

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 70	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2015 - * 085	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 <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
A proposed rule change to list and trade the common shares of beneficial interest of the PowerShares High Income Downside Hedged Portfolio.				
<b>Contact Information</b>				
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 *	Senior Associate General Counsel			
E-mail *	jonathan.cayne@nasdaq.com			
Telephone *	(301) 978-8493	Fax	(301) 978-8472	
<b>Signature</b>				
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	07/17/2015	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.				
<a href="mailto:edward.knight@nasdaq.com">edward.knight@nasdaq.com</a>				

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 (the “Exchange 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 common shares of beneficial interest of the PowerShares High Income Downside Hedged Portfolio (the “Fund”), a series of the PowerShares Actively Managed Exchange-Traded Fund Trust (the “Trust”), under Nasdaq Rule 5735 (“Rule 5735”). The common shares of beneficial interest of the Fund are referred to herein as the “Shares.”

(b) and (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of Nasdaq pursuant to authority delegated to it by the Board of Directors of Nasdaq on July 1, 2015. Nasdaq staff will advise the Board of Directors of Nasdaq of any action taken pursuant to that delegated authority. No other action by Nasdaq 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, Nasdaq at (301) 978-8493.

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

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

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

a. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Rule 5735, which rule governs the listing and trading of Managed Fund Shares<sup>3</sup> on the Exchange.<sup>4</sup> The Shares will be offered by the Fund, which will be an actively managed exchange-traded fund ("ETF") and a series of the Trust. The Trust was established as a Delaware

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<sup>3</sup> A "Managed Fund Share" is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (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>4</sup> The Commission approved Nasdaq Rule 5735 (formerly Nasdaq Rule 4420(o)) in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039). There are already multiple actively managed funds listed on the Exchange; *see, e.g.*, Securities Exchange Act Release Nos. 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR-NASDAQ-2013-036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. *See, e.g.*, Securities Exchange Act Release No. 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR-NYSEArca-2012-139) (order approving listing and trading of First Trust Preferred Securities and Income ETF). Moreover, the Commission previously approved the listing and trading of other actively managed funds within the PowerShares family of ETFs. *See, e.g.*, Securities Exchange Act Release Nos. 68158 (November 5, 2012), 77 FR 67412 (November 9, 2012) (SR-NYSEArca-2012-101) (order approving listing and trading of PowerShares S&P 500 Downside Hedged Portfolio) and 69915 (July 2, 2013), 78 FR 41145 (July 9, 2013) (SR-NYSEArca-2013-56) (order approving listing of PowerShares China A-Share Portfolio). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

statutory trust on November 6, 2007. The Trust is registered with the Commission as an open-end management investment company and has filed a post-effective amendment to its registration statement on Form N-1A (the “Registration Statement”) with the Commission to register the Fund and its Shares under the 1940 Act and the Securities Act of 1933.<sup>5</sup> Invesco PowerShares Capital Management LLC will serve as the investment adviser (the “Adviser”) to the Fund. Invesco Distributors, Inc. (the “Distributor”) will serve as the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon will act as the administrator, accounting agent, custodian (the “Custodian”) and transfer agent for the Fund.

Paragraph (g) of Rule 5735 provides that, if the investment adviser to an investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company’s portfolio.<sup>6</sup> In addition, paragraph (g) of Rule

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<sup>5</sup> See Registration Statement for the Trust, filed on April 13, 2015 (File Nos. 333-147622 and 811-22148). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386) (“Exemptive Order”).

<sup>6</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 other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with the Advisers Act and Rule 204A-1 thereunder. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the

5735 further requires that personnel who make decisions on such investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the investment company's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i), which applies to index-based funds and requires "fire-walls" between affiliated broker-dealers and investment advisers regarding the index-based fund's underlying benchmark index. Rule 5735(g), however, applies to the establishment of a "fire wall" between affiliated investment advisers and the broker-dealers with respect to the investment company's portfolio and not with respect to an underlying benchmark index, as is the case with index-based funds. The Adviser is itself not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer. The Adviser has therefore implemented a fire wall between itself and the Distributor with respect to the access of information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser becomes newly affiliated with a different broker-dealer (or becomes a registered broker-dealer), or (b) any new adviser or sub-adviser to the Fund 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, if applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-

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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.

public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

#### Description of the Fund

The Fund will be an actively managed ETF, and its investment objective will be to seek to achieve high income and positive total returns. The Fund will seek to achieve its investment objective by using a quantitative, rules-based investment methodology designed to provide returns that exceed the performance of the S&P High Income VEQTOR Index (the “Benchmark”).<sup>7</sup> As described below, the Fund will seek to gain exposure to the securities contained in the equity component of the Benchmark and CBOE Volatility Index (“VIX Index”) related instruments (“VIX Index Related Instruments,” as defined below).

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<sup>7</sup> The Fund’s Benchmark allocates between equity securities and CBOE Volatility Index futures. The Commission has previously approved listing and trading of exchange traded products with Chicago Board Options Exchange (“CBOE”) volatility index futures as components of benchmarks. See, e.g., Securities Exchange Act Release No. 68158 (November 5, 2012), 77 FR 67412 (November 9, 2012) (SR-NYSEArca-2012-101) (order approving listing and trading of PowerShares S&P 500 Downside Hedged Portfolio); Securities Exchange Act Release Nos. 65134 (August 15, 2011), 76 FR 52034 (August 19, 2011) (SR-NYSEArca-2011-23) (order approving listing of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF); and 63610 (December 27, 2010), 76 FR 199 (January 3, 2011) (SR-NYSEArca-2010-101) (order approving listing of ProShares VIX Short-Term Futures ETF and ProShares VIX Mid-Term Futures ETF).

The Benchmark, the VIX Index and the S&P 500 VIX Short Term Futures Index

The Benchmark, using strategy allocation rules developed by Standard & Poor's ("S&P"),<sup>8</sup> is composed of two types of components: an equity component, represented by the constituents of the S&P High Income Equity Composite Index ("Equity Component Index"), and a volatility component, represented by the S&P 500 VIX Short Term Futures Index ("VIX Futures Index"). The Benchmark allocates its constituents between the two components in any given amount from time to time based on the level of volatility in the market.

The Equity Component Index is composed of 150 high yield securities that meet certain size, liquidity and listing exchange criteria as determined by S&P. This component is comprised of the following four sub-components: (i) preferred stocks, (ii) units of master limited partnerships ("MLPs"), (iii) real estate investment trusts ("REITs"), and (iv) a portfolio of global securities engaged in the real estate industry ("global property securities") and/or global securities that pay high dividends ("global dividend securities" which, collectively with global property securities, are "Global Equities").

The VIX Index is a theoretical calculation and cannot be traded. The VIX Index is a benchmark index designed to measure the market price of volatility in large cap U.S. stocks over 30 days in the future, and is calculated based on the prices of certain put and call options on the S&P 500<sup>®</sup> Index. The VIX Index measures the premium paid by investors for certain options linked to the S&P 500<sup>®</sup> Index. During periods of market

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<sup>8</sup> S&P is a division of the McGraw-Hill Companies, Inc. S&P is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Benchmark.

instability, the implied level of volatility of the S&P 500<sup>®</sup> Index typically increases and, consequently, the prices of options linked to the S&P 500<sup>®</sup> Index typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the level of the VIX Index to increase. The VIX Index historically has had negative correlations to the S&P 500<sup>®</sup> Index. Because the level of the VIX Index may increase in times of uncertainty, the VIX Index is known as the “fear gauge” of the broad U.S. equities market.

The VIX Futures Index utilizes the prices of the first and second month futures contracts based on the VIX Index, replicating a position that rolls the nearest month VIX futures contracts to the next month VIX futures contracts on a daily basis in equal fractional amounts. The Benchmark’s allocation to its volatility component serves as an implied volatility hedge, as volatility historically tends to correlate negatively to the performance of the equity markets (i.e., rapid declines in the performance of the equity markets generally are associated with particularly high volatility in such markets).

On any Business Day (as defined below), the Benchmark allocates between its equity and volatility components based on a combination of realized volatility and implied volatility trend decision variables. The allocation to the VIX Futures Index generally increases when realized volatility and implied volatility are higher, and decreases when realized volatility and implied volatility are lower. While allocations are reviewed daily, these allocations may change on a less frequent basis.

The U.S. Index Committee (the “Committee”) of S&P maintains the Benchmark. The Committee meets monthly. At each meeting, the Committee reviews pending corporate actions that may affect Benchmark constituents, statistics comparing the

composition of the Benchmark to the market, companies that are being considered as candidates for addition to the Benchmark, and any significant market events. In addition, the Committee may revise the Benchmark's policy covering rules for selecting companies, treatment of dividends, share counts, or other matters.

#### Principal Investment Strategies of the Fund

The Fund's investment strategy is similar to the rules-based allocation methodology of its Benchmark. Therefore, the allocation among the Fund's investments generally will tend to approximate the allocation between the equity and volatility components of the Benchmark. However, the Fund seeks returns that exceed the returns of the Benchmark; accordingly, the Fund can have a higher or lower exposure to either component (or any respective sub-component) of the Benchmark at any time.<sup>9</sup>

In pursuing its investment objective, under normal market conditions,<sup>10</sup> the Fund will invest substantially all of its assets in (i) an equity sleeve that generally corresponds to the Equity Component Index, represented by a combination of 150 high yield securities that includes preferred stocks, MLPs, REITs, and Global Equities, each of

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<sup>9</sup> The Fund will be "non-diversified" under the 1940 Act and therefore may invest more of its assets in fewer issuers than "diversified" funds. The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a-5).

<sup>10</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 objective.

which will be listed either on a U.S. securities exchange or a member exchange of the Intermarket Surveillance Group (“ISG”);<sup>11</sup> and (ii) a volatility sleeve, represented by instruments relating to the VIX Index and consisting of futures contracts on the VIX Index and options on those futures contracts. During periods of low volatility, a greater portion of the Fund’s assets will be invested in equity securities, and during periods of increased volatility, a greater portion of the Fund’s assets will be invested in VIX Index Related Instruments (as defined below). Any U.S. security invested by the Fund must be listed on a national securities exchange, and any non-U.S. security must be listed on a member exchange of the ISG.

Additionally, the Fund may invest in ETFs and exchange-traded notes (“ETNs”) that are listed on U.S. securities exchanges that provide exposure to the components of the Equity Component Index, as well as ETFs and ETNs that provide exposure to the VIX Index (these instruments, collectively with VIX Index futures contracts and options on those futures contracts, are termed the “VIX Index Related Instruments”).

#### Other Investments of the Fund

The Fund may invest its remaining assets in U.S. government securities, high-quality money market instruments, cash and cash equivalents to provide liquidity and to collateralize its investments in derivative instruments. These instruments in which the Fund may invest include: (i) short-term obligations issued by the U.S. Government;<sup>12</sup> (ii)

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<sup>11</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>12</sup> The Fund may invest in U.S. government obligations. Obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities include bills, notes and bonds issued by the U.S. Treasury, as well as “stripped” or “zero

short-term negotiable obligations of commercial banks, fixed time deposits and bankers' acceptances of U.S. and foreign banks and similar institutions;<sup>13</sup> (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc. or "A-1+" or "A-1" by S&P or, if unrated, of comparable quality, as the Adviser of the Fund determines, and (iv) money market mutual funds, including affiliated money market funds.

In addition, the Fund's investment in securities of other investment companies (including money market funds) may exceed the limits permitted under the 1940 Act, in accordance with certain terms and conditions set forth in a Commission exemptive order issued to the Trust pursuant to Section 12(d)(1)(J) of the 1940 Act.<sup>14</sup>

The Fund may enter into repurchase agreements, which are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of \$500

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coupon" U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

<sup>13</sup> Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

<sup>14</sup> Investment Company Act Release No. 30238 (October 23, 2012) (File No. 812-13820).

million and (ii) securities dealers (“Qualified Institutions”). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

The Fund may purchase exchange-listed warrants. However, the Fund does not expect to enter into swap agreements, including credit default swaps, but may do so if such investments are in the best interests of the Fund’s shareholders.

#### Investment Restrictions of the Fund

The Fund may not concentrate its investments (i.e., invest more than 25% of the value of its net assets) in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities.<sup>15</sup>

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), including Rule 144A securities. 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

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<sup>15</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).

than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance.<sup>16</sup>

The Fund intends to qualify for and to elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.<sup>17</sup>

As a result of the instruments that the Fund will hold, the Fund will be subject to regulation by the Commodity Futures Trading Commission and the National Futures Association ("NFA") as a commodity pool, and thus must comply with additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.<sup>18</sup>

The Fund's investments will be consistent with the Fund's investment objective. Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objective. The Fund may utilize instruments or investment

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<sup>16</sup> Long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. See also Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); and 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release Nos. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

<sup>17</sup> 26 U.S.C. 851.

<sup>18</sup> The Exchange represents that the Adviser has previously registered as a commodity pool operator and commodity trading advisor and also is a member of the NFA.

techniques that have a leveraging effect on the Fund. This effective leverage occurs when the Fund's market exposure exceeds the amounts actually invested. Any instance of effective leverage will be covered in accordance with guidance promulgated by the Commission and its staff.<sup>19</sup> The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a "leveraged ETF," i.e., it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index. The Fund will not use futures for speculative purposes, nor will the Fund invest in OTC equities or non-U.S. listed equities or enter into futures contracts that are not traded on a U.S. exchange.

#### Net Asset Value

The Fund's administrator will calculate the Fund's net asset value ("NAV") per Share as of the close of regular trading (normally 4:00 p.m., Eastern time ("E.T.)) on each day the New York Stock Exchange ("NYSE") is open for business (a "Business Day"). NAV per Share will be calculated for the Fund by deducting all of the Fund's liabilities from the total value of its assets and dividing the result by the number of Shares outstanding, rounding to the nearest cent. All valuations will be subject to review by the Board of Trustees of the Trust ("Board") or its delegate.

In determining NAV, expenses will be accrued and applied daily and securities and other assets for which market quotations are readily available will be valued at market value. Securities listed or traded on an exchange (including high yield Global Equities, preferred stocks, MLPs, REITs and warrants) will be valued at the last sale price or official closing price that day as of the close of the exchange on which such

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<sup>19</sup> In re Securities Trading Practices of Investment Companies, Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979).

securities primarily trade. Shares of open-end registered investment companies (i.e., mutual funds) will be valued at net asset value; shares of exchange-traded investment companies (i.e., closed-end funds or ETFs) and ETNs will be valued at the last sale price or official closing price on the exchange on which they primarily trade. Futures contracts are valued as of the final settlement price on the exchange on which they trade. Options will be valued at the closing price (and, if no closing price is available, at the mean of the last bid/ask quotations) from the exchange where such instruments principally trade. U.S. government securities will be valued at the mean price provided by a third party vendor. Illiquid securities, as well as cash and cash equivalents, money market funds, repurchase agreements (including reverse repurchase agreements) and other short-term obligations (including corporate commercial paper, negotiable short-term obligations of commercial banks, fixed time deposits, bankers acceptances and similar securities) will each be valued in accordance with the Trust's valuation policies and procedures, which have been approved by the Trust's Board.

The NAV for the Fund will be calculated and disseminated daily. If an asset's market price is not readily available, the asset will be valued using pricing provided from independent pricing services or by another method that the Adviser, in its judgment, believes will better reflect the asset's fair value in accordance with the Trust's valuation policies and procedures approved by the Trust's Board and with the 1940 Act. Fair value pricing involves subjective judgments and it is possible that a fair value determination for an asset may be materially different than the value that could be realized upon the sale of the asset.

### Creation and Redemption of Shares

The Trust will issue Shares of the Fund at NAV only with authorized participants (“APs”) and only in aggregations of 50,000 shares (each aggregation is called a “Creation Unit”) or multiples thereof, on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any Business Day, of an order in proper form.

The consideration an AP must provide for purchase of Creation Unit aggregations of the Fund may consist of (i) cash, in lieu of all or a portion of the Deposit Securities, as defined below, in an amount calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit (“Deposit Cash”), plus fixed and variable transaction fees; or (ii) an “in-kind” deposit of a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective (the “Deposit Securities”) per each Creation Unit aggregation and generally an amount of cash (the “Cash Component”) computed as described below.

Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) will constitute the “Fund Deposit,” which will represent the minimum initial and subsequent investment amount for a Creation Unit aggregation of the Fund. The Cash Component is sometimes also referred to as the Balancing Amount. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit aggregation and the Deposit Amount (as defined below). For example, for a creation the Cash Component will be an amount equal to the difference between the NAV of Fund Shares (per Creation Unit aggregation) and the “Deposit

Amount” – an amount equal to the market value of the Deposit Securities and/or cash in lieu of all or a portion of the Deposit Securities. If the Cash Component is a positive number (i.e., the NAV per Creation Unit aggregation exceeds the Deposit Amount), the AP will deliver the Cash Component. If the Cash Component is a negative number (i.e., the NAV per Creation Unit aggregation is less than the Deposit Amount), the AP will receive the Cash Component.

Shares may be redeemed only in Creation Unit aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Custodian and only on a Business Day. The Fund will not redeem Shares in amounts less than Creation Unit Aggregations. APs must accumulate enough Shares in the secondary market to constitute a Creation Unit Aggregation in order to have such Shares redeemed by the Trust. The redemption proceeds for a Creation Unit Aggregation generally consist of (i) cash, in lieu of all or a portion of the Fund Securities as defined below, in an amount calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit, less any redemption transaction fees; or (ii) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective per each Creation Unit aggregation (“Fund Securities”)—as announced on the Business Day of the request for redemption received in proper form— plus or minus 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, less any redemption transaction fees. In the event that the Fund Securities have a value greater

than the NAV of the Shares, a compensating Cash Component payment equal to the difference is required to be made by or through an AP by the redeeming shareholder.

Creation Units of the Fund generally will be sold partially in cash and partially in-kind. However, the Fund also reserves the right to permit or require Creation Units to be issued principally in-kind or principally for cash. At all times, the Trust reserves the right to permit or require the substitution of Deposit Cash—i.e., a “cash in lieu” amount—to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, or that may not be eligible for transfer or which might not be eligible for trading by an AP or the investor for which it is acting or other relevant reason.<sup>20</sup>

To the extent that the Fund permits Creation Units to be issued principally or partially in-kind, the Custodian, through the National Securities Clearing Corporation (“NSCC”), will make available on each Business Day, prior to the opening of business of the NYSE (currently 9:30 a.m., E.T.), the list of the names and the quantity of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day), plus any estimated Cash Component, for the Fund. Such Fund Deposit will be applicable, subject to any adjustments as described below, to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available. Information on the specific names and holdings in a Fund Deposit also will be available at [www.pstrader.net](http://www.pstrader.net).

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<sup>20</sup> Such substitutions of certain Deposit Securities are termed “custom orders.” On any given Business Day, if the Fund accepts a custom order, the Adviser represents that the Fund will accept similar custom orders from all other Authorized Participants on the same basis.

To the extent that the Fund permits Creation Units to be redeemed in-kind, the Custodian, through the NSCC, will make available on each Business Day, prior to the opening of business of NYSE (currently 9:30 a.m., E.T.), the identity of the Fund Securities 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 that are applicable to creations of Creation Unit aggregations.

When applicable, during times that the Fund permits in-kind creations, the identity and quantity of the Deposit Securities required for a Fund Deposit for the Shares may change as rebalancing adjustments and corporate action events occur and are reflected within the Fund from time to time by the Adviser, consistent with the investment objective of the Fund.

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 NSCC or (ii) a Depository Trust Company (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an AP) must execute an agreement that has been agreed to by the Distributor and the Custodian with respect to purchases and redemptions of Creation Units.

All orders to create Creation Unit aggregations must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) in each case on the date such order is placed in order for

creations of Creation Unit aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

In order to redeem Creation Units of the Fund, an AP must submit an order to redeem for one or more Creation Units. All such orders must be received by the Fund's transfer agent in proper form no later than the close of regular trading on the NYSE (ordinarily 4:00 p.m. E.T.) in order to receive that day's closing NAV per Share.

The right of redemption may be suspended or the date of payment postponed (i) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the Commission.

APs may be required to pay an administrative fee and a variable transaction fee for purchasing or redeeming Creation Units. Creation and redemption transactions for the Fund are subject to a fixed administrative fee of \$500, payable to the Custodian, irrespective of the size of the order. In addition to the fixed administrative fee, the Custodian may impose an additional variable transaction fee of up to four times the fixed administrative fee. This additional administrative fee may be incurred for administration and settlement of (i) in-kind creations and redemptions effected outside the normal Clearing Process, and (ii) cash creations and redemptions. Finally, to the extent the Fund permits or requires APs to substitute cash in lieu of Deposit Securities, the Adviser may set additional variable fees separate from the fees already described that are also payable to the Fund up to 2%. These cash-in-lieu fees will be negotiated between the Adviser and

the AP and are charged to offset the transaction cost to the Fund of buying (or selling) those particular Deposit Securities, to cover spreads and slippage costs and to protect existing shareholders against sudden movements in the prices of the portfolio investments due to market events. From time to time, the Adviser, in its sole discretion, may adjust the Fund's variable transaction fees or reimburse APs for all or a portion of the creation or redemption transaction fees.

#### Availability of Information

The Fund's website ([www.invescopowershares.com](http://www.invescopowershares.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include the ticker symbol for the Shares, CUSIP and exchange information, along with additional quantitative information updated on a daily basis, including, for the Fund: (1) daily trading volume, the prior Business Day's reported NAV, closing price and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>21</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 the most recently completed calendar year and each of the four most recently completed calendar quarters since that year (or the life of the Fund if shorter). On each Business Day, before commencement of

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<sup>21</sup> The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

trading in Shares in the Regular Market Session<sup>22</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” as such term is defined in Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the Business Day.<sup>23</sup> The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of securities and other assets held by the Fund and the characteristics of such assets. The website and information will be publicly available at no charge.

In addition, to the extent the Fund permits full or partial creations in-kind, a basket composition file, which will include the security names and share quantities to deliver (along with requisite cash in lieu) in exchange for Shares, together with estimates and actual Cash Components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC and at [www.pstrader.net](http://www.pstrader.net). The basket will represent the equity component of the Shares of the Fund.

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>22</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. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

<sup>23</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>24</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.

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.

Intra-day, executable price quotations on the securities and other assets held by the Fund, as well as closing price information, will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day and closing price information on the securities and other assets held by the Fund also will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by APs and other investors.

Investors also will be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Trust's Form N-CSR and Form N-SAR, each of which is filed twice a year, except the SAI, which is filed at least annually. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov).

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<sup>24</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.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume 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, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. Quotation and last sale information for any exchange-traded instruments (including Global Equities, preferred stocks, MLPs, REITs, warrants, ETFs and ETNs) also will be available via the quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans.

Pricing information for any futures contracts or options will be available via the quote and trade service of their respective primary exchanges. Pricing information related to U.S. government securities, money market mutual funds, commercial paper, repurchase and reverse repurchase agreements and other short-term investments held by the Fund will be available through publicly available quotation services, such as Bloomberg, Markit and Thomson Reuters.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, will be included in the Registration Statement.

#### Initial and Continued Listing of the Fund's Shares

The Shares will conform to the initial and continued listing criteria applicable to Managed Fund Shares, as set forth under Rule 5735. The Exchange represents that, for

initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>25</sup> under the Exchange Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

#### Trading Halts of the Fund's Shares

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

#### Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. E.T. The

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<sup>25</sup> See 17 CFR 240.10A-3.

Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in 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 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>26</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. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund with other markets and other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities

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<sup>26</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.

(including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, with regard to the Fund's investments in futures contracts and options, such instruments shall have their principal trading market be a member of ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement.

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

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during

the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members purchasing Shares from the Fund for resale to investors deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

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

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Exchange Act. 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 Exchange Act in general, and Section 6(b)(5)<sup>27</sup> of the Exchange Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

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<sup>27</sup> 15 U.S.C. 78(f)(b)(5).

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws and are adequate to properly monitor trading in the Shares in all trading sessions. The Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Rule 5735 further requires that personnel who make decisions on an open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

FINRA may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund from markets and other entities that are members of ISG, which includes securities

and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund will limit its investments in illiquid securities or other illiquid assets to an aggregate amount of 15% of its net assets (calculated at the time of investment). The holdings of the Fund will be comprised primarily of securities included in the Equity Component Index, VIX Index Related Instruments, U.S. government securities, money market instruments, cash and cash equivalents. The Fund will invest in U.S. government securities, money market instruments, cash and cash equivalents to provide liquidity and to collateralize its investments in derivative instruments. The Fund also may invest directly in ETFs and ETNs. The Fund will not invest in OTC equities or non-U.S. listed equities or enter into futures contracts that are not traded on a U.S. exchange.

The Fund will not use futures for speculative purposes, and its investments will be consistent with the Fund's investment objective. Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objective. In pursuing its investment objective, the Fund may utilize instruments or investment techniques that have a leveraging effect on the Fund. This effective leverage occurs when the Fund's market exposure exceeds the amounts actually invested. Any instance of effective leverage will be covered in accordance with guidance promulgated by the Commission and its staff.<sup>28</sup> The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a "leveraged ETF," *i.e.*, it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index. The Fund does not expect to enter into swap agreements,

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<sup>28</sup> See FN 18, *supra*.

including credit default swaps, but may do so if such investments are in the best interests of the Fund's shareholders.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day that the Fund is traded, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, 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 at least every 15 seconds during the Exchange's Regular Market Session. On each Business Day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio of the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. Quotation and last sale information for any exchange-traded instruments (including Global Equities, preferred stocks, MLPs, REITs, warrants, ETFs and ETNs) also will be available via the quote and trade service of their respective primary exchanges, as well as in accordance

with the Unlisted Trading Privileges and the Consolidated Tape Association plans. Pricing information for any futures contracts or options will be available via the quote and trade service of their respective primary exchanges. Pricing information related to U.S. government securities, money market mutual funds, commercial paper, repurchase and reverse repurchase agreements and other short-term investments held by the Fund will be available through publicly available quotation services, such as Bloomberg, Markit and Thomson Reuters. Intra-day and closing price information will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by APs and other investors.

The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to 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.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Exchange 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 Exchange Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

1. 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-2015-085)

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 PowerShares High Income Downside Hedged Portfolio a series of the PowerShares Actively Managed Exchange-Traded Fund 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 July 17, 2015, 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 common shares of beneficial interest of the PowerShares High Income Downside Hedged Portfolio (the “Fund”), a series of the PowerShares Actively Managed Exchange-Traded Fund Trust (the “Trust”), under Nasdaq Rule 5735 (“Rule 5735”). The common shares of beneficial interest of the Fund are referred to herein as the “Shares.”

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

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

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

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 Rule 5735, which rule governs the listing and trading of Managed Fund Shares<sup>3</sup> on the Exchange.<sup>4</sup>

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<sup>3</sup> A "Managed Fund Share" is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (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>4</sup> The Commission approved Nasdaq Rule 5735 (formerly Nasdaq Rule 4420(o)) in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR- NASDAQ-2008-039). There are already multiple actively managed funds listed on the Exchange; see, e.g., Securities Exchange Act Release Nos. 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR-NASDAQ-2013-036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. See, e.g., Securities Exchange Act Release No. 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR-NYSEArca-2012-139) (order approving listing and trading of First Trust Preferred Securities and Income ETF). Moreover, the Commission previously approved the listing and trading of other actively managed funds within the

The Shares will be offered by the Fund, which will be an actively managed exchange-traded fund (“ETF”) and a series of the Trust. The Trust was established as a Delaware statutory trust on November 6, 2007. The Trust is registered with the Commission as an open-end management investment company and has filed a post-effective amendment to its registration statement on Form N-1A (the “Registration Statement”) with the Commission to register the Fund and its Shares under the 1940 Act and the Securities Act of 1933.<sup>5</sup> Invesco PowerShares Capital Management LLC will serve as the investment adviser (the “Adviser”) to the Fund. Invesco Distributors, Inc. (the “Distributor”) will serve as the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon will act as the administrator, accounting agent, custodian (the “Custodian”) and transfer agent for the Fund.

Paragraph (g) of Rule 5735 provides that, if the investment adviser to an investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or

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PowerShares family of ETFs. See, e.g., Securities Exchange Act Release Nos. 68158 (November 5, 2012), 77 FR 67412 (November 9, 2012) (SR-NYSEArca-2012-101) (order approving listing and trading of PowerShares S&P 500 Downside Hedged Portfolio) and 69915 (July 2, 2013), 78 FR 41145 (July 9, 2013) (SR-NYSEArca-2013-56) (order approving listing of PowerShares China A-Share Portfolio). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

<sup>5</sup> See Registration Statement for the Trust, filed on April 13, 2015 (File Nos. 333-147622 and 811-22148). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386) (“Exemptive Order”).

changes to such investment company's portfolio.<sup>6</sup> In addition, paragraph (g) of Rule 5735 further requires that personnel who make decisions on such investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the investment company's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i), which applies to index-based funds and requires "fire-walls" between affiliated broker-dealers and investment advisers regarding the index-based fund's underlying benchmark index. Rule 5735(g), however, applies to the establishment of a "fire wall" between affiliated investment advisers and the broker-dealers with respect to the investment company's portfolio and not with respect to an underlying benchmark index, as is the case with index-based funds. The Adviser is itself not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer. The Adviser has therefore implemented a fire wall between itself and the Distributor with respect to the access of information concerning the

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<sup>6</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 other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with the Advisers Act and Rule 204A-1 thereunder. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

composition and/or changes to the Fund's portfolio. In the event (a) the Adviser becomes newly affiliated with a different broker-dealer (or becomes a registered broker-dealer), or (b) any new adviser or sub-adviser to the Fund 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, if applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

#### Description of the Fund

The Fund will be an actively managed ETF, and its investment objective will be to seek to achieve high income and positive total returns. The Fund will seek to achieve its investment objective by using a quantitative, rules-based investment methodology designed to provide returns that exceed the performance of the S&P High Income VEQTOR Index (the "Benchmark").<sup>7</sup> As described below, the Fund will seek to gain

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<sup>7</sup> The Fund's Benchmark allocates between equity securities and CBOE Volatility Index futures. The Commission has previously approved listing and trading of exchange traded products with Chicago Board Options Exchange ("CBOE") volatility index futures as components of benchmarks. See, e.g., Securities Exchange Act Release No. 68158 (November 5, 2012), 77 FR 67412 (November 9, 2012) (SR-NYSEArca-2012-101) (order approving listing and trading of PowerShares S&P 500 Downside Hedged Portfolio); Securities Exchange Act Release Nos. 65134 (August 15, 2011), 76 FR 52034 (August 19, 2011) (SR-NYSEArca-2011-23) (order approving listing of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF); and 63610 (December 27, 2010), 76 FR 199 (January 3, 2011) (SR-NYSEArca-2010-101) (order approving listing of

exposure to the securities contained in the equity component of the Benchmark and CBOE Volatility Index (“VIX Index”) related instruments (“VIX Index Related Instruments,” as defined below).

The Benchmark, the VIX Index and the S&P 500 VIX Short Term Futures Index

The Benchmark, using strategy allocation rules developed by Standard & Poor’s (“S&P”),<sup>8</sup> is composed of two types of components: an equity component, represented by the constituents of the S&P High Income Equity Composite Index (“Equity Component Index”), and a volatility component, represented by the S&P 500 VIX Short Term Futures Index (“VIX Futures Index”). The Benchmark allocates its constituents between the two components in any given amount from time to time based on the level of volatility in the market.

The Equity Component Index is composed of 150 high yield securities that meet certain size, liquidity and listing exchange criteria as determined by S&P. This component is comprised of the following four sub-components: (i) preferred stocks, (ii) units of master limited partnerships (“MLPs”), (iii) real estate investment trusts (“REITs”), and (iv) a portfolio of global securities engaged in the real estate industry (“global property securities”) and/or global securities that pay high dividends (“global dividend securities” which, collectively with global property securities, are “Global Equities”).

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ProShares VIX Short-Term Futures ETF and ProShares VIX Mid-Term Futures ETF).

<sup>8</sup> S&P is a division of the McGraw-Hill Companies, Inc. S&P is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Benchmark.

The VIX Index is a theoretical calculation and cannot be traded. The VIX Index is a benchmark index designed to measure the market price of volatility in large cap U.S. stocks over 30 days in the future, and is calculated based on the prices of certain put and call options on the S&P 500<sup>®</sup> Index. The VIX Index measures the premium paid by investors for certain options linked to the S&P 500<sup>®</sup> Index. During periods of market instability, the implied level of volatility of the S&P 500<sup>®</sup> Index typically increases and, consequently, the prices of options linked to the S&P 500<sup>®</sup> Index typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the level of the VIX Index to increase. The VIX Index historically has had negative correlations to the S&P 500<sup>®</sup> Index. Because the level of the VIX Index may increase in times of uncertainty, the VIX Index is known as the “fear gauge” of the broad U.S. equities market.

The VIX Futures Index utilizes the prices of the first and second month futures contracts based on the VIX Index, replicating a position that rolls the nearest month VIX futures contracts to the next month VIX futures contracts on a daily basis in equal fractional amounts. The Benchmark’s allocation to its volatility component serves as an implied volatility hedge, as volatility historically tends to correlate negatively to the performance of the equity markets (i.e., rapid declines in the performance of the equity markets generally are associated with particularly high volatility in such markets).

On any Business Day (as defined below), the Benchmark allocates between its equity and volatility components based on a combination of realized volatility and implied volatility trend decision variables. The allocation to the VIX Futures Index generally increases when realized volatility and implied volatility are higher, and

decreases when realized volatility and implied volatility are lower. While allocations are reviewed daily, these allocations may change on a less frequent basis.

The U.S. Index Committee (the “Committee”) of S&P maintains the Benchmark. The Committee meets monthly. At each meeting, the Committee reviews pending corporate actions that may affect Benchmark constituents, statistics comparing the composition of the Benchmark to the market, companies that are being considered as candidates for addition to the Benchmark, and any significant market events. In addition, the Committee may revise the Benchmark’s policy covering rules for selecting companies, treatment of dividends, share counts, or other matters.

#### Principal Investment Strategies of the Fund

The Fund’s investment strategy is similar to the rules-based allocation methodology of its Benchmark. Therefore, the allocation among the Fund’s investments generally will tend to approximate the allocation between the equity and volatility components of the Benchmark. However, the Fund seeks returns that exceed the returns of the Benchmark; accordingly, the Fund can have a higher or lower exposure to either component (or any respective sub-component) of the Benchmark at any time.<sup>9</sup>

In pursuing its investment objective, under normal market conditions,<sup>10</sup> the Fund will invest substantially all of its assets in (i) an equity sleeve that generally corresponds

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<sup>9</sup> The Fund will be “non-diversified” under the 1940 Act and therefore may invest more of its assets in fewer issuers than “diversified” funds. The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a-5).

<sup>10</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

to the Equity Component Index, represented by a combination of 150 high yield securities that includes preferred stocks, MLPs, REITs, and Global Equities, each of which will be listed either on a U.S. securities exchange or a member exchange of the Intermarket Surveillance Group (“ISG”);<sup>11</sup> and (ii) a volatility sleeve, represented by instruments relating to the VIX Index and consisting of futures contracts on the VIX Index and options on those futures contracts. During periods of low volatility, a greater portion of the Fund’s assets will be invested in equity securities, and during periods of increased volatility, a greater portion of the Fund’s assets will be invested in VIX Index Related Instruments (as defined below). Any U.S. security invested by the Fund must be listed on a national securities exchange, and any non-U.S. security must be listed on a member exchange of the ISG.

Additionally, the Fund may invest in ETFs and exchange-traded notes (“ETNs”) that are listed on U.S. securities exchanges that provide exposure to the components of the Equity Component Index, as well as ETFs and ETNs that provide exposure to the VIX Index (these instruments, collectively with VIX Index futures contracts and options on those futures contracts, are termed the “VIX Index Related Instruments”).

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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 objective.

<sup>11</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Other Investments of the Fund

The Fund may invest its remaining assets in U.S. government securities, high-quality money market instruments, cash and cash equivalents to provide liquidity and to collateralize its investments in derivative instruments. These instruments in which the Fund may invest include: (i) short-term obligations issued by the U.S. Government;<sup>12</sup> (ii) short-term negotiable obligations of commercial banks, fixed time deposits and bankers' acceptances of U.S. and foreign banks and similar institutions;<sup>13</sup> (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc. or "A-1+" or "A-1" by S&P or, if unrated, of comparable quality, as the Adviser of the Fund determines, and (iv) money market mutual funds, including affiliated money market funds.

In addition, the Fund's investment in securities of other investment companies (including money market funds) may exceed the limits permitted under the 1940 Act, in accordance with certain terms and conditions set forth in a Commission exemptive order issued to the Trust pursuant to Section 12(d)(1)(J) of the 1940 Act.<sup>14</sup>

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<sup>12</sup> The Fund may invest in U.S. government obligations. Obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities include bills, notes and bonds issued by the U.S. Treasury, as well as "stripped" or "zero coupon" U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

<sup>13</sup> Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

<sup>14</sup> Investment Company Act Release No. 30238 (October 23, 2012) (File No. 812-13820).

The Fund may enter into repurchase agreements, which are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of \$500 million and (ii) securities dealers (“Qualified Institutions”). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

The Fund may purchase exchange-listed warrants. However, the Fund does not expect to enter into swap agreements, including credit default swaps, but may do so if such investments are in the best interests of the Fund’s shareholders.

#### Investment Restrictions of the Fund

The Fund may not concentrate its investments (i.e., invest more than 25% of the value of its net assets) in securities of issuers in any one industry or group of industries.

This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities.<sup>15</sup>

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), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance.<sup>16</sup>

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<sup>15</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>16</sup> Long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), FN 34. See also Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); and 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release Nos. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

The Fund intends to qualify for and to elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.<sup>17</sup>

As a result of the instruments that the Fund will hold, the Fund will be subject to regulation by the Commodity Futures Trading Commission and the National Futures Association (“NFA”) as a commodity pool, and thus must comply with additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.<sup>18</sup>

The Fund’s investments will be consistent with the Fund’s investment objective. Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objective. The Fund may utilize instruments or investment techniques that have a leveraging effect on the Fund. This effective leverage occurs when the Fund’s market exposure exceeds the amounts actually invested. Any instance of effective leverage will be covered in accordance with guidance promulgated by the Commission and its staff.<sup>19</sup> The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a “leveraged ETF,” *i.e.*, it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index. The Fund will not use futures for speculative purposes, nor will the Fund invest in OTC equities or non-U.S. listed equities or enter into futures contracts that are not traded on a U.S. exchange.

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<sup>17</sup> 26 U.S.C. 851.

<sup>18</sup> The Exchange represents that the Adviser has previously registered as a commodity pool operator and commodity trading advisor and also is a member of the NFA.

<sup>19</sup> In re Securities Trading Practices of Investment Companies, Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979).

### Net Asset Value

The Fund's administrator will calculate the Fund's net asset value ("NAV") per Share as of the close of regular trading (normally 4:00 p.m., Eastern time ("E.T.)) on each day the New York Stock Exchange ("NYSE") is open for business (a "Business Day"). NAV per Share will be calculated for the Fund by deducting all of the Fund's liabilities from the total value of its assets and dividing the result by the number of Shares outstanding, rounding to the nearest cent. All valuations will be subject to review by the Board of Trustees of the Trust ("Board") or its delegate.

In determining NAV, expenses will be accrued and applied daily and securities and other assets for which market quotations are readily available will be valued at market value. Securities listed or traded on an exchange (including high yield Global Equities, preferred stocks, MLPs, REITs and warrants) will be valued at the last sale price or official closing price that day as of the close of the exchange on which such securities primarily trade. Shares of open-end registered investment companies (i.e., mutual funds) will be valued at net asset value; shares of exchange-traded investment companies (i.e., closed-end funds or ETFs) and ETNs will be valued at the last sale price or official closing price on the exchange on which they primarily trade. Futures contracts are valued as of the final settlement price on the exchange on which they trade. Options will be valued at the closing price (and, if no closing price is available, at the mean of the last bid/ask quotations) from the exchange where such instruments principally trade. U.S. government securities will be valued at the mean price provided by a third party vendor. Illiquid securities, as well as cash and cash equivalents, money market funds, repurchase agreements (including reverse repurchase agreements) and other short-term

obligations (including corporate commercial paper, negotiable short-term obligations of commercial banks, fixed time deposits, bankers acceptances and similar securities) will each be valued in accordance with the Trust's valuation policies and procedures, which have been approved by the Trust's Board.

The NAV for the Fund will be calculated and disseminated daily. If an asset's market price is not readily available, the asset will be valued using pricing provided from independent pricing services or by another method that the Adviser, in its judgment, believes will better reflect the asset's fair value in accordance with the Trust's valuation policies and procedures approved by the Trust's Board and with the 1940 Act. Fair value pricing involves subjective judgments and it is possible that a fair value determination for an asset may be materially different than the value that could be realized upon the sale of the asset.

#### Creation and Redemption of Shares

The Trust will issue Shares of the Fund at NAV only with authorized participants ("APs") and only in aggregations of 50,000 shares (each aggregation is called a "Creation Unit") or multiples thereof, on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any Business Day, of an order in proper form.

The consideration an AP must provide for purchase of Creation Unit aggregations of the Fund may consist of (i) cash, in lieu of all or a portion of the Deposit Securities, as defined below, in an amount calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit ("Deposit Cash"), plus fixed and variable transaction fees; or (ii) an "in-kind" deposit of a designated portfolio of securities

determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective (the “Deposit Securities”) per each Creation Unit aggregation and generally an amount of cash (the “Cash Component”) computed as described below.

Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) will constitute the “Fund Deposit,” which will represent the minimum initial and subsequent investment amount for a Creation Unit aggregation of the Fund. The Cash Component is sometimes also referred to as the Balancing Amount. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit aggregation and the Deposit Amount (as defined below). For example, for a creation the Cash Component will be an amount equal to the difference between the NAV of Fund Shares (per Creation Unit aggregation) and the “Deposit Amount” – an amount equal to the market value of the Deposit Securities and/or cash in lieu of all or a portion of the Deposit Securities. If the Cash Component is a positive number (i.e., the NAV per Creation Unit aggregation exceeds the Deposit Amount), the AP will deliver the Cash Component. If the Cash Component is a negative number (i.e., the NAV per Creation Unit aggregation is less than the Deposit Amount), the AP will receive the Cash Component.

Shares may be redeemed only in Creation Unit aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Custodian and only on a Business Day. The Fund will not redeem Shares in amounts less than Creation Unit Aggregations. APs must accumulate enough Shares in the secondary market to constitute a Creation Unit Aggregation in order to have such Shares redeemed

by the Trust. The redemption proceeds for a Creation Unit Aggregation generally consist of (i) cash, in lieu of all or a portion of the Fund Securities as defined below, in an amount calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit, less any redemption transaction fees; or (ii) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective per each Creation Unit aggregation (“Fund Securities”)—as announced on the Business Day of the request for redemption received in proper form— plus or minus 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, less any redemption transaction fees. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating Cash Component payment equal to the difference is required to be made by or through an AP by the redeeming shareholder.

Creation Units of the Fund generally will be sold partially in cash and partially in-kind. However, the Fund also reserves the right to permit or require Creation Units to be issued principally in-kind or principally for cash. At all times, the Trust reserves the right to permit or require the substitution of Deposit Cash—i.e., a “cash in lieu” amount—to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, or that may not be eligible for transfer or which might not be eligible for trading by an AP or the investor for which it is acting or other relevant reason.<sup>20</sup>

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<sup>20</sup> Such substitutions of certain Deposit Securities are termed “custom orders.” On any given Business Day, if the Fund accepts a custom order, the Adviser

To the extent that the Fund permits Creation Units to be issued principally or partially in-kind, the Custodian, through the National Securities Clearing Corporation (“NSCC”), will make available on each Business Day, prior to the opening of business of the NYSE (currently 9:30 a.m., E.T.), the list of the names and the quantity of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day), plus any estimated Cash Component, for the Fund. Such Fund Deposit will be applicable, subject to any adjustments as described below, to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available. Information on the specific names and holdings in a Fund Deposit also will be available at [www.pstrader.net](http://www.pstrader.net).

To the extent that the Fund permits Creation Units to be redeemed in-kind, the Custodian, through the NSCC, will make available on each Business Day, prior to the opening of business of NYSE (currently 9:30 a.m., E.T.), the identity of the Fund Securities 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 that are applicable to creations of Creation Unit aggregations.

When applicable, during times that the Fund permits in-kind creations, the identity and quantity of the Deposit Securities required for a Fund Deposit for the Shares may change as rebalancing adjustments and corporate action events occur and are

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represents that the Fund will accept similar custom orders from all other Authorized Participants on the same basis.

reflected within the Fund from time to time by the Adviser, consistent with the investment objective of the Fund.

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 NSCC or (ii) a Depository Trust Company (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an AP) must execute an agreement that has been agreed to by the Distributor and the Custodian with respect to purchases and redemptions of Creation Units.

All orders to create Creation Unit aggregations must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) in each case on the date such order is placed in order for creations of Creation Unit aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

In order to redeem Creation Units of the Fund, an AP must submit an order to redeem for one or more Creation Units. All such orders must be received by the Fund’s transfer agent in proper form no later than the close of regular trading on the NYSE (ordinarily 4:00 p.m. E.T.) in order to receive that day’s closing NAV per Share.

The right of redemption may be suspended or the date of payment postponed (i) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which

disposal of the Shares of the Fund or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the Commission.

APs may be required to pay an administrative fee and a variable transaction fee for purchasing or redeeming Creation Units. Creation and redemption transactions for the Fund are subject to a fixed administrative fee of \$500, payable to the Custodian, irrespective of the size of the order. In addition to the fixed administrative fee, the Custodian may impose an additional variable transaction fee of up to four times the fixed administrative fee. This additional administrative fee may be incurred for administration and settlement of (i) in-kind creations and redemptions effected outside the normal Clearing Process, and (ii) cash creations and redemptions. Finally, to the extent the Fund permits or requires APs to substitute cash in lieu of Deposit Securities, the Adviser may set additional variable fees separate from the fees already described that are also payable to the Fund up to 2%. These cash-in-lieu fees will be negotiated between the Adviser and the AP and are charged to offset the transaction cost to the Fund of buying (or selling) those particular Deposit Securities, to cover spreads and slippage costs and to protect existing shareholders against sudden movements in the prices of the portfolio investments due to market events. From time to time, the Adviser, in its sole discretion, may adjust the Fund's variable transaction fees or reimburse APs for all or a portion of the creation or redemption transaction fees.

#### Availability of Information

The Fund's website ([www.invescopowershares.com](http://www.invescopowershares.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include the ticker symbol for

the Shares, CUSIP and exchange information, along with additional quantitative information updated on a daily basis, including, for the Fund: (1) daily trading volume, the prior Business Day's reported NAV, closing price and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>21</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 the most recently completed calendar year and each of the four most recently completed calendar quarters since that year (or the life of the Fund if shorter). On each Business Day, before commencement of trading in Shares in the Regular Market Session<sup>22</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" as such term is defined in Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.<sup>23</sup> The Disclosed Portfolio will include, as applicable, the names, quantity,

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<sup>21</sup> The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>22</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. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

<sup>23</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.

percentage weighting and market value of securities and other assets held by the Fund and the characteristics of such assets. The website and information will be publicly available at no charge.

In addition, to the extent the Fund permits full or partial creations in-kind, a basket composition file, which will include the security names and share quantities to deliver (along with requisite cash in lieu) in exchange for Shares, together with estimates and actual Cash Components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC and at [www.pstrader.net](http://www.pstrader.net). The basket will represent the equity component of the Shares of the Fund.

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>24</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.

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

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<sup>24</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.

Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Intra-day, executable price quotations on the securities and other assets held by the Fund, as well as closing price information, will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day and closing price information on the securities and other assets held by the Fund also will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by APs and other investors.

Investors also will be able to obtain the Fund's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Trust's Form N-CSR and Form N-SAR, each of which is filed twice a year, except the SAI, which is filed at least annually. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume 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, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. Quotation and last sale information for any exchange-traded instruments (including Global Equities, preferred stocks, MLPs, REITs, warrants, ETFs and ETNs) also will be available via the

quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans.

Pricing information for any futures contracts or options will be available via the quote and trade service of their respective primary exchanges. Pricing information related to U.S. government securities, money market mutual funds, commercial paper, repurchase and reverse repurchase agreements and other short-term investments held by the Fund will be available through publicly available quotation services, such as Bloomberg, Markit and Thomson Reuters.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, will be included in the Registration Statement.

#### Initial and Continued Listing of the Fund's Shares

The Shares will conform to the initial and continued listing criteria applicable to Managed Fund Shares, as set forth under Rule 5735. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>25</sup> under the Exchange Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

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<sup>25</sup> See 17 CFR 240.10A-3.

### Trading Halts of the Fund's Shares

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

### Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in 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 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>26</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. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund with other markets and other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund from markets and other entities that are members of ISG, which includes securities

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<sup>26</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.

and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, with regard to the Fund's investments in futures contracts and options, such instruments shall have their principal trading market be a member of ISG or a market with which the Exchange has a comprehensive surveillance sharing agreement.

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

#### Information Circular

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

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the

Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Exchange Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Exchange Act. 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 Exchange Act in general, and Section 6(b)(5)<sup>27</sup> of the Exchange Act in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

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<sup>27</sup> 15 U.S.C. 78(f)(b)(5).

Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA, on behalf of the Exchange, which are designed to deter and detect violations of Exchange rules and applicable federal securities laws and are adequate to properly monitor trading in the Shares in all trading sessions. The Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Rule 5735 further requires that personnel who make decisions on an open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

FINRA may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including the equity component securities, ETFs, ETNs and warrants) and instruments (including futures contracts and options) held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund will limit its investments in illiquid securities or other illiquid assets to an aggregate amount of 15% of its net assets (calculated at the time of investment). The holdings of the Fund will be comprised primarily of securities included in the Equity Component Index, VIX Index Related Instruments, U.S. government securities, money market instruments, cash and cash equivalents. The Fund will invest in U.S. government securities, money market instruments, cash and cash

equivalents to provide liquidity and to collateralize its investments in derivative instruments. The Fund also may invest directly in ETFs and ETNs. The Fund will not invest in OTC equities or non-U.S. listed equities or enter into futures contracts that are not traded on a U.S. exchange.

The Fund will not use futures for speculative purposes, and its investments will be consistent with the Fund's investment objective. Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objective. In pursuing its investment objective, the Fund may utilize instruments or investment techniques that have a leveraging effect on the Fund. This effective leverage occurs when the Fund's market exposure exceeds the amounts actually invested. Any instance of effective leverage will be covered in accordance with guidance promulgated by the Commission and its staff.<sup>28</sup> The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a "leveraged ETF," *i.e.*, it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index. The Fund does not expect to enter into swap agreements, including credit default swaps, but may do so if such investments are in the best interests of the Fund's shareholders.

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

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<sup>28</sup> See FN 18, *supra*.

of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Market Session. On each Business Day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio of the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. Quotation and last sale information for any exchange-traded instruments (including Global Equities, preferred stocks, MLPs, REITs, warrants, ETFs and ETNs) also will be available via the quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans. Pricing information for any futures contracts or options will be available via the quote and trade service of their respective primary exchanges. Pricing information related to U.S. government securities, money market mutual funds, commercial paper, repurchase and reverse repurchase agreements and other short-term investments held by the Fund will be available through publicly available quotation services, such as Bloomberg, Markit and Thomson Reuters. Intra-day and closing price information will be available

through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by APs and other investors.

The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to 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.

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 Exchange Act. The Exchange believes that the proposed rule change will facilitate

the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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-2015-085 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2015-085. 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-2015-085 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>29</sup>

Robert W. Errett  
Deputy Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).