

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66489; File No. SR-NASDAQ-2012-004)

February 29, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the Emerging Markets Corporate Bond Fund of the WisdomTree Trust

I. Introduction

On January 4, 2012, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares (“Shares”) of the WisdomTree Emerging Markets Corporate Bond Fund (“Fund”) of the WisdomTree Trust (“Trust”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the Federal Register on January 24, 2012.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 15, 2005. The Fund is registered with the Commission as an investment company and has filed a registration statement on Form N-1A

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

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

<sup>3</sup> See Securities Exchange Act Release No. 66175 (January 18, 2012), 77 FR 3520 (“Notice”).

(“Registration Statement”) with the Commission.<sup>4</sup> WisdomTree Asset Management, Inc. is the investment adviser (“Adviser”) to the Fund,<sup>5</sup> and Western Asset Management Company serves as sub-adviser for the Fund (“Sub-Adviser”).<sup>6</sup> The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust, and ALPS Distributors, Inc. serves as the distributor for the Trust.<sup>7</sup> The Exchange states that, while the Adviser is not affiliated with any broker-dealer, the Sub-Adviser is affiliated with multiple broker-dealers and has implemented a “fire wall” with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In addition, Sub-Adviser personnel who make decisions regarding the Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund’s portfolio.<sup>8</sup>

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<sup>4</sup> See Post-Effective Amendment No. 56 to Registration Statement on Form N-1A for the Trust, dated July 1, 2011 (File Nos. 333-132380 and 811-21864).

<sup>5</sup> WisdomTree Investments, Inc. is the parent company of the Adviser.

<sup>6</sup> The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

<sup>7</sup> The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). See Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812-13458). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust’s application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

<sup>8</sup> See Nasdaq Rule 5735(g). The Exchange further represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed

## WisdomTree Emerging Markets Corporate Bond Fund

The Fund seeks to provide a high level of total return consisting of both income and capital appreciation. To achieve its objective, the Fund will invest in debt securities of corporations that are domiciled or economically tied to emerging market countries.<sup>9</sup>

Specifically, the Fund intends to achieve its investment objectives through direct and indirect investments in Corporate and Quasi-Sovereign Debt. For these purposes, Corporate and Quasi-Sovereign Debt includes fixed-income securities of emerging market countries, such as bonds, notes, or other debt obligations, including loan participation notes (“LPNs”),<sup>10</sup> as well as other

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to prevent the use and dissemination of material, non-public information regarding such portfolio.

<sup>9</sup> According to the Adviser, while there is no universally accepted definition of what constitutes an “emerging market,” in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Adviser and Sub-Adviser look at a variety of commonly-used factors when determining whether a country is an “emerging” market. In general, the Adviser and Sub-Adviser consider a country to be an emerging market if:

- (1) it is either (a) classified by the World Bank in the lower middle or upper middle income designation for one of the past 5 years (i.e., per capita gross national product of less than U.S. \$9,385), (b) has not been a member of the Organisation for Economic Co-operation and Development (“OECD”) for the past five years, or (c) classified by the World Bank as high income and a member in OECD in each of the last five years, but with a currency that has been primarily traded on a non-delivered basis by offshore investors (e.g., Korea and Taiwan); and
- (2) the country’s debt market is considered relatively accessible by foreign investors in terms of capital flow and settlement considerations.

This definition could be expanded or exceptions made depending on the evolution of market and economic conditions.

<sup>10</sup> The Fund may invest in LPNs with a minimum outstanding principal amount of \$200 million that the Adviser or Sub-Adviser deems to be liquid. The Adviser represents that LPNs denominated in U.S. dollars are the predominant form of corporate debt financing in certain emerging markets, particularly in Russia, where they constitute approximately 70% of the corporate debt market (approximately \$40 billion outstanding). In aggregate, LPNs represented over 11% of the JP Morgan Emerging Markets Corporate Bond Index

instruments, such as derivative instruments collateralized by Money Market Securities as described below. Quasi-Sovereign Debt, specifically, refers to fixed income securities or debt obligations that are issued by companies or agencies that may receive financial support or backing from the local government (collectively, “Quasi-Sovereign Institutions”).

Under normal circumstances,<sup>11</sup> the Fund will invest at least 80% of its net assets in Corporate and Quasi-Sovereign Debt that are fixed income securities. Fixed income securities include debt instruments, such as bonds, notes, and other obligations, denominated in U.S. dollars or local currencies. Fixed income securities include Money Market Securities as defined below. Fixed income securities do not include derivatives.

The Fund intends to provide exposure across several geographic regions and countries by investing in Corporate and Quasi-Sovereign Debt from the following regions: Asia, Latin America, Eastern Europe, Africa, and the Middle East. Within these regions, the Fund is likely to invest in countries such as: Argentina, Brazil, Chile, China, Colombia, Hong Kong, India, Indonesia, Israel, Jamaica, Kazakhstan, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Russia, Singapore, Saudi Arabia, South Africa, South Korea, Taiwan, Thailand, Trinidad & Tobago, Turkey, Ukraine, and the United Arab Emirates. This list may change based on market developments. The Fund’s credit exposures are consistently monitored from a risk perspective

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as of November 30, 2011. The Exchange states that LPNs are typically eligible for settlement at Eurcolear, Clearstream, or in the U.S., through The Depository Trust Company. Moreover, intra-day quotations in LPNs are generally available from major broker-dealers and data vendors, such as Bloomberg.

<sup>11</sup> The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income 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.

and may be modified, reduced, or eliminated. The Fund's exposure to any single issuer generally will be limited to 10% of the Fund's assets. The percentage of the Fund's assets in a specific region, country, or issuer will change from time to time. The Fund's exposure to any one country generally will be limited to 30% of the Fund's assets, though this percentage may change in response to economic events and changes to the credit ratings of the Corporate and Quasi-Sovereign Debt of such countries.

The universe of emerging market Corporate and Quasi-Sovereign Debt currently includes securities that are rated "investment grade" as well as "non-investment grade." The Fund intends to provide a broad exposure to emerging market Corporate and Quasi-Sovereign Debt and therefore will invest in both investment grade and non-investment grade securities. The Fund expects to have 65% or more of its assets invested in investment grade securities, though this percentage may change in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 15% of its assets in securities rated B or below by Moody's, or equivalently rated by S&P or Fitch. Although the Fund does not intend to invest in unrated securities, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality. In determining whether a security is of "comparable quality," the Adviser and Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities.

The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to

be sufficiently liquid.<sup>12</sup> The Fund will only buy performing debt securities and will not buy distressed debt. Generally a corporate bond must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than \$200 million par amount outstanding if (1) the Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (for example, broker-dealer quotations or trading history of the security or other securities issued by the issuer), (2) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund, and (3) such investment is deemed consistent with the Fund's goal of providing broad exposure to a broad range emerging markets countries and issuers.

The Fund may invest in Corporate and Quasi-Sovereign Debt with effective or final maturities of any length, but the Fund will seek to keep the average effective duration of its

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<sup>12</sup> The Adviser represents that the size and liquidity of the global market for corporate bonds of emerging market issuers generally has been increasing in recent years. The aggregate dollar amount of emerging market corporate bonds traded in the first two quarters of 2011 (\$490 billion) represented a 36.4% increase compared to the first two quarters of 2010 (\$359 billion). This growth is consistent with the 71% increase in volume for calendar year 2010 (\$879.45 billion) over 2009. The \$514 billion traded in 2009 represented a substantial increase over the amount traded in 2008 (\$380 billion). Turnover in emerging market corporate debt in the first two quarters of 2011 was approximately 14.2% of the overall volume of emerging market debt of \$3.443 trillion. In 2010, emerging market corporate bonds accounted for 16% of the total \$6.765 trillion of emerging market debt trading. This represents a meaningful increase relative to calendar year 2009 where turnover in emerging market corporate debt accounted for 12% of the overall volume of emerging market debt (\$4.445 trillion). These figures compared to only a 9% share in 2008. (Source: Emerging Markets Traders Association Press Release(s), December 8, 2010, August 12, 2010, May 20, 2010, March 8, 2010, March 22, 2011, June 17, 2011 and August 22, 2011).

portfolio between two and ten years under normal market conditions. Effective duration is an indication of an investment's interest rate risk or how sensitive an investment or a fund is to changes in interest rates. Generally, a fund or instrument with a longer effective duration is more sensitive to interest rate fluctuations, and, therefore, more volatile, than a fund with a shorter effective duration. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Fund intends to invest in Corporate and Quasi-Sovereign Debt of at least 13 non-affiliated issuers and will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government or their respective agencies and instrumentalities or government-sponsored enterprises).

#### Money Market Securities

The Fund intends to invest in Money Market Securities in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, and to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. Under normal circumstances, the Fund may invest up to 25% of its net assets in Money Market Securities, although it may exceed this amount where the Adviser or Sub-Adviser deems such investment to be necessary or advisable, due to market conditions. For these purposes "Money Market Securities" include: short-term, high quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by U.S. government securities; money market mutual funds; and deposit and other obligations of U.S. and non-U.S. banks and financial

institutions. All Money Market Securities acquired by the Fund will be rated investment grade, except that the Fund may invest in unrated Money Market Securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to money market securities rated investment grade.

#### Derivative Instruments and Other Investments

The Fund may use derivative instruments as part of its investment strategy. Examples of derivative instruments include forward currency contracts, interest rate swaps, total return swaps, credit linked notes, and combinations of investments that provide similar exposure to local currency debt, such as investment in U.S. dollar denominated bonds combined with forward currency positions or swaps. If forward currency and swaps positions are not being implemented in combination with U.S. dollar denominated bonds, the Fund's use of forward contracts and swaps will be combined with investments in short-term, high quality U.S. money market instruments and will be designed to provide exposure similar to investments in local currency deposits.

The Fund expects that no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. For example, the Fund may engage in swap transactions that provide exposure to corporate debt or interest rates. The Fund also may buy or sell listed currency futures contracts.<sup>13</sup>

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<sup>13</sup> The exchange-listed futures contracts in which the Fund may invest may be listed on exchanges in the U.S., London, Hong Kong or Singapore. Each of the United Kingdom's primary financial markets regulator, the Financial Services Authority, Hong Kong's primary financial markets regulator, the Securities and Futures Commission, and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions ("IOSCO")



With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures and forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will “set aside” liquid assets, or engage in other measures to “cover” open positions with respect to such transactions.

The Fund may engage in foreign currency transactions, and may invest directly in foreign currencies in the form of bank and financial institution deposits and certificates of deposit denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to “lock in” the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.<sup>14</sup>

The Fund may invest in the securities of other investment companies (including money market funds and ETFs). The Fund may hold up to an aggregate amount of 15% of its net assets in (1) illiquid securities; (2) Rule 144A securities; and (3) loan interests (such as loan participations and assignments, but not including LPNs). The Commission staff has interpreted the term “illiquid” in this context to mean a security that cannot be sold or disposed of within seven days in the ordinary course of business at approximately the amount at which a fund has valued such security.

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Multilateral Memorandum of Understanding (“MMOU”), which is a multi-party information sharing arrangement among financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

<sup>14</sup> The Fund will invest only in currencies, and instruments that provide exposure to such currencies, which have significant foreign exchange turnover and are included in the Bank for International Settlements Triennial Central Bank Survey, December 2010 (“BIS Survey”). The Fund may invest in currencies, and instruments that provide exposure to such currencies, selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

The Fund will not invest in any non-U.S. equity securities. In addition, the Fund intends to qualify each year as a regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>15</sup>

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, availability of Fund values and other information, and distributions and taxes, among other things, can be found in the Notice and/or Registration Statement, as applicable.<sup>16</sup>

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>17</sup> and the rules and regulations thereunder

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<sup>15</sup> 26 U.S.C. 851. The Fund will invest its assets, and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification, and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. The Subchapter M diversification tests generally require that (1) the Fund invest no more than 25% of its total assets in securities (other than securities of the U.S. government or other RICs) of any one issuer or two or more issuers that are controlled by the Fund and that are engaged in the same, similar or related trades or businesses, and (2) at least 50% of the Fund’s total assets consist of cash and cash items, U.S. government securities, securities of other RICs and other securities, with investments in such other securities limited in respect of any one issuer to an amount not greater than 5% of the value of the Fund’s total assets and 10% of the outstanding voting securities of such issuer. In addition to satisfying the above referenced RIC diversification requirements, no portfolio security held by the Fund (other than U.S. government securities and non-U.S. government securities) will represent more than 30% of the weight of the Fund’s portfolio and the five highest weighted portfolio securities of the Fund (other than U.S. government securities and/or non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund’s portfolio. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government securities or non-U.S. government securities as U.S. or non-U.S. government securities, as applicable.

<sup>16</sup> See supra notes 3 and 4, and accompanying text, respectively.

<sup>17</sup> 15 U.S.C. 78f.

applicable to a national securities exchange.<sup>18</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>19</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Act,<sup>20</sup> 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 on NASDAQ OMX Global Index Data Service ("GIDS"),<sup>21</sup> which contains information for widely followed indexes and ETFs. On each business day, before commencement of trading in Shares in the Regular Market Session<sup>22</sup> on the Exchange, the Trust

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<sup>18</sup> 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).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>21</sup> GIDS is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and ETFs. GIDS provides investment professionals with the daily and historical information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

<sup>22</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7:00 a.m. to 9:30 a.m.; (2) Regular Market Session from 9:30

will disclose on its website the identities and quantities of the portfolio of securities and other assets (“Disclosed Portfolio”) held by the Fund that will form the basis for the Fund’s calculation of net asset value (“NAV”) at the end of the business day.<sup>23</sup> The NAV of the Fund’s Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time.<sup>24</sup> Moreover, the Intraday Indicative Value, available on GIDS, will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session.<sup>25</sup> In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services, and 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 emerging market Corporate and Quasi-Sovereign Debt, as well as derivative instruments, will be available from major broker-dealer firms. Intra-day price information is available through

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a.m. to 4:00 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m.).

<sup>23</sup> The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of fixed income securities and other assets held by the Fund and the characteristics of such assets.

<sup>24</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

<sup>25</sup> In addition, during hours when the markets for local debt in the Fund’s portfolio are closed, the Intraday Indicative Value will be updated at least every 15 seconds during the Regular Market Session to reflect currency exchange fluctuations.

subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. The website for the Fund 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 Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, the Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange will consider the suspension of trading in or removal from listing of the Shares if the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.<sup>26</sup> The Exchange represents that the Sub-Adviser is affiliated with multiple broker-dealers and has implemented a “fire wall” with respect to such broker-dealers regarding access to information

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<sup>26</sup> See Nasdaq Rule 5735(d)(2)(C)(ii).

concerning the composition and/or changes to the Fund's portfolio.<sup>27</sup> 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.<sup>28</sup> The Exchange states that it prohibits the distribution of material, non-public information by its employees.

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:

- (1) The Shares will be subject to Nasdaq 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.

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<sup>27</sup> See Nasdaq Rule 5735(g), *supra* note 8 and accompanying text. The Commission notes 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 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.

<sup>28</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

- (3) Trading of the Shares will be subject to the Financial Industry Regulatory Authority's ("FINRA") surveillance procedures for derivative products, including Managed Fund Shares.<sup>29</sup> The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.
- (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 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value 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/or continued listing, the Fund must be in compliance with Rule 10A-

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<sup>29</sup> The Exchange states that FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

3 under the Act.<sup>30</sup>

- (6) The Fund may hold up to an aggregate amount of 15% of its net assets in (a) illiquid securities, (b) Rule 144A securities, and (c) loan interests (such as loan participations and assignments, but not including LPNs).
- (7) The Fund will not invest in any non-U.S. registered equity securities.
- (8) The Fund expects that no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.
- (9) 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.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>31</sup> and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>30</sup> See 17 CFR 240.10A-3.

<sup>31</sup> 15 U.S.C. 78f(b)(5).



IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NASDAQ-2012-004) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).