SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77338; File No. SR–NASDAQ–2016–030]

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 Elkhorn Dorsey Wright Commodity Rotation Portfolio of Elkhorn ETF Trust

March 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2016, 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 and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to list and trade the shares of the Elkhorn Dorsey Wright Commodity Rotation Portfolio (the ''Fund'') of Elkhorn ETF Trust (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares''). The shares of the Fund are collectively 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.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[3] on the Exchange.[4] The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on December 12, 2013.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund will be a series of the Trust. The Fund will invest in, among other things, exchange-traded commodity futures contracts and exchange-traded commodity-linked instruments held indirectly through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (referred to herein as the ''Subsidiary'').

Elkhorn Investments, LLC will be the investment adviser (the ''Adviser'') to the Fund and will monitor the Fund's investment portfolio. It is currently anticipated that day-to-day portfolio management for the Fund will be provided by the Adviser. However, the Fund and the Adviser may contract with an investment sub-adviser (a ''Sub-Adviser'') to provide day-to-day portfolio management for the Fund. ALPS Distributors, Inc. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Fund will contract with unaffiliated third parties to provide administrative, custodial and transfer agency services to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''firewall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''firewall'' between the investment adviser and the broker-dealer reflects

[3] 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.

[4] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). The Fund would not be the first actively-managed fund listed on the Exchange; *see* Securities Exchange Act Release No. 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund) and Securities Exchange Act Release No. 72728 (July 31, 2014) 79 FR 45852 (August 6, 2014) (SR–NASDAQ–2014–059) (order approving listing and trading of Global X Commodities Strategy ETF). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[5] The Trust has obtained from the Commission an order granting certain exemptive relief to the Trust under the 1940 Act (File No. 812–14262). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[6] *See* Registration Statement on Form N–1A for the Trust dated February 18, 2016 (File Nos. 333–201473 and 811–22926).

[7] 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 any Sub-Adviser and their 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 Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with a broker-dealer. The Adviser has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

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

Elkhorn Dorsey Wright Commodity Rotation Portfolio

The Fund's investment objective will be to provide total return which exceeds that of the DWA Commodity Rotation Index (the ''Benchmark'').[8] The Fund will seek excess return above the Benchmark solely through the active management of a short duration portfolio of highly liquid, high quality bonds.

The Fund will be an actively-managed ETF that seeks to achieve its investment objective by, under normal market conditions,[9] investing in exchange-traded commodity futures contracts, exchange-cleared and non-exchange-cleared swaps,[10] exchange-traded options on futures contracts and exchange-traded commodity-linked instruments [11] (collectively, ''Commodities'') through the Subsidiary, thereby obtaining exposure to the commodities markets.

The Fund's Commodities investments, in part, will be comprised of exchange-traded futures contracts on commodities that comprise the Benchmark. Although the Fund, through the Subsidiary, will generally hold many of the futures contracts included in the Benchmark, the Fund and the Subsidiary will be actively managed and will not be obligated to invest in all the futures contracts on commodities that comprise the Benchmark. In addition, with respect to investments in exchange-traded futures contracts, the Fund and the Subsidiary will not be obligated to invest in the same amount or proportion as the Benchmark, or be obligated to track the performance of the Benchmark. In addition to exchange-traded futures contracts, the Fund's Commodities investments will also be comprised of exchange-cleared and non-exchange-cleared swaps on commodities, exchange-traded options on futures contracts that provide exposure to the investment returns of the commodities markets, and exchange-traded commodity-linked instruments, without investing directly in physical commodities.

The Fund will invest in Commodities through investments in the Subsidiary and will not invest directly in physical commodities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. In addition to Commodities, the Fund may invest its assets in (1) the following short-term debt instruments: [12] Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; [13] certificates of deposit issued against funds deposited in a bank or savings and loan association; bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; repurchase agreements,[14] which involve purchases of debt securities; bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and commercial paper, which are short-term unsecured promissory notes (collectively, ''Short-Term Debt Instruments); [15] (2) corporate debt obligations; [16] (3) money market instruments; [17] (4) investment companies (other than those that are commodity-linked instruments),[18]

[8] The Benchmark is developed, maintained and sponsored by Dorsey, Wright & Associates, LLC (''Dorsey Wright'').

[9] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets, futures 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.

[10] Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets. When investing in non-exchange-cleared swaps, the Subsidiary will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or a Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's and/or a Sub-Adviser's analysis will evaluate each approved counterparty using various methods of analysis and may consider such factors as the counterparty's liquidity, its reputation, the Adviser's and/or Sub-Adviser's past experience with the counterparty, its known disciplinary history and its share of market participation.

[11] Exchange-traded commodity-linked instruments include: (1) ETFs that provide exposure to commodities as would be listed under Nasdaq Rules 5705 and 5735; and (2) pooled investment vehicles that invest primarily in commodities and commodity-linked instruments as would be listed under Nasdaq Rules 5710 and 5711(b), (d), (f), (g), (h), (i) and (j). Such pooled investment vehicles are commonly referred to as ''exchange-traded funds'' but they are not registered as investment companies because of the nature of their underlying assets.

[12] Short-term debt instruments are issued by issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's'') or Fitch Ratings (''Fitch'') and have a maturity of one year or less.

[13] Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[14] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser and/or a Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (the ''Board''). The Adviser and/or a Sub-Adviser will review and monitor the creditworthiness of such institutions. The Adviser and/or a Sub-Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[15] The Fund may additionally invest in commercial paper only if it has received the highest rating from at least one nationally recognized statistical rating organization or, if unrated, has been judged by the Adviser and/or a Sub-Adviser to be of comparable quality.

[16] At least 75% of corporate debt obligtions will have a minimum principal amount outstanding of $100 million or more.

[17] For the Fund's purposes, money market instruments will include only the following instruments: Short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a–7 under the 1940 Act; and money market mutual funds.

[18] The Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order obtained by the Trust and the

Continued

including both exchange-traded and non-exchange traded investment companies, that provide exposure to commodities, equity securities and fixed income securities to the extent permitted under the 1940 Act and any applicable exemptive relief; [19] and (5) cash and other cash equivalents (collectively, ''Other Investments''). The Fund will use the Other Investments as investments, to provide liquidity and to collateralize the Subsidiary's commodity exposure on a day-to-day basis.

The Fund's investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code.[20]

Subsidiary's Investments

The Subsidiary will generally seek to make investments in Commodities and its portfolio will be managed by the Adviser or a Sub-Adviser.[21] The Adviser or a Sub-Adviser will use its discretion to determine the percentage of the Fund's assets allocated to the Commodities held by the Subsidiary that will be invested in exchange-traded commodity futures contracts, exchange-cleared and non-exchange-cleared swaps, exchange-traded options on futures contracts and exchange-traded commodity-linked instruments. Generally, the Adviser or a Sub-Adviser will take various factors into account on a periodic basis in allocating the assets of the Subsidiary, including, but not limited to the results of the Benchmark's proprietary model developed by Dorsey Wright that is discussed further below, the performance of commodity indexes relative to each other, relative price differentials for a range of commodity futures for current delivery as compared to similar commodity futures for future delivery, and other market conditions. The weightings of the Fund's portfolio will be reviewed and updated at least annually.

In connection with the Benchmark's proprietary model, Dorsey Wright applies a relative strength methodology to rank twenty-five to thirty single commodity futures, each represented by single commodity futures index with an embedded dynamic roll strategy, and selects a subset of commodity futures that demonstrate relative strength characteristics. The methodology takes into account, among other characteristics, the performance of a commodity as compared to the broad commodity market, the relative performance of each single commodity versus all of the other commodities, and the liquidity of the underlying commodities.

The Fund will not be sponsored, endorsed, sold or promoted by Dorsey Wright. Dorsey Wright's only relationship to the Fund will be the licensing of certain service marks and service names of Dorsey Wright. Dorsey Wright will have no obligation to take the needs of the Adviser, any Sub-Adviser or the Fund into consideration in connection with the Benchmark's proprietary model or its application of the related methodology.

The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in the derivative instruments. The Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Commodities. The Subsidiary's investments will provide the Fund with exposure to domestic and international markets.

The Subsidiary will initially consider investing in futures contracts set forth in the following table. The table also provides each instrument's trading hours, exchange and ticker symbol. The table is subject to change.

Commodity	Exchange code	Exchange name [22]	Trading hours electronic (E.T.)	Contract symbol(s)
SRW Wheat	CBT	Chicago Board of Exchange	Sun–F 20:00–08:45 M–F 09:30–14:15	W; ZW
HRW Wheat	CBT	Chicago Board of Exchange	Sun–F 20:00–08:45 M–F 09:30–14:15	KW; KE
Corn	CBT	Chicago Board of Trade	Sun–F 20:00–08:45 M–F 09:30–14:15	C; ZC
Soybeans	CBT	Chicago Board of Trade	Sun–F 20:00–08:45 M–F 09:30–14:15	S; ZS
Coffee "C" Arabica	NYB	ICE Futures US	04:15–13:30	KC
Sugar #11	NYB	ICE Futures US	03:30–13:00	SB
Cocoa	NYB	ICE Futures US	04:45–13:30	CC
Cotton	NYB	ICE Futures US	21:00–14:20	CT
Live Cattle	CME	Chicago Mercantile Exchange	M 10:05–F 14:55 (Halts 17:00–18:00)	LC; LE
Lean Hogs	CME	Chicago Mercantile Exchange	M 10:05–F 14:55 (Halts 17:00–18:00)	LH; HE
NY Harbor ULSD	NYM	New York Mercantile Exchange	18:00–17:15	HO
Gasoil	ICE	ICE Futures Europe	20:00–18:00	G

Adviser from the Commission. *See* Investment Company Act Release No. 31401 (December 29, 2014) (File No. 812–14264). The exchange-traded investment companies in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The non-exchange-traded investment companies in which the Fund may invest include all non-exchange-traded investment companies that are not money market instruments, as described above. While the Fund and the Subsidiary may invest in inverse commodity-linked instruments, the Fund and the Subsidiary will not invest in leveraged or inverse leveraged (*e.g.,* 2X or −3X) commodity-linked instruments.

[19] The exchange-traded investment companies in which the Fund invests will be listed and traded in the U.S. on registered exchanges.

[20] 26 U.S.C. 851.

[21] The Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary will be wholly-owned and controlled by the Fund. Therefore, the Fund's ownership and control of the Subsidiary will prevent the Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

Commodity	Exchange code	Exchange name [22]	Trading hours electronic (E.T.)	Contract symbol(s)
WTI Crude Oil	NYM	New York Mercantile Exchange	18:00–17:15	CL
Brent Crude Oil	ICE	ICE Futures Europe	20:00–18:00	B
Natural Gas	NYM	New York Mercantile Exchange	18:00–17:15	NG
Aluminum primary	LME	London Metal Exchange	20:00–14:00	AH
Copper grade A	LME	London Metal Exchange	20:00–14:00	CA
Zinc high grade	LME	London Metal Exchange	20:00–14:00	ZS
Gold	CMX	Commodity Exchange	18:00–17:15	GC
Silver	CMX	Commodity Exchange	18:00–17:15	SI
RBOB Gasoline	NYM	New York Mercantile Exchange	18:00–17:15	RB

[22] All of the exchanges are Intermarket Surveillance Group (''ISG'') members except for the London Metal Exchange (''LME''), ICE Futures Europe and Commodity Exchange. The LME falls under the jurisdiction of the Financial Conduct Authority (''FCA''). The FCA is responsible for ensuring the financial stability of the exchange members' businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activity, including conducting the arbitration proceedings under the LME arbitration regulations. With respect to the futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts) of the futures contracts held by the Subsidiary in the aggregate shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of Trade and the New York Mercantile Exchange, futures contracts whose principal trading market is the Commodity Exchange shall not be subject to the prohibition in (a), above. In addition, at least 90% of the Fund's net assets that are invested in exchange-traded options on futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

As the U.S. and foreign exchanges noted above list additional contracts, as currently listed contracts on those exchanges gain sufficient liquidity or as other exchanges list sufficiently liquid contracts, the Adviser and/or any Sub-Adviser will include those contracts in the list of possible investments of the Subsidiary. The list of commodities futures and commodities markets considered for investment can and will change over time.

In addition to investing in Commodities, the Subsidiary, like the Fund, may invest in Other Investments (*e.g.,* as investments or to serve as margin or collateral or otherwise support the Subsidiary's positions in Commodities).

Commodities Regulation

The Commodity Futures Trading Commission (''CFTC'') has adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator. As a result of the instruments that will be indirectly held by the Fund, the Adviser will register as a commodity pool operator [23] and will also be a member of the National Futures Association (''NFA''). Any Sub-Adviser will register as a commodity pool operator or commodity trading adviser, as required by CFTC regulations. The Fund and the Subsidiary will be subject to regulation by the CFTC and NFA and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools.

Investment Restrictions

While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will be consistent with the Fund's investment objective and will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and -3X) of an index.

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.[24]

The Subsidiary's shares will be offered only to the Fund and the Fund will not sell shares of the Subsidiary to other investors. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary). The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act or any applicable exemptive relief.[25]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser.[26] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[27]

Net Asset Value

The Fund's net asset value (''NAV'') will be determined as of the close of trading (normally 4:00 p.m., Eastern time (''E.T.'')) on each day the New York Stock Exchange (''NYSE'') is open for

[23] As defined in Section 1a(11) of the Commodity Exchange Act.

[24] *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).

[25] *See* note 18.

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

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

business. The NAV of the Fund will be calculated by dividing the value of the net assets of such Fund (*i.e.* the value of its total assets, less total liabilities) by the total number of outstanding Shares, generally rounded to the nearest cent.

The Fund's and the Subsidiary's investments will be generally valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer), or (iii) based on amortized cost. The Fund and the Subsidiary may use various pricing services or discontinue the use of any pricing service. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation.

If available, Short-Term Debt Instruments (other than certificates of deposits, bank time deposits and repurchase agreements), corporate debt obligations, other cash equivalents and money market instruments (other than money market mutual funds) with maturities of more than 60 days will typically be priced based on valuations provided by independent, third-party pricing agents. Such values will generally reflect the last reported sales price if the instrument is actively traded. The third-party pricing agents may also value debt instruments at an evaluated bid price by employing methodologies that utilize actual market transactions, broker-supplied valuations, or other methodologies designed to identify the market value for such instruments. Short-Term Debt Instruments (other than certificates of deposit, bank time deposits and repurchase agreements), corporate debt obligations, other cash equivalents and money market instruments (other than money market mutual funds) with remaining maturities of 60 days or less may be valued on the basis of amortized cost, which approximates market value. If such prices are not available, the instrument will be valued based on values supplied by independent brokers or by fair value pricing, as described below.

Certificates of deposit and bank time deposits will typically be valued at cost.

Repurchase agreements will typically be valued as follows: Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.,* those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded.

Exchange-traded options will be valued at the closing price in the market where such contracts are principally traded.

Swaps will be valued based on valuations provided by independent, third-party pricing agents.

Securities of non-exchange-traded investment companies will be valued at the investment company's applicable NAV.

Equity securities (including exchange-traded commodity-linked instruments and exchange-traded investment companies other than exchange-traded commodity-linked instruments) listed on a securities exchange, market or automated quotation system for which quotations are readily available (except for securities traded on the Exchange) will be valued at the last reported sale price on the primary exchange or market on which they are traded on the valuation date (or at approximately 4:00 p.m., E.T. if a security's primary exchange is normally open at that time). For a security that trades on multiple exchanges, the primary exchange will generally be considered to be the exchange on which the security generally has the highest volume of trading activity. If it is not possible to determine the last reported sale price on the relevant exchange or market on the valuation date, the value of the security will be taken to be the most recent mean between the bid and asked prices on such exchange or market on the valuation date. Absent both bid and asked prices on such exchange, the bid price may be used. For securities traded on the Exchange, the Exchange official closing price will be used. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing, as described below.

The prices for foreign instruments will be reported in local currency and converted to U.S. dollars using currency exchange rates. Exchange rates will be provided daily by recognized independent pricing agents.

In the event that current market valuations are not readily available or such valuations do not reflect current market values, the affected investments will be valued using fair value pricing pursuant to the pricing policy and procedures approved by the Board in accordance with the 1940 Act. The frequency with which the Fund's and the Subsidiary's investments are valued using fair value pricing will be primarily a function of the types of securities and other assets in which they invest pursuant to their respective investment objectives, strategies and limitations.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV [28] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units are not expected to consist of less than 25,000 Shares. The Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket''). In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Distributor and only on a business day.

On each business day, prior to the opening of business of the Exchange, the Fund will cause to be published through the National Securities Clearing Corporation the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket

[28] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the NYSE, generally 4:00 p.m., E.T. (the ''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

is announced on the following business day.

Availability of Information

The Fund's Web site (*www.elkhorn.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 Web site will include the Shares' ticker, 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 and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price'') [29] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [30] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities, Commodities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[31] The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding such as the type of swap), the identity of the security, commodity or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio), will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service [32] 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 and the Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information on the securities and other assets held by the Fund and the Subsidiary will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by Authorized Participants and other investors. More specifically, pricing information for exchange-traded commodity futures contracts, exchange-traded options on futures contracts, exchange-traded commodity-linked instruments and exchange-traded investment companies (other than exchange-traded commodity-linked instruments) will be available on the exchanges on which they are traded and through subscription services. Pricing information for non-exchange-traded U.S. registered open-end investment companies will be available through the applicable fund's Web site or major market data vendors. Pricing information for swaps, corporate debt obligations, money market instruments (other than money market mutual funds), other cash equivalents and Short-Term Debt Instruments will be available through subscription services and/or broker-dealer firms and/or pricing services. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for certain fixed income securities held by the Fund.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *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. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A–3 [33] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

[29] 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.

[30] *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.).

[31] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[32] 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 indexes, listed ETFs, or third-party partner indexes and ETFs.

[33] *See* 17 CFR 240.10A–3.

Trading Halts

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

Trading Rules

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

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[34] 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 in the exchange-traded Commodities and exchange-traded investment companies not included within the definition of "Commodities" (such investment companies, together with exchange-traded Commodities, are referred to as "Exchange-Traded Instruments") held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG[35] and FINRA may obtain trading information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary 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. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

With respect to the futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts) of the futures contracts held by the Subsidiary in the aggregate shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided, that so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of Trade and the New York Mercantile Exchange, futures contracts whose principal trading market is the Commodity Exchange shall not be subject to the prohibition in (a), above. In addition, at least 90% of the Fund's net assets that are invested in exchange-traded options on futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets.

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 and by whom 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 deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

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

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

[34] 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.

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

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

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

The Adviser is not registered as a broker-dealer, although it is affiliated with a broker-dealer, and is therefore required to implement a ''firewall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the 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 Fund's portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary 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. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

With respect to the futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts) of the futures contracts held by the Subsidiary in the aggregate shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of Trade and the New York Mercantile Exchange, futures contracts whose principal trading market is the Commodity Exchange shall not be subject to the prohibition in (a), above. In addition, at least 90% of the Fund's net assets that are invested in exchange-traded options on futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets.

The Fund's investment objective will be to provide total return which exceeds that of the Benchmark. The Fund will invest in Commodities through investments in the Subsidiary and will not invest directly in physical commodities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and −3X) of an index. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary).

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 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 and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund and the Subsidiary 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.

Intra-day executable price quotations on the securities and other assets held by the Fund and the Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information on the securities and other assets held by the Fund and the Subsidiary will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by Authorized Participants and other investors. More specifically, pricing information for exchange-traded commodity futures contracts, exchange-traded options on futures contracts, exchange-traded commodity-linked instruments and exchange-traded investment companies other than exchange-traded commodity-linked instruments will be available on the exchanges on which they are traded and through subscription services. Pricing information for non-exchange-traded investment companies will be available through the applicable fund's Web site or major market data vendors. Pricing information for swaps, corporate debt obligations, money market instruments (other than money market mutual funds), other cash equivalents and Short-Term Debt Instruments will be available through subscription services and/or broker-dealer firms and/or pricing services. Additionally, FINRA's TRACE will be a source of price information for certain fixed income securities held by the Fund.

The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

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

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

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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 email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–030 and should be submitted on or before April 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–05853 Filed 3–15–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form S–6, SEC File No. 270–181, OMB Control No. 3235–0184.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is "Form S–6 (17 CFR 239.16), for Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2 (17 CFR 274.13)." Form S–6 is a form used for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") of securities of any unit investment trust ("UIT") registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("Investment Company Act") on Form N–8B–2. Section 5 of the Securities Act (15 U.S.C. 77e) requires the filing of a registration statement prior to the offer of securities to the public and that the statement be

[36] 17 CFR 200.30–3(a)(12).