

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 58      SECURITIES AND EXCHANGE COMMISSION      File No.\* SR - 2014 - \* 090  
 WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*)

Filing by NASDAQ Stock Market  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document       Exhibit 3 Sent As Paper Document

**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).  
 A Proposed Rule Change Relating to the Listing and Trading of the Shares of the Validea Market Legends ETF of the ETF Series Solutions ETF Trust.

**Contact Information**  
 Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Jonathan      Last Name \* Cayne  
 Title \* Sr. Associate General Counsel  
 E-mail \* jonathan.cayne@nasdaqomx.com  
 Telephone \* (301) 978-8493      Fax (301) 978-8472

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)  
 Date 08/28/2014      Executive Vice President and General Counsel  
 By Edward S. Knight      (Name \*)  
 NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.  
 Persona Not Validated - 1383935917270,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”), is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade the shares of the Validea Market Legends ETF (the “Fund”) of ETF Series Solutions (the “Trust”) under Nasdaq Rule 5735 (“Managed Fund Shares”).<sup>3</sup> The shares of the Fund are collectively referred to herein as the “Shares.”

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 16, 2014. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Jonathan F. Cayne, Senior Associate General Counsel, The NASDAQ OMX Group at (301) 978-8493 (telephone).

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

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

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

<sup>3</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039). There are already multiple actively-managed funds listed on the Exchange; see e.g., Securities Exchange Act Release No. 72411 (June 17, 2014), 79 FR 35598 (June 23, 2014) (SR-NASDAQ-2014-40) (order approving listing and trading of Calamos Focus Growth ETF). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

a. 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<sup>4</sup> on the Exchange. The Fund will be an actively-managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust, which was established as a Delaware business trust on February 9, 2012.<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission.<sup>6</sup> The Fund is a series of the Trust.

Validea Capital Management, LLC will be the investment adviser (“Adviser”) to the Fund. Quasar Distributors, LLC (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. U.S. Bancorp Fund Services, LLC (“USBFS”) will act as the administrator, accounting agent, and transfer agent to the Fund. U.S. Bank National Association will act as the custodian to the Fund.

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<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1)(the “1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> The Trust has obtained, or will obtain prior to listing Shares of the Fund on the Exchange, from the Commission an order (the “Exemptive Order”) on which the Trust may rely, granting certain exemptive relief to the Trust under the 1940 Act. See Application for an Order (June 16, 2014) (File No. 812-14322).

<sup>6</sup> See Post- Effective Amendment No. 14 to the Registration Statement on Form N-1A for the Trust, dated July 16, 2014 (File Nos. 333-179562 and 811-22668). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

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 a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, nonpublic information regarding the open-end fund’s portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, and is not affiliated with any broker-dealer. In the event (a) the Adviser becomes newly affiliated

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<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with applicable federal securities laws as defined in Rule 204A-1(e)(4). Accordingly, procedures designed to prevent the communication and misuse of nonpublic information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio. The Adviser has no present intent or arrangement to become newly affiliated with any broker-dealer, and the Fund does not currently intend to use a sub-adviser.

#### Validea Market Legends ETF

##### Principal Investments

The Fund is a non-diversified, actively-managed ETF that intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund's primary investment objective is to achieve capital appreciation, with a secondary focus on income. The Fund will pursue its objectives by investing primarily, *i.e.* at least 80% of its assets under normal market conditions,<sup>8</sup> in U.S. exchange-listed equity securities of U.S. companies and foreign equity securities traded on a U.S.

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<sup>8</sup> The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objectives.

exchange as American Depositary Receipts (“ADRs”).

The Adviser will select securities using a proprietary quantitative and fundamentals-based system that evaluates investment opportunities based on the published investment strategies of legendary investors whose investment strategies have generally been subject to significant academic or media analysis, such as Warren Buffet, Peter Lynch and David Dreman. The Adviser’s system incorporates 17 stock selection models, each intended to replicate the strategy of a legendary investor. The models incorporate over 300 unique fundamental metrics of companies, including measures relating to profitability, valuation, growth, cash flow, financing and past performance, among others. The Adviser scores over 6,000 companies based on the metrics of its investor models and expects that the Fund will generally hold approximately 100 securities.

Using historical data, the Adviser’s system evaluates the long term performance, risks, and correlation of each model and blends some or all of the models to identify the composite strategy that the Adviser believes is most likely to achieve the Fund’s investment objectives while reducing volatility. By utilizing various stock picking methods in the creation of the composite strategy, the Adviser will seek to reduce the volatility of the Fund’s returns in different market environments and limit investment style specific risk.

The Fund will invest at least 80% of its assets in equity securities of U.S. companies and foreign equity securities traded on a U.S. exchange as ADRs.<sup>9</sup> The

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<sup>9</sup> ADRs are receipts, typically issued by a bank or trust issuer, which evidence ownership of underlying securities issued by a non-U.S. issuer. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are

Fund's investment in ADRs may include ADRs representing companies in emerging markets. The Fund may invest in the securities of companies of any market capitalization, but the Adviser expects that the Fund will have a bias toward small-cap and mid-cap companies. The Adviser also expects to limit the Fund's investment in any individual economic sector to no more than 40% of the Fund's total assets.

The Adviser expects that the Fund will regularly update or "rebalance" the securities that it holds, but no more often than once every 28 days and at least 5 times per year. On each such date, securities whose fundamental scores no longer meet the Fund's requirements will be removed and replaced with higher scoring securities. A stock will only be sold in between rebalance dates if the stock has significantly underperformed the overall market since the time the stock was purchased.

The Fund's investment in foreign equity securities will be in the form of ADRs. With respect to its investments in exchange-listed common stocks and ADRs, the Fund will invest in such securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG").

The Fund will generally invest in sponsored ADRs that are listed on ISG member exchanges and that the Adviser deems as liquid at time of purchase. In certain limited circumstances, the Fund may invest in unlisted or unsponsored ADRs or ADRs that the Adviser deems illiquid at the time of purchase or for which pricing information is not readily available. The issuers of unlisted or unsponsored ADRs are not obligated to disclose material information in the United States. Therefore, there may be less

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issued by a non-U.S. issuer. ADRs are not necessarily denominated in the same currency as their underlying securities.



information available regarding such issuers and there may be no correlation between available information and the market value of the ADRs.

#### Other Investments

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities or other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>10</sup>

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

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<sup>10</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

instrumentalities, or securities of other registered investment companies.<sup>11</sup>

While the Fund under normal circumstances will invest at least 80% of its assets in U.S. exchange-listed equity securities, the Fund may invest the remaining assets in a variety of other securities in support of its primary investment strategy, including, but not limited to: equity securities traded over-the-counter,<sup>12</sup> equity securities of other U.S. registered investment companies, including open-end mutual funds, money market mutual funds and exchange-traded funds, and money market instruments.<sup>13</sup>

### The Shares

The Fund will issue and redeem Shares only in Creation Units at the net asset value (“NAV”)<sup>14</sup> next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the NYSE, generally,

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<sup>11</sup> 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).

<sup>12</sup> The Fund’s investments in equity securities traded over-the-counter include shares of common stock and ADRs. .

<sup>13</sup> The term “money market instruments,” as used herein, means (i) short-term obligations issued by the U.S. Government; (ii) short term negotiable obligations of commercial banks, fixed time deposits and bankers’ acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase “Prime-1” by Moody’s Investors Service, Inc. or “A-1+” or “A-1” by Standard & Poor’s or, if unrated, of comparable quality, as the Adviser of the Fund determines; and (iv) money market mutual funds.

<sup>14</sup> The NAV of the Fund’s Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (“NYSE”), generally 4:00 p.m. Eastern time (the “NAV Calculation Time”). NAV per Share will be calculated by dividing the Fund’s net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund’s NAV, see Registration Statement.

4:00 p.m. Eastern time. Creation Unit sizes will be at least 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the agreement executed with each Authorized Participant (as defined below).

The consideration for purchase of a Creation Unit generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and the Cash Component (as defined below), computed as described below or (ii) the cash value of all or a portion of the Deposit Securities (“Deposit Cash”) and the “Cash Component,” computed as described below. The Fund may, under certain circumstances, effect a portion of creations and redemptions for cash, rather than in-kind securities, in accordance with the Exemptive Order.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The “Cash Component” will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the

Cash Component is a negative number (*i.e.*, the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a “Participating Party,” *i.e.*, 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 (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute an agreement that has been agreed to by the Distributor and USBFS with respect to purchases and redemptions of Creation Units.

USBFS, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange’s Regular Market Session (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and/or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit, subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities and/or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through USBFS and only on a business day.

With respect to the Fund, USBFS, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund's portfolio securities ("Fund Securities") and/or, if relevant, the required cash value thereof that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in kind or in cash or a combination thereof, as determined by the Trust. With respect to in kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by USBFS on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of one or

more Fund Securities.

The creation/redemption order cut off time for the Fund is expected to be 4:00 p.m. Eastern time for purchases of Shares. On days when the Exchange closes earlier than normal and in the case of custom orders, the Fund may require orders for Creation Units to be placed earlier in the day.

#### Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be calculated by USBFS and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open. In calculating the Fund's NAV per Share, investments will generally be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer).<sup>15</sup> Exchange-traded equities; sponsored or unsponsored ADRs or other exchange-traded securities will be valued at the official closing price on their principal exchange or board of trade, or lacking any current reported sale at the time of valuation, at the mean between the most recent bid and asked quotations on its principal exchange or board of trade. Portfolio securities traded on more than one securities exchange will be valued at

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<sup>15</sup> Under normal market conditions, the Fund will obtain pricing information on all of its assets from these sources.

the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities. Equity securities traded over-the-counter will be valued at the mean between the most recent bid and asked quotations received from pricing services; if the most recent bid and asked quotations are not available, these securities will be valued in accordance with the Fund's fair valuation procedures. Money market instruments with maturities of less than 60 days will be valued at amortized cost; money market instruments with longer maturities will be valued at the mid-point of the bid-ask prices. Investment company shares will be valued at NAV, unless the shares are exchange-traded, in which case they will be valued at the last sale or official closing price on the market on which they primarily trade.

Notwithstanding the foregoing, in determining the value of any security or asset, the Fund may use a valuation provided by a pricing vendor employed by the Trust and approved by the Board. The pricing vendor may base such valuations upon dealer quotes, by analyzing the listed market, by utilizing matrix pricing, by analyzing market correlations and pricing and/or employing sensitivity analysis.

The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust Board from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such

valuations do not reflect current market value, the Trust's procedures require the Trust's Valuation Committee to determine a security's fair value if a market price is not readily available in accordance with the 1940 Act.<sup>16</sup> In determining such value the Trust's Valuation Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators. In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing may involve subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

#### Availability of Information

The Fund's website ([www.valideafunds.com](http://www.valideafunds.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 additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>17</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of

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<sup>16</sup> The Valuation Committee of the Trust Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Fund has implemented procedures designed to prevent the use and dissemination of material, nonpublic information regarding valuation and revaluation of any portfolio investments.

<sup>17</sup> 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 such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.



discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session<sup>18</sup> 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”) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>19</sup> On a daily basis, the Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund’s website: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund’s portfolio. The website information will be publicly available at no charge.

In addition, 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 portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the

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<sup>18</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

<sup>19</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

NASDAQ OMX Information LLC proprietary index data service,<sup>20</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated 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 from the securities' local market and may not reflect events that occur subsequent to the local market's close. Intra-day, executable price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms. Intra-day price information on the securities and other assets held by the Fund will also be available through subscription or free services that can be accessed by Authorized Participants and other investors: (a) pricing information for exchange-traded equity securities; investment company securities; sponsored or unsponsored ADRs; or other exchange-traded securities will be publicly available from the websites of the exchanges on which they trade, on public financial websites, and through subscription services such as Bloomberg and Thompson Reuters; (b) pricing information regarding over-the-counter equities (including ADRs and certain investment company securities) and money market instruments, will be available through subscription services such as Markit, Bloomberg and Thompson Reuters.

Premiums and discounts between the Intraday Indicative Value and the market price of the Fund's shares 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.

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<sup>20</sup> Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

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

In addition, a basket composition file, which includes the security names, amounts and share quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via NSCC. The basket will represent one Creation Unit of the Fund.

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's annual and semi-annual reports (together, "Shareholder Reports"), and its Form N-CSR and Form N-SAR. 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](http://www.sec.gov). Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. 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. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services and via the Consolidated Tape Association plans for the Shares. Similarly, quotation and last sale information for any underlying exchange-traded products will also be available via the quote and trade services of their respective primary exchanges, as

well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans, as applicable.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A-3<sup>21</sup> 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 and Trading Pauses

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading 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

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<sup>21</sup> See 17 CFR 240.10A-3.

which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. Eastern time. 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 the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>22</sup> 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

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<sup>22</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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. In addition, the Exchange may obtain information from the Trade Reporting and Compliance Engine (“TRACE”), which is the FINRA-developed vehicle that facilitates mandatory reporting of over-the-counter secondary market transactions in eligible fixed income securities.<sup>23</sup>

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares; exchange-traded equities, including ADRs; exchange-listed investment companies; or other exchange-traded securities with other markets and other entities that are ISG members, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded equities, including ADRs, exchange-listed investment companies, or other exchange-traded securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares; exchange-traded equities, including ADRs; exchange-listed investment companies; or other exchange-traded securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>24</sup> FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s TRACE.

Not more than 10% of the net assets of the Fund, in the aggregate, will be

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<sup>23</sup> All broker/dealers who are FINRA member firms have an obligation to report transactions in corporate bonds to TRACE.

<sup>24</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

invested in (1) unlisted or unsponsored ADRs; (2) ADRs not listed on an exchange that is not a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

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

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) the dissemination of information regarding the Intraday Indicative Value through major index service providers such as NASDAQ OMX proprietary index data services or other major market proprietary index services; (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; (6) trading information; and (7) the dissemination of the Disclosed Portfolio through the Fund's website.

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.

b. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act<sup>25</sup> in general and Section 6(b)(5) of the Act<sup>26</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange believes that its surveillance procedures are adequate to properly

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<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> 15 U.S.C. 78f(b)(5).



monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The exchange-traded equities; exchange-listed investment companies; or other exchange-traded securities in which the Fund may invest will be limited to U.S. exchanges that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information from TRACE, which is the FINRA-developed vehicle that facilitates mandatory reporting of over-the-counter secondary market transactions in eligible fixed income securities.

The Fund will pursue its objectives by investing primarily, *i.e.*, at least 80% of its assets under normal market conditions, in U.S. exchange-listed equity securities. The equity securities held by the Fund may include small- and mid-cap sized companies. The equity securities held by the Fund may also include publicly-traded exchange-listed common stocks of non-U.S. issuers in the form of ADRs.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities or other illiquid assets (calculated at the time of investment). The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries.

Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in (1) unlisted or unsponsored ADRs; (2) ADRs not listed on an exchange that is

a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange. The Adviser is not a broker-dealer, and is not affiliated with any broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.

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 Fund 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, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session

on the Exchange, the Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will also be available via Nasdaq proprietary quote and trade services and via the Consolidated Tape Association plans for the Shares. Similarly, quotation and last sale information for any underlying exchange-traded products will also be available via the quote and trade services of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans, as applicable. Intra-day, executable price quotations of the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The website for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted or paused 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, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready

access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

4. 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 exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Completed notice of proposed rule change for publication in the Federal Register.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASDAQ-2014-090)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the Validea Market Legends ETF of the ETF Series Solutions ETF Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 28, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to list and trade the shares of the Validea Market Legends ETF (the “Fund”) of ETF Series Solutions (the “Trust”) under Nasdaq Rule 5735 (“Managed Fund Shares”).<sup>3</sup> The shares of the Fund are collectively referred to herein as the “Shares.”

The text of the proposed rule change is available at

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

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

<sup>3</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039). There are already multiple actively-managed funds listed on the Exchange; see e.g., Securities Exchange Act Release No. 72411 (June 17, 2014), 79 FR 35598 (June 23, 2014) (SR-NASDAQ-2014-40) (order approving listing and trading of Calamos Focus Growth ETF). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

<http://nasdaq.cchwallstreet.com/>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange. The Fund will be an actively-managed exchange-traded fund ("ETF"). The Shares will be offered by the Trust, which was established as a Delaware business trust on February 9, 2012.<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement")

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<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1)(the "1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> The Trust has obtained, or will obtain prior to listing Shares of the Fund on the Exchange, from the Commission an order (the "Exemptive Order") on which the Trust may rely, granting certain exemptive relief to the Trust under the 1940 Act. See Application for an Order (June 16, 2014) (File No. 812-14322).

with the Commission.<sup>6</sup> The Fund is a series of the Trust.

Validea Capital Management, LLC will be the investment adviser (“Adviser”) to the Fund. Quasar Distributors, LLC (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. U.S. Bancorp Fund Services, LLC (“USBFS”) will act as the administrator, accounting agent, and transfer agent to the Fund. U.S. Bank National Association will act as the custodian 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 a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, paragraph (g) further

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<sup>6</sup> See Post- Effective Amendment No. 14 to the Registration Statement on Form N-1A for the Trust, dated July 16, 2014 (File Nos. 333-179562 and 811-22668). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with applicable federal securities laws as defined in Rule 204A-1(e)(4). Accordingly, procedures designed to prevent the communication and misuse of nonpublic information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised



requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, nonpublic information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, and is not affiliated with any broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio. The Adviser has no present intent or arrangement to become newly affiliated with any broker-dealer, and the Fund does not currently intend to use a sub-adviser.

#### Validea Market Legends ETF

##### Principal Investments

The Fund is a non-diversified, actively-managed ETF that intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

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person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

The Fund's primary investment objective is to achieve capital appreciation, with a secondary focus on income. The Fund will pursue its objectives by investing primarily, *i.e.* at least 80% of its assets under normal market conditions,<sup>8</sup> in U.S. exchange-listed equity securities of U.S. companies and foreign equity securities traded on a U.S. exchange as American Depositary Receipts ("ADRs").

The Adviser will select securities using a proprietary quantitative and fundamentals-based system that evaluates investment opportunities based on the published investment strategies of legendary investors whose investment strategies have generally been subject to significant academic or media analysis, such as Warren Buffet, Peter Lynch and David Dreman. The Adviser's system incorporates 17 stock selection models, each intended to replicate the strategy of a legendary investor. The models incorporate over 300 unique fundamental metrics of companies, including measures relating to profitability, valuation, growth, cash flow, financing and past performance, among others. The Adviser scores over 6,000 companies based on the metrics of its investor models and expects that the Fund will generally hold approximately 100 securities.

Using historical data, the Adviser's system evaluates the long term performance,

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<sup>8</sup> The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions, by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser would continue to seek to achieve the Fund's investment objectives.

risks, and correlation of each model and blends some or all of the models to identify the composite strategy that the Adviser believes is most likely to achieve the Fund's investment objectives while reducing volatility. By utilizing various stock picking methods in the creation of the composite strategy, the Adviser will seek to reduce the volatility of the Fund's returns in different market environments and limit investment style specific risk.

The Fund will invest at least 80% of its assets in equity securities of U.S. companies and foreign equity securities traded on a U.S. exchange as ADRs.<sup>9</sup> The Fund's investment in ADRs may include ADRs representing companies in emerging markets. The Fund may invest in the securities of companies of any market capitalization, but the Adviser expects that the Fund will have a bias toward small-cap and mid-cap companies. The Adviser also expects to limit the Fund's investment in any individual economic sector to no more than 40% of the Fund's total assets.

The Adviser expects that the Fund will regularly update or "rebalance" the securities that it holds, but no more often than once every 28 days and at least 5 times per year. On each such date, securities whose fundamental scores no longer meet the Fund's requirements will be removed and replaced with higher scoring securities. A stock will only be sold in between rebalance dates if the stock has significantly underperformed the overall market since the time the stock was purchased.

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<sup>9</sup> ADRs are receipts, typically issued by a bank or trust issuer, which evidence ownership of underlying securities issued by a non-U.S. issuer. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a non-U.S. issuer. ADRs are not necessarily denominated in the same currency as their underlying securities.

The Fund's investment in foreign equity securities will be in the form of ADRs. With respect to its investments in exchange-listed common stocks and ADRs, the Fund will invest in such securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG").

The Fund will generally invest in sponsored ADRs that are listed on ISG member exchanges and that the Adviser deems as liquid at time of purchase. In certain limited circumstances, the Fund may invest in unlisted or unsponsored ADRs or ADRs that the Adviser deems illiquid at the time of purchase or for which pricing information is not readily available. The issuers of unlisted or unsponsored ADRs are not obligated to disclose material information in the United States. Therefore, there may be less information available regarding such issuers and there may be no correlation between available information and the market value of the ADRs.

#### Other Investments

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities or other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as

determined in accordance with Commission staff guidance.<sup>10</sup>

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other registered investment companies.<sup>11</sup>

While the Fund under normal circumstances will invest at least 80% of its assets in U.S. exchange-listed equity securities, the Fund may invest the remaining assets in a variety of other securities in support of its primary investment strategy, including, but not limited to: equity securities traded over-the-counter,<sup>12</sup> equity securities of other U.S. registered investment companies, including open-end mutual funds, money market

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<sup>10</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

<sup>11</sup> 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).

<sup>12</sup> The Fund’s investments in equity securities traded over-the-counter include shares of common stock and ADRs. .

mutual funds and exchange-traded funds, and money market instruments.<sup>13</sup>

### The Shares

The Fund will issue and redeem Shares only in Creation Units at the net asset value (“NAV”)<sup>14</sup> next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the NYSE, generally, 4:00 p.m. Eastern time. Creation Unit sizes will be at least 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the agreement executed with each Authorized Participant (as defined below).

The consideration for purchase of a Creation Unit generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and the Cash Component (as defined below), computed as described

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<sup>13</sup> The term “money market instruments,” as used herein, means (i) short-term obligations issued by the U.S. Government; (ii) short term negotiable obligations of commercial banks, fixed time deposits and bankers’ acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase “Prime-1” by Moody’s Investors Service, Inc. or “A-1+” or “A-1” by Standard & Poor’s or, if unrated, of comparable quality, as the Adviser of the Fund determines; and (iv) money market mutual funds.

<sup>14</sup> The NAV of the Fund’s Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (“NYSE”), generally 4:00 p.m. Eastern time (the “NAV Calculation Time”). NAV per Share will be calculated by dividing the Fund’s net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund’s NAV, see Registration Statement.

below or (ii) the cash value of all or a portion of the Deposit Securities (“Deposit Cash”) and the “Cash Component,” computed as described below. The Fund may, under certain circumstances, effect a portion of creations and redemptions for cash, rather than in-kind securities, in accordance with the Exemptive Order.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The “Cash Component” will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.*, the NAV per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component will be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a “Participating Party,” *i.e.*, 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 (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute an agreement that has been agreed to by the Distributor and USBFS with respect to purchases and redemptions of Creation Units.

USBFS, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange’s Regular Market Session (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and/or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit, subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities and/or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through USBFS and only on a business day.

With respect to the Fund, USBFS, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund’s portfolio securities (“Fund Securities”) and/or, if relevant, the required cash value thereof that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be



identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in kind or in cash or a combination thereof, as determined by the Trust. With respect to in kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by USBFS on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the “Cash Redemption Amount”), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust’s discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of one or more Fund Securities.

The creation/redemption order cut off time for the Fund is expected to be 4:00 p.m. Eastern time for purchases of Shares. On days when the Exchange closes earlier than normal and in the case of custom orders, the Fund may require orders for Creation Units to be placed earlier in the day.

#### Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including

the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be calculated by USBFS and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open. In calculating the Fund's NAV per Share, investments will generally be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer).<sup>15</sup> Exchange-traded equities; sponsored or unsponsored ADRs or other exchange-traded securities will be valued at the official closing price on their principal exchange or board of trade, or lacking any current reported sale at the time of valuation, at the mean between the most recent bid and asked quotations on its principal exchange or board of trade. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities. Equity securities traded over-the-counter will be valued at the mean between the most recent bid and asked quotations received from pricing services; if the most recent bid and asked quotations are not available, these securities will be valued in accordance with the Fund's fair valuation procedures. Money market instruments with maturities of less than 60 days will be valued at amortized cost; money market instruments with longer maturities will be valued at the mid-point of the bid-ask prices.

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<sup>15</sup> Under normal market conditions, the Fund will obtain pricing information on all of its assets from these sources.

Investment company shares will be valued at NAV, unless the shares are exchange-traded, in which case they will be valued at the last sale or official closing price on the market on which they primarily trade.

Notwithstanding the foregoing, in determining the value of any security or asset, the Fund may use a valuation provided by a pricing vendor employed by the Trust and approved by the Board. The pricing vendor may base such valuations upon dealer quotes, by analyzing the listed market, by utilizing matrix pricing, by analyzing market correlations and pricing and/or employing sensitivity analysis.

The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust Board from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Trust's Valuation Committee to determine a security's fair value if a market price is not readily available in accordance with the 1940 Act.<sup>16</sup> In determining such value the Trust's Valuation Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of

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<sup>16</sup> The Valuation Committee of the Trust Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Fund has implemented procedures designed to prevent the use and dissemination of material, nonpublic information regarding valuation and revaluation of any portfolio investments.

relevant financial indicators. In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing may involve subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

#### Availability of Information

The Fund's website ([www.valideafunds.com](http://www.valideafunds.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 additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>17</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session<sup>18</sup> 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") held by the Fund that will form the

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<sup>17</sup> 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 such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>18</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

basis for the Fund's calculation of NAV at the end of the business day.<sup>19</sup> On a daily basis, the Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund's website: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund's portfolio. The website information will be publicly available at no charge.

In addition, 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 portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,<sup>20</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated 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 from the securities' local market and may not reflect events that occur subsequent

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<sup>19</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

<sup>20</sup> Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

to the local market's close. Intra-day, executable price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms. Intra-day price information on the securities and other assets held by the Fund will also be available through subscription or free services that can be accessed by Authorized Participants and other investors: (a) pricing information for exchange-traded equity securities; investment company securities; sponsored or unsponsored ADRs; or other exchange-traded securities will be publicly available from the websites of the exchanges on which they trade, on public financial websites, and through subscription services such as Bloomberg and Thompson Reuters; (b) pricing information regarding over-the-counter equities (including ADRs and certain investment company securities) and money market instruments, will be available through subscription services such as Markit, Bloomberg and Thompson Reuters.

Premiums and discounts between the Intraday Indicative Value and the market price of the Fund's shares 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 trading day.

In addition, a basket composition file, which includes the security names, amounts and share quantities, as applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of Nasdaq via NSCC. The basket will represent

one Creation Unit of the Fund.

Investors will also be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's annual and semi-annual reports (together, "Shareholder Reports"), and its Form N-CSR and Form N-SAR. 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](http://www.sec.gov). Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. 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. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services and via the Consolidated Tape Association plans for the Shares. Similarly, quotation and last sale information for any underlying exchange-traded products will also be available via the quote and trade services of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans, as applicable.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A-3<sup>21</sup> 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 and Trading Pauses

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules

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

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<sup>21</sup> See 17 CFR 240.10A-3.



Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. Eastern time. 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 the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>22</sup> 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. In addition, the Exchange may obtain information from the Trade Reporting and Compliance Engine (“TRACE”), which is the FINRA-developed vehicle that facilitates mandatory reporting of over-the-counter

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<sup>22</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

secondary market transactions in eligible fixed income securities.<sup>23</sup>

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares; exchange-traded equities, including ADRs; exchange-listed investment companies; or other exchange-traded securities with other markets and other entities that are ISG members, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded equities, including ADRs, exchange-listed investment companies, or other exchange-traded securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares; exchange-traded equities, including ADRs; exchange-listed investment companies; or other exchange-traded securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>24</sup> FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in (1) unlisted or unsponsored ADRs; (2) ADRs not listed on an exchange that is not a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of

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<sup>23</sup> All broker/dealers who are FINRA member firms have an obligation to report transactions in corporate bonds to TRACE.

<sup>24</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

material, nonpublic information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) the dissemination of information regarding the Intraday Indicative Value through major index service providers such as NASDAQ OMX proprietary index data services or other major market proprietary index services; (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; (6) trading information; and (7) the dissemination of the Disclosed Portfolio through the Fund's website.

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.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act<sup>25</sup> in general and Section 6(b)(5) of the Act<sup>26</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The exchange-traded equities; exchange-listed investment companies; or other exchange-traded securities in which the Fund may invest will be limited to U.S. exchanges that are members of the ISG, which includes all U.S. national securities

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<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> 15 U.S.C. 78f(b)(5).

exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information from TRACE, which is the FINRA-developed vehicle that facilitates mandatory reporting of over-the-counter secondary market transactions in eligible fixed income securities.

The Fund will pursue its objectives by investing primarily, *i.e.*, at least 80% of its assets under normal market conditions, in U.S. exchange-listed equity securities. The equity securities held by the Fund may include small- and mid-cap sized companies. The equity securities held by the Fund may also include publicly-traded exchange-listed common stocks of non-U.S. issuers in the form of ADRs.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities or other illiquid assets (calculated at the time of investment). The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries.

Not more than 10% of the net assets of the Fund, in the aggregate, will be invested in (1) unlisted or unsponsored ADRs; (2) ADRs not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; or (3) unlisted common stocks or common stocks not listed on an exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange. The Adviser is not a broker-dealer, and is not affiliated with any broker-dealer. In the event (a) the Adviser becomes newly affiliated with a

broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.

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 Fund 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, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will also be

available via Nasdaq proprietary quote and trade services and via the Consolidated Tape Association plans for the Shares. Similarly, quotation and last sale information for any underlying exchange-traded products will also be available via the quote and trade services of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans, as applicable. Intra-day, executable price quotations of the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The website for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted or paused 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, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the 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 exchange-traded fund 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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or



(ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-090 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASDAQ-2014-090. This file number should be included on the subject line if e-mail 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2014-090 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).