The Exchanges now seek to extend the exemptions until March 31, 2015.[6] The Exchanges' request was made in conjunction with immediately effective filings that extend the operation of the Programs through the same date.[7] In their request to extend the exemptions, the Exchanges note that the participation in the Programs has increased more recently. Accordingly, the Exchanges have asked for additional time to allow themselves and the Commission to analyze more robust data concerning the Programs, which the Exchanges committed to provide to the Commission.[8] For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemptions, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, each Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its Retail Liquidity Program, until March 31, 2015.

The limited and temporary exemptions extended by this Order are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

(August 8, 2013) (SR–NYSE–2013–48), and 70100 (August 2, 2013), 78 FR 48535 (August 8, 2013) (SR–NYSEMKT–2013–60). When the pilot term of the Programs was extended, the Commission granted the Exchanges' request to also extend the Sub-Penny Exemption through July 31, 2014. *See* Securities Exchange Act Release No. 70085 (July 31, 2013), 78 FR 47807 (August 6, 2013).

[6] *See* Letter from Martha Redding, Chief Counsel, NYSE, to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, dated July 30, 2014.

[7] *See* Securities and Exchange Commission Release Nos. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (SR–NYSE–2014–35) and 72625 (July 16, 2014), 79 FR 42566 (July 22, 2014) (SR–NYSEMKT–2014–60).

[8] *See* Order, *supra* note 3, 77 FR at 40681.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18535 Filed 8–5–14; 8:45 am]

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[9] 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72728; File No. SR–NASDAQ–2014–059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the Global X Commodities ETF of Global X Funds

July 31, 2014.

I. Introduction

On May 28, 2014, The NASDAQ Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of Global X Commodities Strategy ETF (''Fund'') under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on June 16, 2014.[3] On June 27, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

Nasdaq proposes to list and trade Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by Global X Funds (''Trust''), which was established as a Delaware statutory trust on March 6, 2008.[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] Global X Management Company LLC will be the investment adviser (''Adviser'') and administrator (''Administrator'') to the Fund. The Fund and the Adviser will contract with an investment sub-adviser (''Sub-Adviser'') to provide day-to-day portfolio management of the Fund.[7] SEI Investments Distribution Company will be the principal underwriter and distributor of the Fund's Shares, and Brown Brothers Harriman (''Custodian'') will act as the custodian and transfer agent to the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including other portfolio holdings and investment restrictions.[8]

A. Investment Strategy

According to the Exchange, the Fund will be an actively managed ETF that will seek to achieve a total return that exceeds that of the Credit Suisse Composite Commodities Index (''Benchmark''),[9] consistent with

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 72357 (June 10, 2014), 79 FR 34376 (''Notice'').

[4] In Amendment No. 1, the Exchange clarified which subsections of Nasdaq Rule 5711 are specifically applicable to pooled investment vehicles that invest primarily in commodities and commodity-linked instruments. *See infra* note 10. Because Amendment No. 1 is technical in nature, the Commission believes that Amendment No. 1 is not subject to notice and comment.

[5] According to the Exchange, the Trust will obtain from the Commission an order granting certain exemptive relief under the Investment Company Act of 1940 (''1940 Act'') (File No. 812–14241). 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.

[6] *See* Registration Statement on Form N–1A for the Trust dated May 23, 2014 (File No. 811–22209).

[7] The Exchange represents that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer; or (b) the Sub-Adviser, any new adviser or new sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, such Adviser, Sub-Adviser, or new adviser or sub-adviser, as the case may be, will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

[8] The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. *See* Notice, *supra* note 3, and Registration Statement, *supra* note 6 and accompanying text, respectively.

[9] The Exchange represents that the Benchmark is developed, maintained, and sponsored by Credit Suisse International (''CS''), which is not a U.S.

prudent investment management. The Exchange represents that the Benchmark is a monthly rebalancing, long-only, fully collateralized futures index that offers multi-sector exposure to energy, industrial metals, precious metals, and agricultural commodities. It is a total return index that measures the hypothetical returns on an uncollateralized investment in certain futures contracts, plus the interest that could be earned on the funds committed to a collateralized investment in such contracts. In general, the Fund will pursue its objective by seeking to invest in commodity-linked futures—in similar weightings to the Benchmark—and in other commodity-linked instruments. The Fund's investments in commodity-linked futures and other commodity-linked instruments will be backed by an actively managed, low-volatility portfolio of fixed income instruments. Specifically with respect to the commodity-linked futures and other commodity-linked instruments holdings, the Fund will indirectly invest in exchange-traded futures contracts and exchange-traded commodity-linked instruments [10] (collectively, ''Commodities'') through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (''Subsidiary'').[11] The Fund will not be an ''index tracking'' ETF and will not be required to invest in all of the components of the Benchmark. The Fund will generally seek to hold through the Subsidiary similar instruments to those included in the Benchmark and seek to gain exposure to commodities included in the Benchmark. The Exchange states that the Fund will invest in Commodities only through the Subsidiary.

B. Principal Investments of the Fund

The Fund will be an actively managed ETF that will seek to achieve a total return that exceeds that of the Benchmark. The Exchange states that under normal market conditions,[12] the Fund will invest in Commodities through the Subsidiary. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. The remainder of the Fund's assets will be invested in: (1) Short-term, investment grade fixed income securities that include U.S. government and agency securities,[13] corporate debt obligations, and repurchase agreements; [14] (2) money market instruments; [15] (3) ETFs (other than those that are commodity-linked instruments) [16] and other investment companies registered under the 1940 Act, including exchange-traded closed-end funds, that provide exposure to commodities, equity securities, and fixed income securities to the extent permitted under the 1940 Act and any applicable exemptive relief; (4) certain bank instruments; [17] and (5) cash and other cash equivalents. In addition, the Fund may enter into foreign currency transactions on a spot (*i.e.,* cash) basis.

The Exchange represents that the Fund will use the fixed income securities as investments and to collateralize the Subsidiary's commodity exposure on a day-to-day basis.

C. Investments of the Subsidiary

The Exchange represents that, under normal market conditions,[18] the Subsidiary is expected to invest in futures contracts in proportional weights and allocations that are similar to the Benchmark, as well as in other exchange-traded commodity-linked

registered broker-dealer, but is affiliated with a broker-dealer and, with respect to such broker-dealer affiliate, has implemented a fire wall and procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Benchmark. The Fund will not be sponsored, endorsed, sold, or promoted by CS. CS's only relationship to the Fund will be the licensing of certain service marks and service names of CS and of the Benchmark, which will be determined, composed, and calculated by CS without regard to the Adviser, the Sub-Adviser, or the Fund. CS will have no obligation to take the needs of the Adviser, the Sub-Adviser, or the Fund into consideration in determining, composing, or calculating the Benchmark.

[10] Exchange-traded commodity-linked instruments include: (1) exchange-traded funds (''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 investments. *See infra* note 16 (providing additional information and descriptions about ETFs, in general, and ETFs to be held by the Fund, in particular).

[11] The Exchange represents that, as a result of the instruments that will be indirectly held by the Fund, the Adviser will register as a commodity pool operator (as defined in Section 1a(11) of the Commodity Exchange Act) and will also be a member of the National Futures Association (''NFA''). The Exchange represents that the Sub-Adviser will register as a commodity pool operator or commodity trading adviser, as required by the Commodity Futures Trading Commission (''CFTC'') regulations and that 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.

[12] The Exchange states that 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.

[13] These 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 that 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 Exchange states that the Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Trust's Board of Trustees (''Board''). The Adviser will review and monitor the creditworthiness of such institutions and 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] Money market instruments will include: 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; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. In addition, the Fund may invest in commercial paper, which are short-term unsecured promissory notes. The Fund may 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 to be of comparable quality.

[16] *See supra* note 10 and accompanying text. In general, an ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country, and region indexes. The Exchange represents that the ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. According to the Exchange, the Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, 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 Adviser from the Commission. *See* Investment Company Act Release No. 30454 (Apr. 9, 2013) (File No. 812–14079). The ETFs 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). 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.

[17] The Fund may invest in certificates of deposit issued against funds deposited in a bank or savings and loan association. In addition, the Fund may invest in bankers' acceptances, which are short-term credit instruments used to finance commercial transactions. The Fund also may invest in 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.

[18] *See supra* note 12.

instruments.[19] The Subsidiary will have the same investment objective as the Fund; however, unlike the Fund, the Subsidiary may invest without limitation in Commodities. As indicated above, the Benchmark will include, and the Subsidiary will have holdings in, futures contracts that consist of only long positions in Commodities. Therefore, the Fund, through the Subsidiary, will benefit if a security or instrument increases in value. Conversely, the Fund, through the Subsidiary, will be adversely impacted if a security or instrument declines in value. The Fund, through the Subsidiary, may have a higher or lower exposure to any sector or component within the Benchmark at any time.

The Exchange states that the Subsidiary will be advised by the Sub-Adviser[20] and that 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. These federal income tax laws limit the ability of investment companies to invest directly in the derivative instruments. The Subsidiary's investments will provide the Fund with exposure to both domestic and international markets.[21]

D. Investment Restrictions

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. In addition, 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 the Fund's Benchmark.

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 or its agencies or instrumentalities or to securities of other investment companies.

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 (other than shares of the Subsidiary) and the Subsidiary will not invest in any non-U.S. equity securities. 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.

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.[22] 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.

The Fund will not invest directly in Commodities. The Fund expects to primarily gain exposure to these investments by investing in the Subsidiary. In addition, the Fund and the Subsidiary will not invest in options contracts, swaps, or forward investments.

Additional information regarding the Trust, Fund, and Shares, including investment strategies and restrictions, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share (''NAV''), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and the Registration Statement, as applicable.[23]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[25] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[26] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote

[19] According to the Exchange, the Benchmark will include, and the Subsidiary will have holdings in, futures contracts that consist of only long positions in Commodities. Additional information regarding the Benchmark, including the specific commodities underlying the futures contracts included in the Benchmark as of May 23, 2014, can be found in a table in the Notice. *See* Notice, *supra* note 3, 79 FR 34376, 34378. The table contained in the Notice also provides each instrument's trading hours, exchange, and ticker symbol. *See id.* The Exchange notes that the table is subject to change. As stated above, the Subsidiary will not in all cases invest in the futures contracts included in the Benchmark. The Fund, through the Subsidiary, may have a higher or lower exposure to any sector or component within the Benchmark at any time.

[20] The Exchange states that 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 Exchange represents that 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.

[21] The Exchange represents that 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 is not a member of the Intermarket Surveillance Group (''ISG'') or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Exchange further represents that all commodity-linked instruments in which the Subsidiary invests will be traded on ISG member markets.

[22] 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).

[23] *See* Notice, *supra* note 3; *see also* Registration Statement, *supra* note 6.

[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78k(a)(1)(C)(iii).

and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares. In addition, the Intraday Indicative Value,[27] as defined in Rule 5735(c)(3), will be available on the NASDAQ OMX Information LLC proprietary index data service [28] 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.[29] 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 identities and quantities of the portfolio of securities, Commodities, and other assets held by the Fund and the Subsidiary (the ''Disclosed Portfolio,'' as defined in Nasdaq Rule 5735(c)(2)) that will form the basis for the Fund's calculation of NAV at the end of the business day.[30] In addition, the Custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments composing the creation basket, as well as the estimated cash component (if any), for that day. The Fund's 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 business.[31] 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. 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. Specifically, pricing information for Commodities, ETFs (other than Commodities), and closed-end funds will be available on the exchanges on which they are traded and through subscription services. Pricing information for fixed income securities and money market instruments will be available through subscription services and broker-dealer firms. 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. Information relating to the Benchmark, including its constituents, weightings, and changes to its constituents will be available on the Web site of CS. The Fund's Web site (*www.globalxfunds.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. 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.[32] Trading in the Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, the Exchange represents that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer.[33] Prior to

[27] According to the Exchange, the Intraday Indicative Value will reflect an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio) and will be based upon the current value of the components of the Disclosed Portfolio.

[28] The NASDAQ OMX Global Index Data Service (''GIDS'') is a data feed service that provides real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs.

[29] Regular Market Session means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m. *See* Nasdaq Rule 4120(b)(4)(D).

[30] 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), the identity of the security, commodity, or other asset or instrument underlying the holding, if any; 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.

[31] 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. According to the Exchange, the Fund's and the Subsidiary's investments will be generally valued using market valuations. If available, debt securities and money market instruments 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 security is actively traded. The third-party pricing agents may also value debt securities 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 securities. Debt obligations 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 security will be valued based on values supplied by independent brokers or by fair value pricing. Futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded. Redeemable securities issued by U.S. registered open-end investment companies will be valued at the investment company's applicable NAV, with the exception of ETFs, which will be priced as described below. In the case of shares of funds that are not traded on an exchange, a market valuation means such fund's published NAV per share. Equity securities (including exchange-traded commodity-linked instruments, other ETFs, and closed-end funds) 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). 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's 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.

[32] These reasons may include: (1) The extent to which trading is not occurring in the securities, Commodities, or 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. With respect to trading halts, the Exchange states that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

[33] *See supra* note 7. The Exchange further represents, among other things, that in the event the

Continued

the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that trading in the Shares will be subject to existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[34] The Exchange further 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 Exchange states that FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the exchange-traded securities, commodity-linked instruments, and futures contracts held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG and that FINRA may obtain trading information regarding trading in the Shares and in the exchange-traded securities, commodity-linked instruments, and futures contracts 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 securities, commodity-linked instruments, and futures contracts 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. The Exchange states that 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.

The Exchange represents that the Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

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

(3) 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, and 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.

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

(5) For initial and continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A–3 under the Act.[35]

(6) The Fund's investments will be consistent with its respective investment objective. 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.

(7) 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, in accordance with Commission guidance.

(8) 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 is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(9) All commodity-linked instruments in which the Subsidiary invests will be traded on ISG member markets. Commodity-linked instruments include: (a) Exchange-traded funds ("ETFs") that provide exposure to commodities as would be listed under Nasdaq Rules 5705 and 5735; and (b) 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).

(10) The Fund and the Subsidiary will not invest in options contracts, swaps, or forward investments. In addition, the Fund will not invest directly in Commodities.

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

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

Sub-Adviser is or becomes a registered broker-dealer or becomes affiliated with a broker-dealer, such Sub-Adviser will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio. *See id.* The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and the 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.

[34] The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[35] *See* 17 CFR 240.10A–3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act [36] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NASDAQ–2014–059), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

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[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72730; File No. SR–BYX–2014–013]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.24(a)(2) to Include Riskless Principal Orders To the Types of Orders that May Qualify as Retail Orders under the Retail Price Improvement Program

July 31, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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

The Exchange proposes to amend Exchange Rule 11.24(a)(2) to include riskless principal orders to the types of orders that may qualify as Retail Orders under the Exchange's Retail Price Improvement Program (the ''RPI Program''). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 amend Exchange Rule 11.24(a)(2) to include riskless principal orders to the types of orders that may qualify as Retail Orders under the Exchange's RPI Program.[6] The Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow.[7] Under the RPI Program, all Exchange Users [8] are permitted members to submit Retail Price Improvement Orders (''RPI Orders'') [9] which are designed to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO'', and together with the Protected NBB, the ''Protected NBBO'').[10] The Exchange believes that the RPI Program promotes competition for retail order flow by allowing Exchange Users to submit RPI Orders to interact with Retail Orders.

Exchange Rule 11.24(a)(2) currently defines a Retail Order as, ''an agency order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of the market and the order does not originate from a trading algorithm or any other computerized methodology.'' The Exchange believes that its definition of a Retail Order is unnecessarily restrictive compared to that of other exchanges because it does not include ''riskless principal orders'' in its definition.[11] The Exchange believes that its comparatively narrow definition may create confusion among the Exchange's Members,[12] preventing

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] The Exchange notes that in order to qualify as a Retail Order, a riskless principal order must satisfy the criteria set forth in FINRA Rule 5320.03.

[7] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BYX–2012–019). *See also* Securities Exchange Act Release No. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR–BYX–2014–001) (Notice of Filing and Immediate Effectiveness extending pilot period until January 31, 2015).

[8] A ''User'' is defined ''as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.'' BYX Rule 1.5(cc).

[9] A ''Retail Price Improvement Order'' is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as such. *See* Rule 11.24(a)(3).

[10] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (''NBB'') and national best offer (''NBO'', together with the NBB, the ''NBBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[11] The Exchange notes that other market centers include ''riskless principal orders'' as part of their definitions of ''Retail Orders.'' *See, e.g.,* Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR–NASDAQ–2012–129); Securities Exchange Act Release No. 69103 (March 11, 2013), 78 FR 16547 (March 15, 2013) (SR–NYSE–2013–20); Securities Exchange Release No. 69104 (March 11, 2013), 78 FR 16556 (March 15, 2013) (SR–NYSEMKT–2013–22); and Securities Exchange Act Release No. 69378 (April 15, 2013), 78 FR 23617 (April 19, 2013) (SR–EDGX–2013–13).

[12] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted

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