager nor the Sub-Adviser is a broker-dealer, but that each is affiliated with a broker-dealer and has implemented, and will maintain, a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. In support of this proposal, the Exchange represents that: (1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. Other than as described above, the Fund will meet all requirements of Nasdaq Rule 5735(b)(1). The Fund’s investments will be subject to the limitations described in Section II.A above.

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

(3) Trading in the Shares will be subject to the existing trading surveillance, administered by both Nasdaq and also FINRA on behalf of the Exchange, 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.

(4) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund from markets and other entities that are members of ISG and with which the Exchange has CSSAs, and FINRA and the Exchange both may obtain information regarding trading in the Shares, the exchange-listed securities, derivatives, and other instruments held by the Fund from markets and other entities that are members of ISG, which include securities and futures exchanges and swap execution facilities, or with which the Exchange has in place a CSSA. FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for most of the fixed income securities held by the Fund through reporting on TRACE and, with respect to municipal securities, EMMA.

(5) 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: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or

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155 See supra note 100. EMMA will be a source of price information for municipal bonds.

156 See Nasdaq Rule 5735(d)(1)(B).

157 See Nasdaq Rule 5735(d)(2)(B)(ii). The term Reporting Authority is defined in Nasdaq Rule 5735(e)(4).
concurrently with the confirmation of a transaction; and (f) trading information.

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

(7) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.\(^\text{158}\)

(8) The Fund’s investments, including derivatives, will be consistent with the Fund’s investment objectives and applicable legal requirements, and will not be used to seek leveraged returns or performance that is the multiple or inverse multiple of a benchmark (although derivatives may have embedded leverage). Although the Fund will be permitted to borrow as permitted under the 1940 Act, it will not be operated in a manner designed to seek leveraged returns or a multiple or inverse multiple of the performance of an underlying reference index.

The Exchange represents that all statements and representations made in the filing regarding: (1) The description of the portfolio or reference assets; (2) limitations on portfolio holdings or reference assets; (3) dissemination and availability of the reference asset or Intraday Indicative Values; or (4) the applicability of Exchange listing rules 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.

This approval order is based on all of the Exchange’s statements and representations, including those set forth above and in Amendment Nos. 1, 2 and 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2 and 3 is consistent with Section 6(b)(5) of the Act\(^\text{159}\) and Section 11A(a)(1)(C)(iii) of the Act\(^\text{160}\) and the rules and regulations thereunder applicable to a national securities exchange.

### IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 to the proposed rule change are 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);
- Send an email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2018–080 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–2018–080. 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 website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–080, and should be submitted on or before February 27, 2019.

### VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,\(^\text{163}\) that the proposed rule change (SR–NASDAQ–2018–080), as modified by Amendment Nos. 1, 2 and 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\(^\text{164}\)

Eduardo A. Aleman,
Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Rule 7.31 Relating to Discretionary Orders, Auction-Only Orders, Discretionary Modifier, and Yielding Modifier and Related Amendments to Rules 7.16, 7.34, 7.36, and 7.37


On November 29, 2018, New York Stock Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant

\(^{158}\) See 17 CFR 240.10A–3.

\(^{159}\) 15 U.S.C. 78b(b)(5).


\(^{161}\) See supra note 8.


\(^{163}\) Id.