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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-72347; File No. SR-NYSEArca-2014-20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment Nos. 3 and 5 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 3 and 5, Relating to the Listing and Trading of Shares of Reality Shares DIVS ETF under NYSE Arca Equities Rule 8.600
Jun. 9, 2014.

On February 25, 2014, NYSE Arca, Inc. (“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 of Reality Shares Isolated Dividend Growth ETF under NYSE Arca Equities Rule 8.600. On March 7, 2014, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.³ The proposed rule change, as modified by Amendment No. 2, was published for comment in the Federal Register on March 17, 2014.⁴ The Commission received no comments on the proposal. On April 23, 2014, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 was filed on March 6, 2014 and withdrawn on March 7, 2014.

⁴ See Securities Exchange Act Release No. 71686 (March 11, 2014), 79 FR 14761.

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 72000 (April 23, 2014), 79 FR 24032 (April 29, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated June 13,

Pursuant to Section 19(b)(1) of the Act⁷ and Rule 19b-4 thereunder,⁸ notice is hereby given that, on May 27, 2014 and June 5, 2014, the Exchange filed with the Commission Amendment Nos. 3 and 5, respectively, to the proposed rule change, as described in Sections I and II below, which Sections have been prepared by the Exchange.⁹ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 3 and 5, from interested persons.

Additionally, this order institutes proceedings under Section 19(b)(2)(B) of the Act¹⁰ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 3 and 5, as discussed in Section III below. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as described in Section III, below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

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

2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁷ 15 U.S.C.78s(b)(1).

⁸ 17 CFR 240.19b-4.

⁹ Amendment No. 3 replaces SR-NYSEArca-2014-20, as previously amended by Amendment No. 2, and supersedes such filing in its entirety. Amendment No. 4 was filed on June 4, 2014 and withdrawn on June 5, 2014. Amendment No. 5 reflects a change to the name of the fund from "Reality Shares Isolated Dividend Growth ETF" to "Reality Shares DIVS ETF."

¹⁰ 15 U.S.C. 78s(b)(2)(B).

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): Reality Shares DIVS ETF. The text of the proposed rule change is available on the Exchange’s website at www.nyse.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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares¹¹ on the Exchange: Reality Shares DIVS ETF (the “Fund”).¹² The Shares of the Fund will be

¹¹ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

¹² The Commission approved NYSE Arca Equities Rule 8.600 and has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and

offered by the Reality Shares ETF Trust (formerly, the ERNY Financial ETF Trust) (the “Trust”). The Trust will be registered with the Commission as an open-end management investment company.¹³ Reality Shares Advisors, LLC (formerly, ERNY Financial Advisors, LLC) will serve as the investment adviser to the Fund (the “Adviser”). ALPS Distributors, Inc. (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon (the “Administrator,” “Transfer Agent” or “Custodian”) will serve as administrator, custodian and transfer agent for the Fund.¹⁴

As described in more detail below, the Fund will seek to produce long-term capital

trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing and trading of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving listing and trading of Cambria Global Tactical ETF); 64643 (June 10, 2011) 76 FR 35062 (June 15, 2011) (SR-NYSEArca-2011-21) (order approving listing and trading of WisdomTree Global Real Return Fund); 69397 (April 18, 2013) 78 FR 24276 (April 24, 2013) (SR-NYSEArca-2013-18) (order approving listing and trading of fourteen actively-managed funds of the iShares Trust); 69591 (May 16, 2013) 78 FR 30372 (May 22, 2013) (SR-NYSEArca-2013-33) (order approving listing and trading of the International Bear ETF).

¹³ The Trust will be registered under the 1940 Act. On November 12, 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, as amended by Pre-Effective Amendment Number 1, filed with the Commission on February 6, 2014 (File Nos. 333-192288 and 811-22911) and Pre-Effective Amendment Number 2, filed with the Commission on May 1, 2014 (File Nos. 333-192288 and 811-22911) (the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. Investment Company Act Release No. 30552 (June 10, 2013) (“Exemptive Order”). The Trust filed an 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. 812-14146), on April 5, 2013, as amended on May 10, 2013 (together, the “Exemptive Application”). Investments made by the Fund will comply with the conditions set forth in the Exemptive Application and the Exemptive Order.

¹⁴ This Amendment No. 3 to SR-NYSEArca-2014-20 replaces SR-NYSEArca-2014-20 as amended by Amendment No. 2 to SR-NYSEArca-2014-20 and supersedes such filing in its entirety. See supra note 9.

appreciation by attempting to isolate the value of dividends paid by a portfolio of U.S., European and Japanese large capitalization companies.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition of and/or changes to such investment company portfolio. Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio.¹⁵ Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer and is not affiliated with any

¹⁵ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and 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.

broker-dealers. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or 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, they will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investments

According to the Registration Statement, the Fund is actively managed by the Adviser and seeks long-term capital appreciation by using proprietary trading strategies designed to isolate and capture the growth in the level of dividends expected to be paid on a portfolio of large-capitalization equity securities listed for trading in the U.S., Europe and Japan, while attempting to minimize the Fund's exposure to the price fluctuations associated with these securities.¹⁶ The Adviser believes that, over time, the level of expected dividends reflected in the Fund's portfolio will be highly correlated to the level of actual dividends paid on such large capitalization securities.

¹⁶ There is no guarantee that either the level of overall dividends paid by such companies will grow over time, or that the Fund's investment strategies will capture such growth. The Fund will include appropriate risk disclosure in its offering documents disclosing both of these risks.

The Adviser considers U.S. large capitalization companies to be those with market capitalizations within the range of market capitalizations of the companies included in the S&P 500 Index. The Adviser considers European large capitalization companies to be those with market capitalizations within the range of market capitalizations of the companies included in the Euro Stoxx 50 Index. The Adviser considers Japanese large capitalization companies to be those with market capitalizations within the range of market capitalizations of the companies included in the Nikkei 225 Index.

Under normal market conditions,¹⁷ the Fund will invest substantially all of its assets in (i) a combination of exchange-listed options contracts on large capitalization equity indexes and exchange-listed option contracts on exchange traded funds (“ETFs”)¹⁸ designed to track the performance of large capitalization equity securities listed for trading in the U.S., Europe or Japan, as well as (ii) derivatives, including swaps, exchange-listed futures contracts and forward contracts, designed to capture the growth of the level of dividends expected to be paid on large capitalization equity securities listed for trading in the U.S., Europe and Japan. In addition to the investments described above, the Fund may also buy and sell over-the counter (“OTC”) options on indexes of large-capitalization U.S., European and Japanese equity securities listed for trading in the U.S., Europe and Japan, such as the S&P 500 Index, the Euro Stoxx 50 Index and the Nikkei 225 Index, and listed and OTC options on the securities, or any group of securities, issued by large capitalization U.S., European and Japanese companies.¹⁹

The Fund will buy (i.e., hold a “long” position in) and sell (i.e., hold a “short” position in) put and call options. A put option gives the purchaser of the option the right to sell, and the issuer of the option the obligation to buy, the underlying security or instrument on a specified

¹⁷ The term “under normal market conditions” 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 terrorism, riot or labor disruption or any similar intervening circumstance.

¹⁸ For purposes of this proposed rule change, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts as described in NYSE Arca Equities Rule 8.100, and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETFs, it may not invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹⁹ The Fund will transact only with OTC options dealers that have in place an International Swaps and Derivatives Association (“ISDA”) agreement with the Fund.

date or during a specified period of time. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security or instrument on a specified date or during a specified period of time. The Fund will invest in a combination of put and call options designed to allow the Fund to isolate its exposure to the growth of the level of dividends expected to be paid on a portfolio of securities issued by large capitalization companies listed for trading in the United States, Europe and Japan, while minimizing the Fund's exposure to changes in the trading price of such securities. The Fund may invest up to 80% of its assets through options transactions.

The prices of index and ETF options reflect the market trading prices of the securities included in the applicable index or securities held by the applicable ETF, as well as market expectations regarding the level of dividends to be paid on such indexes or ETFs during the term of the option. A significant portion of the Fund's portfolio holdings will consist of multiple corresponding near-term and long-term put and call option combinations on the same reference assets (e.g., options on the S&P 500 Index or options on S&P 500 ETFs) with the same strike price. Because option prices reflect both stock price and dividend expectations, they can be used in combination to isolate either price exposure or dividend expectations. The use of near-term and long-term put and call option combinations on the same reference asset with the same strike price, but with different maturities, is designed to gain exposure to the level of dividends expected to be paid on a portfolio of large-capitalization equity securities listed for trading in the U.S., Europe and Japan, while attempting to minimize the Fund's exposure to the price fluctuations associated with these securities.

Once established, this portfolio construction of option combinations will accomplish two goals. First, the use of corresponding buy or sell positions on near and long-term options at the

same strike price is designed to neutralize underlying stock price movements. In other words, the corresponding “buy” and “sell” positions on the same reference asset are designed to net against each other and eliminate the impact that changes to the stock price of the reference asset would otherwise have on the value of the Fund Shares. Second, by minimizing the impact of price fluctuations through the construct of the near- and long-term contract combinations, the strategy is designed to isolate market expectations for dividends implied between expiration dates of the near-term and long-term option contracts.

The Fund may invest in exchange-listed futures contracts and forward contracts based on indexes of large-capitalization U.S., European and Japanese equity securities listed for trading in the U.S., Europe or Japan, such as the S&P 500 Index, the Euro Stoxx 50 Index and the Nikkei 225 Index, and the securities, or any group of securities, issued by large capitalization U.S., European and Japanese companies. A listed futures contract is a standardized contract traded on a recognized exchange in which two parties agree to exchange either a specified financial asset or the cash equivalent of said asset at a specified future date and price. A forward contract involves the obligation to purchase or sell either a specified financial asset or the cash equivalent of said asset at a future date at a price set at the time of the contract. The Fund’s use of listed futures contracts and forward contracts will be designed to allow the Fund to isolate its exposure to the growth of the level of the dividends expected to be paid on a portfolio of securities of large capitalization U.S., European and Japanese companies, while minimizing the Fund’s exposure to changes in the trading price of such securities. As with option contracts, the prices of equity index futures contracts and forward contracts reflect the market trading prices of the securities included in the applicable index , as well as market expectations regarding the level of dividends to be paid on such indexes during the term of such futures or forward contract. Therefore, as

with option contracts, long and short positions in near-dated and far-dated futures and forward contracts can be used in combination to isolate either price exposure or dividend expectations. For example, as with option contracts, the use of long and short positions in near-dated and far-dated futures and forward contracts can be used to gain exposure to the level of dividends expected to be paid on a portfolio of securities, while attempting to minimize the Fund's exposure to the price fluctuations associated with such securities. In addition, the Fund may invest in listed dividend futures contracts. Listed dividend futures contracts are available for certain indices (such as EURO STOXX 50 Index Dividend Futures and Nikkei 225 Dividend Index Futures). These futures contracts provide direct exposure to the level of implied dividends in the designated index, without exposure to the price of the securities included in the index. The Fund also may invest in Eurodollar futures contracts to manage or hedge exposure to interest rate fluctuations. The Fund may invest up to 80% of its assets through futures contracts and forward transactions.

The Fund may enter into dividend and total return swap transactions (including equity swap transactions) based on indexes of large-capitalization U.S., European and Japanese equity securities listed for trading in the U.S., Europe and Japan, such as the S & P 500 Index, the Euro Stoxx 50 Index and the Nikkei 225 Index, and securities, or any group of securities, issued by large capitalization U.S., European and Japanese companies.²⁰ In a typical swap transaction, one party agrees to make periodic payments to another party ("counterparty") based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap transactions are usually done on a net basis, the Fund receiving or paying only

²⁰ The Fund will transact only with swap dealers that have in place an ISDA agreement with the Fund.

the net amount of the two payments. In a typical dividend swap transaction, the Fund would pay the swap counterparty a premium and would be entitled to receive the value of the actual dividends paid on the subject index during the term of the swap contract. In a typical total return swap, the Fund might exchange long or short exposures to the return of the underlying securities or an underlying index to isolate the value of the dividends paid on the underlying securities or index constituents. The Fund also may engage in interest rate swap transactions. In a typical interest rate swap transaction one stream of future interest payments is exchanged for another. Such transactions often take the form of an exchange of a fixed payment for a variable payment based on a future interest rate. The Fund intends to use interest rate swap transactions to manage or hedge exposure to interest rate fluctuations. The Fund may invest up to 80% of its assets through swap transactions.²¹

The Fund will attempt to limit counterparty risk by entering into non-cleared swap, forward and option contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.²²

²¹ Where practicable, the Fund intends to invest in swaps cleared through a central clearing house ("Cleared Swaps"). Currently, only certain of the interest rate swaps in which the Fund intends to invest are Cleared Swaps, while the dividend and total return swaps (including equity swaps) in which the Fund may invest are currently not Cleared Swaps.

²² The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser will evaluate each approved counterparty using various methods of analysis, such as, for example, the counterparty's liquidity in the event of default, the counterparty's reputation, the Adviser's past experience with the counterparty, and the counterparty's share of market participation.

The Fund's investments in swaps, futures contracts, forward contracts and options will be consistent with the Fund's investment objective and with the requirements of the 1940 Act.²³

Other Investments

In addition to the investments described above, the Fund may invest up to 20% of its net assets in high-quality, short-term debt securities and money market instruments.²⁴ Debt securities and money market instruments include shares of fixed income or money market mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities (including securities issued or guaranteed by the U.S. government or its authorities, agencies, or instrumentalities), repurchase agreements²⁵ and bonds that are rated BBB or higher.

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

²³ To limit the potential risk associated with such transactions, the Fund will segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations arising from such transactions. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or " earmark " liquid assets or otherwise cover the transactions that may give rise to such risk.

²⁴ The Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

²⁵ The Fund may enter into repurchase agreements with banks and broker-dealers. A repurchase agreement is an agreement under which securities are acquired by a fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The acquiring fund bears a risk of loss in the event that the other party to a repurchase agreement defaults on its obligations and the fund is delayed or prevented from exercising its rights to dispose of the collateral securities.

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.²⁶

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 illiquid by the Adviser, consistent with Commission guidance.²⁷ The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.²⁸

²⁶ See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

²⁷ In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

²⁸ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment

The Fund may buy and sell individual large-capitalization equity securities listed for trading in the U.S., Europe and Japan.

The Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act.

The Fund will be classified as a “non-diversified” investment company under the 1940 Act.²⁹

The Fund intends to qualify for and to elect treatment as a separate regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code.³⁰

The Fund’s investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund’s primary broad-based securities benchmark index (as defined in Form N-1A).³¹ The Trust’s Exemptive Order does not place any limit on the amount of derivatives in which the Fund can invest (other than adherence to the requirements of the 1940 Act and the rules thereunder).

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares only in Creation Units at the net asset value (“NAV”) next determined after receipt of an order on a

Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

²⁹ The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

³⁰ 26 U.S.C. 851 et seq.

³¹ The Fund’s broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund’s first full calendar year of performance.

continuous basis every business day. Creation Unit sizes are 25,000 Shares or more per Creation Unit. The Creation Unit size for the Fund may change.

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and the “Cash Component” (defined below), computed as described below or (ii) the cash value of the Deposit Securities (“Deposit Cash”) and the Cash Component, computed as described below. Because non-exchange traded derivatives are not eligible for in-kind transfer, they will be substituted with an amount of cash of equal value (i.e., Deposit Cash) when the Fund processes purchases of Creation Units in-kind. Specifically, the Fund will not accept OTC options, forward contracts, dividend swap transactions, total return swap transactions and interest rate swap transactions as Deposit Securities. When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchaser. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The “Cash Component” is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

A portfolio composition file, to be sent via the National Securities Clearing Corporation (“NSCC”), will be made available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time) containing a list of the names and the required

number of shares of each security in the Deposit Securities to be included in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day). In addition, on each business day, the estimated Cash Component, effective through and including the previous business day, will be made available through NSCC.

The Fund Deposit is applicable for purchases of Creation Units of the Fund until such time as the next-announced Fund Deposit is made available. In accordance with the Exemptive Order, the Fund reserves the right to accept a nonconforming Fund Deposit. In addition, the composition of the Deposit Securities may change as, among other things, corporate actions and investment decisions by the Adviser are implemented for the Fund's portfolio.

All purchase orders must be placed by or through an "Authorized Participant". An Authorized Participant must be either a broker-dealer or other participant in the Continuous Net Settlement System ("Clearing Process") of the NSCC or a participant in The Depository Trust Company ("DTC") with access to the DTC system, and must execute an agreement with the Distributor that governs transactions in the Fund's Creation Units. In-kind portions of purchase orders will be processed through the Clearing Process when it is available.

Fund Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Distributor and only on a business day. The Fund, through the NSCC, will make available immediately prior to the opening of business on the Exchange on each business day, the list of the names and quantities of the Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day ("Fund Securities"). Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption

proceeds for a Creation Unit will consist of Fund Securities plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the “Cash Redemption Amount”). In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust’s discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of the in-kind securities representing one or more Fund Securities.³² Because non-exchange traded derivatives are not eligible for in-kind transfer, they will be substituted with an amount of cash of equal value when the Fund processes redemptions of Creation Units in-kind. Specifically, the Fund will transfer the corresponding cash value of OTC options, forward contracts, dividend swap transactions, total return swap transactions and interest rate swap transactions in lieu of in-kind securities. In accordance with the Exemptive Order, the Fund also reserves the right to distribute to the Authorized Participant non-conforming Fund Securities.

The right of redemption may be suspended or the date of payment postponed: (i) For any period during which the New York Stock Exchange (“NYSE”) is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares or determination of the Fund’s NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

³² The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

For an order involving a Creation Unit to be effectuated at the Fund's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order ("Order Cut-Off Time"). The Order Cut-Off Time for creation and redemption orders for the Fund is generally expected to be 4:00 p.m. Eastern Time. Orders for creation or redemption of Creation Units for cash generally must be submitted by 4:00 p.m. Eastern Time. A standard creation or redemption transaction fee (as applicable) will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Detailed descriptions of the Fund's procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the website for the Fund (which will be publicly available prior to the public offering of Shares), as applicable.

Determination of Net Asset Value

The Fund will calculate its NAV by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares outstanding. The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the NYSE (normally, 4:00 p.m., Eastern Time) as described in its Registration Statement.

In calculating the Fund's NAV per Share, the Fund's investments will be valued in accordance with procedures approved by the Trust's Board of Trustees. These procedures, which may be changed by the Trust's Board of Trustees from time to time, generally require investments to be valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, an independent pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied

by an exchange, an independent pricing service, or a major market maker (or dealer) or (iii) based on amortized cost. The Trust may use various independent pricing services, or discontinue the use of any independent pricing service, as determined by the Trust's Board of Trustees from time to time.

The Trust will generally value exchange-listed equity securities (which include common stocks and ETFs) and exchange-listed options on such securities at market closing prices. Market closing price is generally determined on the basis of last reported sales prices, or if no sales are reported, based on the midpoint between the last reported bid and ask. The Trust will generally value listed futures at the settlement price determined by the applicable exchange. Non-exchange-traded derivatives, such as forwards, OTC options and swap transactions, will normally be valued on the basis of quotations or equivalent indication of value supplied by an independent pricing service or major market makers or dealers. Investment company securities (other than ETFs) will be valued at NAV. Debt securities and money market instruments generally will be valued based on prices provided by independent pricing services, which may use valuation models or matrix pricing to determine current value. The Trust generally will use amortized cost to value debt securities and money market instruments that have a remaining maturity of 60 days or less.

In the event that current market valuations are not readily available or the Trust or Adviser believes such valuations do not reflect current market value, the Trust's procedures require that a security's fair value be determined.³³ In determining such value the Trust or the

³³ The Trust's Board of Trustees has established Fair Value Procedures, in accordance with the 1940 Act, governing the valuation of any portfolio investments for which market quotations or prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation of any portfolio investments.

Adviser may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (e.g., movement in interest rates, market indices, and prices from the Fund's index providers). In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Fund's website, www.realityshares.com, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (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 (the "Bid/Ask Price"),³⁴ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio (as such term is 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.³⁵

³⁴ 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.

³⁵ Under accounting procedures to be followed by the Fund, trades made on the prior

On a daily basis, the Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

In addition, a portfolio composition file, which includes 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 NYSE via NSCC. The portfolio composition file will represent one Creation Unit of Shares of the Fund.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and the Trust's Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information

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.

regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value ("PIV") as defined in NYSE Area Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.³⁶ The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including ETFs, futures and exchange-traded equities and options, will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, and, with respect to OTC options, swaps and forwards, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. Price information regarding investment company securities other than ETFs will be available from on-line information services and from the website for the applicable investment company security. The intra-day, closing and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund

³⁶ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.³⁷ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also 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 will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca

³⁷ See NYSE Arca Equities Rule 7.12.

Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3³⁸ under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by 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.³⁹ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened,

³⁸ 17 CFR 240.10A-3.

³⁹ 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.

where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁴⁰ FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

Not more than 10% of the assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

⁴⁰ 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.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁴¹ that an exchange have rules that are designed to prevent fraudulent and manipulative

⁴¹ 15 U.S.C. 78f(b)(5).

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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealers. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or 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, they will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. 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 illiquid by the Adviser. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts from such markets and other entities. In addition, the

Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. Not more than 10% of the assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually

available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including ETFs, futures and exchange-traded equities and options, will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, and, with respect to OTC options, swaps and forwards, from third party pricing sources, or on-line information services such as Bloomberg or Reuters. Price information regarding investment company securities other than ETFs will be available from on-line information services and from the website for the applicable investment company security. The intra-day, closing and settlement prices of debt securities and money market instruments will be readily available from published and other public sources or on-line information services. The website for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-listed equity securities, ETFs, futures contracts and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. Not more than 10% of the assets of the Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures

contracts or options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-NYSEArca-2014-20 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁴² to determine whether the proposed rule change, as modified by Amendment Nos. 3 and 5 thereto,

⁴² 15 U.S.C. 78s(b)(2)(B).

should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 3 and 5.

Pursuant to Section 19(b)(2)(B) of the Act,⁴³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."⁴⁴

IV. Procedure: Request for Written Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment Nos. 3 and 5, is consistent with Section 6(b)(5) of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁴⁵

⁴³ Id.

⁴⁴ 15 U.S.C. 78f(b)(5).

⁴⁵ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR- NYSEArca-2014-20 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2014-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding - either oral or notice and opportunity for written comments - is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2014-20 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Kevin M. O'Neill,
Deputy Secretary.

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06/13/2014]

⁴⁶ 17 CFR 200.30-3(a)(12) and 17 CFR 200.30-3(a)(57).