



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71133; File No. SR-NYSEArca-2013-111]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change to List and Trade Shares of Manna Core Equity Enhanced Dividend Income Fund Under NYSE Arca Equities Rule 8.600

December 18, 2013

I. Introduction

On October 23, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the Manna Core Equity Enhanced Dividend Income Fund (“Fund”). The proposed rule change was published for comment in the Federal Register on November 7, 2013.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Exchange makes the following representations and statements in describing the Fund and its investment strategies, including portfolio holdings and limitations. The Shares will be offered by ETF Actively Managed Trust (“Trust”). The Trust will be registered with the Commission as an

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 70798 (November 1, 2013), 78 FR 66973 (“Notice”).

open-end management investment company.⁵ ETF Issuer Solutions, Inc. will serve as the investment adviser to the Fund (“Adviser”). ETF Distributors LLC will be the principal distributor of the Fund’s Shares. Manna ETFs Management LLC (the “Sub-Adviser”) will serve as sub-adviser for the Fund. The Bank of New York Mellon will serve as the administrator, accountant, custodian, and transfer agent for the Fund. The Exchange represents that the Adviser and Sub-Adviser are each not registered as a broker-dealer, but the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of and changes to the Fund’s portfolio.⁶

The Fund will seek long-term capital appreciation and income primarily through purchases and short sales of U.S. and international equity securities. To achieve its investment objective, normally⁷ the Fund will invest up to 100% (but not less than 80%) of its net assets

⁵ The Trust is registered under the 1940 Act. On April 2, 2013, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the “1933 Act”) (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-187668 and 811-22819) (the “Registration Statement”). The Trust filed an Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14080), dated June 19, 2013 (“Exemptive Application”). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30607 (July 23, 2013) (“Exemptive Order”). Investments made by the Fund will comply with the conditions set forth in the Exemptive Application and the Exemptive Order.

⁶ See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that in the event (a) the Adviser or any Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to the Fund’s portfolio, and will be subject to procedures designed to prevent the misuse of material, non-public information regarding the Fund’s portfolio.

⁷ The term “normally” includes, but is not limited to, the absence of extreme volatility or trading halts in the equity 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

between its Core Position, Dividend Position and Short Position (each as defined below). The Fund expects to invest in a portfolio of U.S. common stocks or exchange traded funds (“ETFs”) selected by the Sub-Adviser to reflect a broad spectrum (i.e., positions in companies of different market capitalizations) of the U.S. equity market (the “Core Position”). The Fund also expects to invest in a portfolio that may contain U.S. and non-U.S. common stocks, American Depositary Receipts (“ADRs”), participation notes, or other equity securities listed on U.S. or non-U.S. exchanges or traded over the counter that the Sub-Adviser expects to generate dividend income to the Fund (the “Dividend Position”). The Fund also expects to sell short a portfolio of common stocks, index- or sector-based ETFs, other investment companies, exchange traded notes (“ETNs”) and other exchange traded products (“ETPs”),⁸ other securities or index- or sector-based futures contracts all of which trade on U.S. and non-U.S. exchanges selected for the purpose of hedging against country or currency risk associated with the investments in the

terrorism, riot or labor disruption or any similar intervening circumstance. According to the Registration Statement, in certain adverse market, economic, political, or other conditions, the 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. The Fund may determine that market conditions warrant investing in cash or cash equivalents, such as money market instruments, and to the extent permitted by applicable law and the Fund’s investment restrictions, shares of other investment companies. Under such circumstances, the Fund may invest up to 100% of its assets in these investments.

⁸ For purposes of this proposed rule change, ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETPs all will be listed and traded in the U.S. on registered exchanges. While the Funds may invest in inverse ETPs, the Funds will not invest in leveraged or inverse leveraged ETPs (e.g., 2X or 3X).

Dividend Position, or because they are likely to underperform the market or lose value in the near term (the “Short Position”).

The Fund will be an actively managed ETF and thus does not seek to replicate the performance of a specific index. Instead, the Fund will use an active investment strategy to meet its investment objective. The Sub-Adviser, subject to the oversight of the Adviser and the Board of Trustees of the Trust, will have discretion on a daily basis to manage the Fund’s portfolio in accordance with the Fund’s investment objective and investment policies.

The Sub-Adviser will typically seek to invest the Core Position in a portfolio of common stocks and ETPs selected by the Sub-Adviser to reflect a broad spectrum (i.e., positions in companies of different market capitalizations) of the U.S. equity market. The Core Position may invest in the common stock of issuers of any market capitalization and there are no requirements as to the number of securities the Core Position must hold.

The Fund may invest in any type of ETF, including index based ETFs, sector based ETFs, and fixed-income ETFs. The Fund may hold ETFs with portfolios comprised of domestic or foreign stocks or bonds or any combination thereof. However, due to legal limitations, the Fund will be prevented from purchasing more than 3% of an ETF’s outstanding shares unless: (i) the ETF or the Fund has received an order for exemptive relief from the 3% limitation from the Commission that is applicable to the Fund; and (ii) the ETF and the Fund take appropriate steps to comply with any conditions in such order.

According to the Exchange, to implement the Dividend Position’s strategy, the Sub-Adviser will seek to maximize the level of dividend income that the Dividend Position receives, through the purchase of U.S. and non-U.S. securities that the Sub-Adviser expects to generate dividend income for the Dividend Position. To participate in non-U.S. developed or emerging

markets, the Dividend Position may invest in debt or equity securities, ADRs, participation notes, and other securities listed on U.S. or non-U.S. exchanges or U.S. securities traded over the counter. The Fund will invest only in foreign securities and ADRs that are traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Sub-Adviser expects to seek to participate in special dividend situations and engage in dividend capture trading. Special dividend situations may include those where issuers decide to return large cash balances to shareholders as one-time dividend payments.

The Fund expects to establish Short Positions, representing up to 30% of the Fund’s principal investments, in securities selected by the Sub-Adviser for the purpose of hedging against country, currency, sector or other risk associated with the investments in the Dividend Position, in an attempt to establish, between the Dividend Position and the Short Positions, a market neutral position with respect to the countries and currency in which the Dividend Position is invested. The Fund may also invest in Short Positions in securities that the Sub-Adviser believes are likely to underperform the market or lose value in the near term. To implement the Short Positions, the Sub-Adviser expects to typically sell short a portfolio of equities, index- or sector-based ETF’s, other investment companies, index- or sector-based futures contracts or other securities that trade on U.S. and non-U.S. exchanges.⁹ According to the Registration Statement, the proceeds from the Short Positions (i.e., cash received from selling securities short) will typically be used to fund the acquisition of the Fund’s investments in the Dividend Position.

⁹ To participate in non-U.S. developed or emerging markets, the Fund may invest in ETFs, ADRs, futures contracts and other securities listed on U.S. or non-U.S. exchanges or traded over the counter that are intended to track the non-U.S. equity markets or market sectors in which the Sub-Adviser seeks exposure.

Although the Fund expects to invest not less than 80% of its assets as described above, the Fund has flexibility to invest in other types of securities when the Sub-Adviser believes they offer more attractive opportunities or to meet liquidity, redemption, and short term investing needs. The Fund may invest up to 20% of its assets in securities convertible into common stock. Convertible securities eligible for purchase by the Fund include convertible bonds, convertible preferred stocks, and warrants. The Fund will not invest directly in real estate, but may invest in readily marketable securities issued by companies that invest in real estate or interests therein. The Fund may also invest in readily marketable interests in real estate investment trusts.

Investment Limitations

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 Rule 144A securities deemed to be illiquid by the Sub-Adviser. 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 assets 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 may lend portfolio securities in an amount equal to up to 33% of its total assets to broker-dealers, major banks, or other recognized domestic institutional borrowers of securities that the Sub-Adviser has determined are creditworthy under guidelines established by the Board of Trustees. The Fund may not lend securities to any company affiliated with the Sub-Adviser. Each loan of securities will be collateralized by cash, securities, or letters of credit.

The Fund will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of the Fund's investments in that industry would equal or exceed 25% of the current value of the Fund's total assets, provided that this restriction does not limit the Fund's: (i) investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (iii) investments in repurchase agreements collateralized by U.S. government securities.

The Fund will not invest in swaps, and no more than 10% of the net assets of the Fund will be invested in unsponsored ADRs. Additional information regarding the Fund; the Shares; the Fund's investment objective, strategies, methodology, and restrictions; the Adviser; the distributor; the administrator; the custodian; the transfer agent; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Notice and Registration Statement, as applicable.¹⁰

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.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,¹² which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and

¹⁰ See supra notes 4 and 5 respectively.

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

manipulative acts and practices, 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 NYSE Arca Equities Rule 8.600 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,¹³ 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 and any underlying ETPs, sponsored ADRs, and common stock will be available via the Consolidated Tape Association high-speed line, and price information for futures and non-exchange traded securities held by the Fund will be available from publicly-available pricing sources, including Bloomberg, IDC, and Reuters. The Exchange will disseminate the Indicative Optimized Portfolio Value ("IOPV"), which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), at least every 15 seconds during the Core Trading Session through one or more major market data vendors.¹⁴ The net asset value ("NAV") of the Fund will be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern time) on each day that the Exchange is open. The

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁴ See Notice, supra note 4, 78 FR at 66977. The IOPV calculations will be estimates of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. The quotations of certain Fund holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States. See id.

Fund's website will include a form of the prospectus for the Fund and additional quantitative information updated on a daily basis, including, (1) the prior business day's reported closing price, NAV, and mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),¹⁵ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.¹⁶ 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.¹⁷ NYSE Arca expects that 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.¹⁸

Further, the Commission 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 Fund will make available on its website on each business day before commencement of the Core Trading Session the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.¹⁹ The Commission notes that the Exchange will obtain a representation

¹⁵ The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers. See id.

¹⁶ See id.

¹⁷ See id.

¹⁸ See id.

¹⁹ See id. On a daily basis, the Adviser will disclose for each portfolio security or other

from the Fund 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.²⁰ In addition, a basket composition file, which will include the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation.²¹ The basket will represent one Creation Unit of Shares of the Fund. The Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities or financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²² Further, if the IOPV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption occurs; if the interruption persists past the day in which it occurred, the Exchange

financial instrument of the Fund the following information on the Fund's website: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge. Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day. See id.

²⁰ See id. at 66978.

²¹ See id. at 66977.

²² 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 a Fund. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

will halt trading no later than the beginning of the trading day following the interruption.²³ The Exchange will consider the suspension of trading in or removal from listing of the Shares if the IOPV is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.²⁴ 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.²⁵ The Exchange represents that the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.²⁶ The Exchange has a general policy prohibiting the distribution of material, non-public information by its employees. Finally, the Exchange states that, on its behalf, the Financial Industry Regulatory Authority (“FINRA”) will communicate as needed with other markets that are members of the ISG regarding trading in the Shares and exchange-traded securities held by the Fund.²⁷

The Exchange has represented that the Shares are equity securities subject to the Exchange’s rules governing the trading of equity securities.²⁸ In support of this proposal, the Exchange has made representations, including:

²³ See NYSE Arca Equities Rule 8.600(d)(2)(D).

²⁴ See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

²⁵ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

²⁶ See supra note 6 and accompanying text.

²⁷ See Notice, supra note 4, 78 FR at 66979.

²⁸ See id. at 66978.

- (1) The Shares will conform to the initial and continuing listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange's surveillance 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.²⁹
- (3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded securities held by the Fund with other markets that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-traded securities held by the Fund from such markets or other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded securities held by the Fund from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁰ The Fund will invest only in foreign securities and ADRs that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²⁹ FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

³⁰ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

- (4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (“ETP Holders”) in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Creation Unit Aggregations and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV is disseminated; (e) the requirement that ETP Holders 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 Fund will be in compliance with Rule 10A-3 under the Exchange Act,³¹ as provided by NYSE Arca Equities Rule 5.3.³²
- (7) The Fund will not invest in swaps.
- (8) The Fund’s investments will be consistent with its investment objective and will not be used to enhance leverage.
- (9) 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 Rule 144A securities. The

³¹ 17 CFR 240.10A-3.

³² See Notice, supra note 4, 78 FR at 66978.

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.

- (10) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

This order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³³ that

³³ 15 U.S.C. 78s(b)(2).

the proposed rule change (SR-NYSEArca-2013-111), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Kevin M. O'Neill,
Deputy Secretary.

[8011-01p]

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³⁴ 17 CFR 200.30-3(a)(12).