For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72809; File No. SR–NASDAQ–2014–063]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of the Shares of the Arrow DWA Balanced ETF, Arrow DWA Tactical ETF and Arrow DWA Tactical Yield ETF of Arrow Investments Trust

August 11, 2014.

I. Introduction

On June 23, 2014, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Arrow DWA Balanced ETF, Arrow DWA Tactical ETF and Arrow DWA Tactical Yield ETF (each a ''Fund'' and, collectively, ''Funds'') under Nasdaq Rule 5735. On June 26, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 3, 2014.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange has made the following representations and statements in describing the Funds and their respective investment strategies, including other portfolio holdings and investment restrictions.[5]

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735 (''Managed Fund Shares''), which governs the listing and trading of Managed Fund Shares. Each Fund is a series of the Arrow Investments Trust (''Trust'').[6] Arrow Investment Advisors, LLC is the investment adviser (''Adviser'') to the Funds.[7] Gemini Fund Services, LLC will act as the administrator and transfer agent to the Funds. Brown Brothers Harriman & Co. (''Custodian'') will act as the custodian and transfer agent to the Funds. Northern Lights Distributors, LLC is the principal underwriter and distributor of each Fund's Shares.

Arrow DWA Balanced ETF

The Exchange represents that the Fund's primary investment objective is to seek to achieve an appropriate balance between long-term capital appreciation and capital preservation. In pursuing its investment objective, the Fund will invest in other ETFs[8] that each invests primarily in domestic and foreign (including emerging markets) (i) equity securities[9] of any market capitalization, (ii) fixed income securities[10] of any credit quality, or (iii) alternative assets.[11] In addition, the Fund will invest in commodity futures through a wholly-owned and controlled Cayman subsidiary (''Balanced Subsidiary''). The Fund's fixed income securities may be rated below investment grade (rated BB+ or lower by Standard & Poor's Ratings Services (''S&P'') or comparably rated by another nationally recognized statistical rating organization (''NRSRO''), also known as ''high yield'' or ''junk'' bonds, and in unrated debt securities determined by the Adviser to be of comparable quality.

The Exchange states that the Fund is a ''fund of funds,'' which means that it primarily invests in ETFs; however, the Adviser may elect to invest directly in the types of securities described above. The Adviser may elect to make these direct investments when it is cost effective for the Fund to do so (such as when the Fund reaches a size sufficient to effectively purchase the underlying securities held by the ETFs in which it invests, allowing the Fund to avoid the costs associated with indirect investments). The Adviser uses technical analysis[12] to allocate the Fund's portfolio among the asset classes described above.

The Exchange states that under normal market conditions,[13] the Fund will invest:

- From 25% to 65% in ETFs that invest in equity securities;
- from 25% to 65% in ETFs that invest in fixed income securities; and
- from 10% to 40% in ETFs that invest in alternative assets.

The Fund will have the ability to invest up to 25% of its total assets in the Balanced Subsidiary. The Balanced Subsidiary will invest primarily in commodity futures, as well as fixed income securities and cash equivalents, which are intended to serve as margin

[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified that the Arrow Investments Trust will issue and sell shares of the Arrow DWA Balanced ETF, Arrow DWA Tactical ETF and Arrow DWA Tactical Yield ETF only in aggregations of 100,000 shares.

[4] *See* Securities Exchange Act Release No. 72493 (June 27, 2014), 79 FR 38088 (''Notice'').

[5] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (''NAV'') calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* note 4 and *infra* note 6, respectively.

[6] *See* Post-Effective Amendment No. 7 to Registration Statement on Form N–1A for the Trust (File Nos. 333–178164 and 811–22638) (''Registration Statement'').

[7] The Exchange states that the Adviser is not a broker-dealer, but it is affiliated with a broker-dealer. The Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio. The Exchange further states that, in the event (a) the Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or 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 ETFs in which the Fund may invest include Index Fund Shares and Portfolio Depositary Receipts (as described in Nasdaq Rule 5705(a) and (b)) and Managed Fund Shares (as described in Nasdaq Rule 5735).

[9] The Fund defines ''equity securities'' to be exchange-traded common and preferred stocks.

[10] The Fund defines ''fixed income securities'' to be bonds, notes or debentures.

[11] The Fund defines ''alternative assets'' to be investments that are historically uncorrelated to either equity or fixed income investments, which are commodity futures, exchange-traded master limited partnerships (''MLPs'') and real estate-related securities, which include foreign and domestic exchange-traded real estate investment trusts (''REITs'') or exchange-traded real estate operating companies (''REOCs'').

[12] Technical analysis is the method of evaluating securities by analyzing statistics generated by market activity, such as past prices and trading volume, in an effort to determine probable future prices.

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

or collateral for the Balanced Subsidiary's investments in commodity futures.

The Fund will invest in ETFs within specific asset classes when the technical models used by the Adviser indicate a high probability that the applicable asset classes and ETFs are likely to outperform the applicable universe. The Fund will sell interests or reduce investment exposure among an asset class or ETF when the technical models used by the Adviser indicate that such asset class or ETF is likely to underperform the applicable universe. The Fund may be more heavily invested in fixed-income ETFs, cash positions and similar securities when the technical models indicate these assets should significantly outperform the equity and/or alternative asset classes.

The Exchange states that, in general, the Fund's investments in equity securities are intended to achieve the capital appreciation component of its investment objective and the Fund's investments in fixed income securities are intended to achieve the capital preservation component of its investment objective. Under normal market conditions, the Adviser expects that the Fund will invest a combined minimum of 35% in fixed-income securities and in alternative assets. The Fund's investments in alternative assets are intended to enable the portfolio to be less reliant on fixed-income investments for reducing volatility and equities for increasing returns. The Adviser may engage in frequent buying and selling of portfolio securities to achieve the Fund's investment objective.

The Exchange states that the Fund seeks to achieve its investment objective by implementing a proprietary technical asset allocation (''TAA'') model. The Adviser will overweight asset classes, rotation strategies, and underlying ETFs exhibiting positive relative strength, and underweight asset classes, rotation strategies, and underlying ETFs exhibiting negative relative strength. In essence, TAA works by reallocating at different times in response to the changing patterns of returns available in the markets. This methodology does not attempt to predict the future; it simply reacts to pattern changes in the marketplace at any given time. This methodology allows the Fund to be adaptive to current market conditions. The tactical model relies on a number of technical indicators when making allocation decisions for the Fund. The Adviser utilizes relative strength as the primary technical indicator to tactically allocate assets both within and across asset classes and rotation strategies. The relative strength indicator is important because it adapts to the changing market conditions. Relative strength measures the likelihood that an ETF or a group of ETFs will outperform the appropriate base index. When the indicator is moving up, it shows that the ETF or group of ETFs is performing better than the base index. When the indicator is moving down, it shows that the ETF or group of ETFs is performing worse than the base index (*i.e.,* not rising as fast or falling faster).[14]

The Exchange states that the Adviser has discretion to add to or delete from the universe of eligible ETFs for each strategy based on holdings, expense ratio, volume, liquidity, new product availability, and other factors that can positively contribute to achieving the Fund's investment objectives.

Arrow DWA Tactical ETF

The Exchange states that the Fund's primary investment objective is to seek to achieve long-term capital appreciation with capital preservation as a secondary objective. In pursuing its investment objective, the Fund will invest in other ETFs [15] that each invests primarily in domestic and foreign (including emerging markets) (i) equity securities [16] of any market capitalization, (ii) fixed-income securities [17] of any credit quality, or (iii) alternative assets.[18] In addition, the Fund will invest in commodity futures through a wholly-owned and controlled Cayman subsidiary (''Tactical Subsidiary''). The Fund's fixed income securities may be rated below investment grade (rated BB+ or lower by S&P or comparably rated by another NRSRO, also known as ''high yield'' or ''junk'' bonds, and in unrated debt securities determined by the Adviser to be of comparable quality.

The Exchange represents that the Fund is a ''fund of funds,'' which means that it primarily invests in ETFs; however, the Adviser may elect to invest directly in the types of securities described above. The Adviser may elect to make these direct investments when it is cost effective for the Fund to do so (such as when the Fund reaches a size sufficient to effectively purchase the underlying securities held by the ETFs in which it invests, allowing the Fund to avoid the costs associated with indirect investments). The Adviser uses technical analysis to allocate the Fund's assets among the asset classes described above.[19]

The Exchange states that under normal market conditions, the Fund will invest:

- From 0% to 100% of its assets in ETFs that invest in equity securities;
- From 0% to 100% of its assets in ETFs that invest in fixed-income securities; and
- From 0% up to 90% of its assets in ETFs that invest in alternative assets.

The Exchange states that the Fund will have the ability to invest up to 25% of its total assets in the Tactical Subsidiary. The Tactical Subsidiary will invest primarily in commodity futures, as well as fixed-income securities and cash equivalents, which are intended to serve as margin or collateral for the Tactical Subsidiary's investments in commodity futures.

The Exchange states that the Fund will invest in ETFs within specific asset classes when the technical models used by the Adviser indicate a high probability that the applicable asset classes and ETFs are likely to outperform the applicable universe. The Fund will sell interests or reduce investment exposure among an asset class or ETF when the technical models used by the Adviser indicate that such asset class or ETF is likely to underperform the applicable universe. The Fund may invest more heavily in fixed-income ETFs, cash positions and similar securities when the technical models indicate these assets should significantly outperform the equity and/or alternative asset classes.

The Exchange states that, in general, the Fund's investments in equity securities are intended to achieve the capital appreciation component of the Fund's investment objectives. At times, the Fund may invest in fixed-income securities in order to achieve the capital preservation component of the Fund's investment objectives. The Fund's investments in alternative assets are intended to enable the portfolio to be less reliant on fixed-income investments for reducing volatility and equities for increasing returns. The Adviser may engage in frequent buying and selling of portfolio securities to achieve the Fund's investment objectives.

The Exchange states that the Fund seeks to achieve its investment objectives by implementing a proprietary TAA model. The Adviser will overweight asset classes, rotation

[14] For example, in the sector rotation strategy, the Adviser creates a sector-based index to compare all available sector ETFs for investment in the Fund. The performance of each ETF is compared to the base index and ranked. The Adviser generally purchases the ETFs that demonstrate the highest-ranked relative strength and sells any positions that are not included in that list.

[15] *See supra* note 8.

[16] *See supra* note 9.

[17] *See supra* note 10.

[18] *See supra* note 11.

[19] *See supra* note 12.

strategies and underlying ETFs exhibiting positive relative strength and underweight asset classes, rotation strategies and underlying ETFs exhibiting negative relative strength. The tactical model relies on a number of technical indicators when making allocation decisions for the Fund. The Adviser utilizes relative strength as the primary technical indicator to tactically allocate assets both within and across asset classes and rotation strategies. The relative strength indicator is important because it adapts to the changing market conditions. Relative strength measures the likelihood that an ETF or a group of ETFs will outperform the appropriate base index. When the indicator is moving up, it shows that the ETF or group of ETFs is performing better than the base index. When the indicator is moving down, it shows that the ETF or group of ETFs is performing worse than the base index (*i.e.,* not rising as fast or falling faster).[20]

The Exchange states that the Adviser has discretion to add to or subtract from the universe of eligible ETFs for each strategy based on holdings, expense ratio, volume, liquidity, new product availability and other factors that can positively contribute to achieving the Fund's investment objectives.

The Subsidiaries

The Exchange represents that the Balanced Fund and Tactical Fund each has the ability to invest up to 25% of its total assets in the Balanced Subsidiary and the Tactical Subsidiary, respectively (each a ''Subsidiary''; together, ''Subsidiaries''). Each Subsidiary will invest primarily in commodity futures, as well as fixed-income securities and cash equivalents, which are intended to serve as margin or collateral for each Subsidiary's investments in commodity futures. Each Subsidiary may have both long and short positions in commodities futures. However, for a given commodity, each Subsidiary will have a net long exposure. Each Subsidiary will also be advised by the Adviser.[21]

By investing in commodities futures indirectly through the applicable Subsidiary, the Exchange states that each of the Balanced Fund and the Tactical Fund will obtain exposure to the commodities markets within the federal tax requirements that apply to the Fund. Investment in each Subsidiary is expected to provide the applicable Fund with exposure to the commodities markets within the limitations of the federal tax requirements of Subchapter M of the Internal Revenue Code.

Because each of the Balanced Fund and the Tactical Fund may invest up to 25% of its assets in its respective Subsidiary, each Fund may be considered to be investing indirectly in such investments through its Subsidiary, and references to each of the Balanced Fund and Tactical Fund may also include its Subsidiary. When viewed on a consolidated basis, each Subsidiary will be subject to the same investment restrictions and limitations, and follow the same compliance policies and procedures, as the applicable Fund.

The Exchange represents that as a result of the instruments that will be indirectly held by each of the Balanced Fund and the Tactical Fund, the Adviser has registered as a commodity pool operator[22] and is also a member of the National Futures Association (''NFA''). Each of the Balanced Fund, Tactical Fund, and the Subsidiaries are subject to regulation by the Commodity Futures Trading Commission and NFA, and to additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

Arrow DWA Tactical Yield ETF

The Exchange states that the Fund's primary investment objective is to seek high current income with an appropriate balance between long-term capital appreciation and capital preservation. In pursuing its investment objective, the Fund will invest in other ETFs[23] that each invest in domestic and foreign (including emerging markets) (i) equity securities[24] of any market capitalization or (ii) fixed-income securities[25] of any credit quality. The Fund also invests indirectly in these asset classes through various exchange-traded products (''ETPs'')[26] and exchange-traded closed-end funds, and directly through individual securities. In order to mitigate the settlement risk of the foreign denominated securities in which it invests due to currency fluctuations, the Fund may also invest up to 25% of its net assets in Spot Forex futures.

The Exchange states that the Fund will maintain two income strategies that focus on (i) securities that generate ''high beta yield,'' consisting of securities correlated to equities based on a proprietary methodology, and (ii) securities that generate ''low beta yield,'' consisting of securities less correlated to equities based on a proprietary methodology. Beta is a measure of the price volatility, or risk, of a security or a portfolio in comparison to the market as a whole. A security's correlation to equities is a measure of the performance similarity of the security to the S&P 500 index. The high beta strategy is a composite of securities that are selected based on their credit and equity risk premiums characteristics. The low beta yield strategy is a composite of securities that are selected based on their inflation, interest, and credit risk characteristics. The Fund uses a proprietary selection methodology designed to identify securities that demonstrate strong relative strength characteristics within each strategy. The Fund will then utilize a quantitative methodology that relies on economic and fundamental factors to tactically underweight and overweight the income strategies.

The Exchange represents that the Fund will, under normal market conditions, invest as follows:

- From 20% to 80% in the Low Beta (LB). The LB will be comprised of equity and fixed income securities, including ETPs that invest in international and domestic securities; and
- From 20% to 80% in the High Beta (HB). The HB will be in equity and fixed income securities, including ETPs that invest in international and domestic securities.

The Exchange states that the Fund expects to be a ''fund of funds,'' which means that it primarily invests in ETFs, ETPs, and closed-end funds; however, the Adviser may elect to invest directly in the asset classes described above. The Adviser may elect to make these direct

[20] *See supra* note 14.

[21] Neither Subsidiary will be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') nor will be directly subject to its investor protections, except as noted in the Registration Statement. However, each Subsidiary will be wholly-owned and controlled by the applicable Fund and will be advised by the Adviser. Therefore, each Fund's ownership and control of its respective Subsidiary will prevent the applicable Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Board of Trustees of the Trust (''Board'') will have oversight responsibility for the investment activities of each Fund, including its expected investment in the applicable Subsidiary, and the Fund's role as the sole shareholder of the applicable Subsidiary. The Adviser will receive no additional compensation for managing the assets of each Subsidiary. Each 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 Funds.

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

[23] *See supra* note 8.

[24] The Fund defines equity securities to be exchange-traded common and preferred stocks and exchange-traded REITs.

[25] *See supra* note 10.

[26] The ETPs in which the Fund may invest include exchange-traded currency trusts (as described in Nasdaq Rule 5711(e)) and exchange-traded notes (''ETNs'') (as described in Nasdaq Rule 5730).

investments when it is cost effective for the Fund to do so (such as when the Fund reaches a size sufficient to effectively purchase the underlying securities held by the ETFs, ETPs, or closed-end Funds in which it invests, allowing the Fund to avoid the costs associated with indirect investments).

All Funds

The Exchange represents that in certain situations or market conditions, a Fund may temporarily depart from its normal investment policies and strategies, provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, a Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress. The Funds may borrow money from a bank as permitted by the 1940 Act or other governing statute, by applicable rules thereunder, or by Commission or other regulatory agency with authority over the Funds, but only for temporary or emergency purposes. The use of temporary investments is not a part of a principal investment strategy of the Funds.

The Exchange represents that each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). Each 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 a 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 Exchange represents that each Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry.

The Exchange states that the Funds will be classified as ''non-diversified'' investment companies under the 1940 Act, and that the Funds intend to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code.

The Funds will not invest in options or swaps.

The Exchange represents that each Fund's investments and each Subsidiary's investments will be consistent with its (or its applicable Fund's) respective investment objective and, although certain derivative investments will have a leveraging effect on the Funds and Subsidiaries, the Funds and Subsidiaries will not seek leveraged returns (*e.g.,* 2X or −3X).

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 Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[28] 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 Funds 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 Act,[29] 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 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,[30] as defined in Nasdaq Rule 5735(c)(3), of each Fund will be available on the NASDAQ OMX Information LLC proprietary index data service, and 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.[31] On each business day, before commencement of trading in Shares in the Regular Market Session [32] on the Exchange, the Funds will disclose on their Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(c)(2)) held by each Fund that will form the basis for each Fund's calculation of NAV at the end of the business day.[33] 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, as well as amount of cash (if any), constituting the creation basket for each Fund for that day. The NAV of each Fund will be determined once each business day, normally as of the close of trading of the New York Stock Exchange, generally, 4:00 p.m. Eastern Time.[34] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intraday, executable price quotations on the securities and other assets held by the Funds and Subsidiaries will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intraday price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other

[27] 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).

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[30] According to the Exchange, the Intraday Indicative Value reflects an estimated intraday value of each Fund's portfolio. The Intraday Indicative Value will be based upon the current value for the components of a Disclosed Portfolio.

[31] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service. The Exchange represents that GIDS offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs and that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[32] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m., Eastern Time).

[33] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of securities and other assets held by each Fund and each Subsidiary and the characteristics of such assets. The Web site and information will be publicly available at no charge.

[34] NAV will be calculated by deducting all of a Fund's liabilities from the total value of its assets and dividing the result by the number of Shares outstanding, rounding to the nearest cent.

investors. Pricing information for exchange-traded securities such as common and preferred stocks, ETFs, ETPs, ETNs, closed-end funds, futures contracts, REITs, MLPs, and REOCs will be publicly available from the Web sites of the exchanges on which they trade, on public financial Web sites, and through subscription services such as Bloomberg and Thompson Reuters. Pricing information regarding debt securities (including high yield fixed-income securities, bonds, notes, and debentures) will be available through subscription services such as Markit, Bloomberg, and Thompson Reuters. The Funds' Web site will include a form of the prospectus for the Funds 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. Trading in Shares of the Funds will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pause provisions under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,[35] and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which trading in Shares of the Funds may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[36] In addition, the Exchange states that the Adviser is not a broker-dealer, but it is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.[37] The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[38] 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 represents that FINRA, on behalf of the Exchange, will communicate as needed regarding trading information it can obtain relating to the Shares and other exchange-traded securities and instruments held by the Funds with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and FINRA may obtain trading information regarding trading in the Shares and exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes all U.S. national securities and certain futures exchanges, or are parties to 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 each Fund reported to FINRA's Trade Reporting and Compliance Engine. Prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed 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 the following:

(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 FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) At all times, 90% of each Fund's exchange-traded assets will be securities that trade in markets that are members of the ISG, which includes all U.S. national securities and certain futures exchanges, or are parties to a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss 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

[35] These reasons may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolios of the Funds; 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 may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.

[36] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[37] *See supra* note 7. 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 its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients, as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with 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.

[38] 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.

recommending transactions in the Shares to customers; (c) how and by whom information regarding the Intraday Indicative Value and 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.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act.[39]

(7) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). Each 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 a Fund's net assets are held in illiquid assets.

(8) The Funds will not invest in options or swaps.

(9) Each Fund's investments and each Subsidiary's investments will be consistent with its (or its applicable Fund's) respective investment objective and, although certain derivative investments will have a leveraging effect on the Funds and Subsidiaries, the Funds and Subsidiaries will not seek leveraged returns (*e.g.,* 2X or −3X).

(10) A minimum of 100,000 Shares of each Fund 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.

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[40] 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,[41] that the proposed rule change (SR–NASDAQ–2014–063), 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.[42]

Kevin M. O'Neill,

Deputy Secretary.

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[39] *See* 17 CFR 240.10A–3.

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72806; File No. SR–Phlx–2014–51]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Singly Listed Options

August 11, 2014.

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 August 1, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Section III of the Pricing Schedule which pertains to Singly Listed Options fees.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.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 aspects of such statements.

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

1. Purpose

The purpose of this filing is to amend Section III of the Exchange's Pricing Schedule entitled ''Singly Listed Options'' to: (1) Amend Options Transaction Charges; (ii) delete NASDAQ OMX Alpha Indexes(TM) (''Alpha Indexes''),[4] MSCI Index Options,[5] and Treasury Securities[6]

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

[2] 17 CFR 240.19b–4.

[3] Singly Listed Options fees includes options overlying currencies, equities, ETFs, ETNs treasury securities and indexes not listed on another exchange.

[4] Alpha Indexes measure relative total returns of one stock and one exchange-traded fund share (''ETF'') underlying options which are also traded on the Exchange (each such combination of two components is referred to as an ''Alpha Pair''). The first component identified in an Alpha Pair (the ''Target Component'') is measured against the second component identified in the Alpha Pair (the ''Benchmark Component''). Alpha Index Options contracts will be exercised European-style and settled in U.S. dollars. *See* Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2001) (SR–Phlx–2010–176).

[5] The Exchange filed to list options on the MSCI EM Index. The MSCI EM Index is a free float-adjusted market capitalization index consisting of large and midcap component securities from countries classified by MSCI as ''emerging markets,'' and is designed to measure equity market performance of emerging markets. The index consists of component securities from the following 21 emerging market countries: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey. *See* Securities Exchange Act Release No. 66420 (February 17, 2012), 77 FR 11177 (February 24, 2012) (SR–Phlx–2011–179) (an order granting approval of the proposal to list and trade options on the MSCI EM Index). The Exchange also filed to list options on the MSCI EAFE Index. The MSCI EAFE Index is a free float-adjusted market capitalization index that is designed to measure the equity market performance of developed markets, excluding the U.S. and Canada. The MSCI EAFE Index consists of component securities from the following twenty-two (22) developed market countries: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. *See* Securities Exchange Act Release No. 66569 (March 9, 2012), 77 FR 15409 (March 15, 2014) (SR–Phlx–2012–28).

[6] Subsection (a)(1) of Phlx Rule 1001D states that the term ''Treasury securities'' (also known as Treasury debt securities) means a bond or note or other evidence of indebtedness that is a direct obligation of, or an obligation guaranteed as to principal or interest by, the United States or a corporation in which the United States has a direct or indirect interest (except debt securities guaranteed as to timely payment of principal and interest by the Government National Mortgage

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