



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77891; File No. SR-NYSEArca-2016-70)

May 24, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Use of Rule 144A Securities By the Fidelity Corporate Bond ETF, Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 11, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to permit the Fidelity Corporate Bond ETF, Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF (each a “Fund” and together the “Funds”) to consider securities issued pursuant to Rule 144A under the Securities Act of 1933 as debt securities eligible for the principal investment of 80% of Fund assets. Shares of the Fidelity Corporate Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF have been approved by the Exchange for listing and trading on the Exchange under NYSE Arca Equities Rule 8.600. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved proposed rule changes relating to listing and trading on the Exchange of shares ("Shares") of the Funds under NYSE Arca Equities Rule 8.600,⁴ which governs the listing and trading of Managed Fund Shares.⁵ The Exchange proposes to amend the

⁴ See Securities Exchange Act Release Nos. 72068 (May 1, 2014), 79 FR 25923 (May 6, 2014) (SR-NYSEArca-2014-47) (notice of filing of proposed rule change relating to listing and trading of Shares of Fidelity Corporate Bond ETF Managed Shares under NYSE Arca Equities Rule 8.600) ("Prior Corporate Bond Notice"); 72439 (June 20, 2014), 79 FR 36361 (June 26, 2014) (SR-NYSEArca-2014-47) (order approving proposed rule change relating to listing and trading of Shares of Fidelity Corporate Bond ETF Managed Shares under NYSE Arca Equities Rule 8.600) ("Prior Corporate Bond Order" and, together with the Prior Corporate Bond Notice, the "Prior Corporate Bond Releases"); 72064 (May 1, 2014), 79 FR 25908 (May 6, 2014) (SR-NYSEArca-2014-46) (notice of filing of proposed rule change relating to listing and trading of Shares of Fidelity Investment Grade Bond ETF; Fidelity Limited Term Bond ETF; and Fidelity Total Bond ETF under NYSE Arca Equities Rule 8.600) ("Prior Total Bond Notice"); 72748 (August 4, 2014), 79 FR 46484 (August 8, 2014) (SR-NYSEArca-2014-46) (order approving proposed rule change relating to listing and trading of Shares of the Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF under NYSE Arca Equities Rule 8.600) ("Prior Total Bond ETF Order" and, together with the Prior Total Bond Notice, the "Prior Total Bond Releases").

⁵ 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")

representation in the Prior Corporate Bond Notice and Prior Total Bond Notice to provide each Fund may include Rule 144A securities within a Fund’s principal investments in debt securities (i.e., debt securities in which at least 80% of a Fund’s assets are invested).

I. Description of the Funds

Fidelity Investments Money Management, Inc. (“FIMM”), an affiliate of Fidelity Management & Research Company (“FMR”), is the manager (“Manager”) of each Fund. FMR Co., Inc. (“FMRC”) serves as a sub-adviser for the Fidelity Total Bond ETF. FMRC has day-to-day responsibility for choosing certain types of investments of foreign and domestic issuers for Fidelity Total Bond ETF. Other investment advisers, which also are affiliates of FMR, serve as sub-advisers to the Funds and assist FIMM with foreign investments, including Fidelity Management & Research (U.K.) Inc. (“FMR U.K.”), Fidelity Management & Research (Hong Kong) Limited (“FMR H.K.”), and Fidelity Management & Research (Japan) Inc. (“FMR Japan”) (each a “Sub-Adviser” and together with FMRC, “Sub-Advisers”). Fidelity Distributors Corporation (“FDC”) is the distributor for the Funds’ Shares.

The Funds are funds of Fidelity Merrimack Street Trust (“Trust”), a Massachusetts business trust.⁶

Shares of the Fidelity Corporate Bond ETF, Fidelity Limited Term Bond ETF, and

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.

⁶ The Trust is registered under the 1940 Act. On December 29, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and the 1940 Act relating to the Funds (File Nos. 333-186372 and 811-22796) (“Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30513 (May 10, 2013) (“Exemptive Order”) (File No. 812-14104).

Fidelity Total Bond ETF have been approved by the Exchange for listing and trading on the Exchange under NYSE Arca Equities Rule 8.600 and are currently trading on the Exchange.

A. Fidelity Corporate Bond ETF

As described in the Prior Corporate Bond Notice, the Fidelity Corporate Bond ETF seeks a high level of current income. The Manager normally invests at least 80% of Fidelity Corporate Bond ETF assets in investment-grade corporate bonds and other corporate debt securities.⁷

Corporate debt securities are bonds and other debt securities issued by corporations and other business structures, as described in the Prior Corporate Bond Notice.

The Fidelity Corporate Bond ETF may hold uninvested cash or may invest it in cash equivalents such as money market securities, or shares of short-term bond exchanged-traded funds registered under the 1940 Act (“ETFs”) or mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients). The Manager uses the Barclays® U.S. Credit Bond Index as a guide in structuring the Fund and selecting its investments. FIMM manages the Fund to have similar overall interest rate risk to the Barclays® U.S. Credit Bond Index.

As stated in the Prior Corporate Bond Releases, in buying and selling securities for the Fund, the Manager analyzes the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fund’s exposure to various

⁷ According to the Registration Statement, investment-grade debt securities include all types of debt instruments, including corporate debt securities, that are of medium and high-quality. An investment-grade rating means the security or issuer is rated investment-grade by a credit rating agency registered as a nationally recognized statistical rating organization (“NRSRO”) with the Commission (for example, Moody’s Investors Service, Inc.), or is unrated but considered to be of equivalent quality by the Fidelity Corporate Bond ETF’s Manager or Sub-Advisers.

risks, including interest rate risk, the Manager considers, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

While the Manager normally invests at least 80% of assets of the Fund in investment grade corporate bonds and other corporate debt securities, as described above, the Manager may invest up to 20% of the Fund's assets in other securities and financial instruments, as described in the Prior Corporate Bond Notice.

According to the Registration Statement, the Fund may invest in restricted securities, which are subject to legal restrictions on their sale. Restricted securities generally can be sold in privately negotiated transactions, pursuant to an exemption from registration under the Securities Act, or in a registered public offering.

B. Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF and Fidelity Total Bond ETF

As described in the Prior Total Bond Notice, the Fidelity Investment Grade Bond ETF (which has not yet commenced operation) will seek a high level of current income. The Manager normally will invest at least 80% of the Fund's assets in investment-grade debt securities (those of medium and high quality). The debt securities in which the Fund may invest are corporate debt securities; U.S. Government securities; repurchase agreements and reverse repurchase agreements; money market securities; mortgage and other asset-backed securities; senior loans; loan participations and loan assignments and other evidences of indebtedness, including letters of credit, revolving credit facilities and other standby financing commitments; stripped securities; municipal securities; sovereign debt obligations; and obligations of international agencies or supranational entities (collectively, "Debt Securities").

As described in the Prior Total Bond Notice, the Fidelity Investment Grade Bond ETF

may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short term bond ETFs, mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients). The Manager will use the Barclays U.S. Aggregate Bond Index (the “Aggregate Index”) as a guide in structuring the Fund and selecting its investments, and will manage the Fund to have similar overall interest rate risk to the Aggregate Index.

As described in the Prior Total Bond Notice, the Manager will consider other factors when selecting the Fidelity Investment Grade Bond ETF’s investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fidelity Investment Grade Bond ETF’s exposure to various risks, including interest rate risk, the Manager will consider, among other things, the market’s overall risk characteristics, the market’s current pricing of those risks, information on the Fidelity Investment Grade Bond ETF’s competitive universe and internal views of potential future market conditions.

As described in the Prior Total Bond Notice, the Fidelity Limited Term Bond ETF seeks to provide a high rate of income. The Manager normally invests at least 80% of the Fidelity Limited Term Bond ETF’s assets in investment-grade Debt Securities (those of medium and high quality). The Fidelity Limited Term Bond ETF may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short term bond ETFs, mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients). The Manager uses the Fidelity Limited Term Composite Index (the “Composite Index”) as a guide in structuring the

Fund and selecting its investments. The Manager manages the Fidelity Limited Term Bond ETF to have similar overall interest rate risk to the Composite Index.

The Manager considers other factors when selecting the Fidelity Limited Term Bond ETF's investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fidelity Limited Term Bond ETF's exposure to various risks, including interest rate risk, the Manager considers, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

As described in the Prior Total Bond Notice, the Fidelity Total Bond ETF seeks a high level of current income. The Manager normally invests at least 80% of the Fidelity Total Bond ETF's assets in Debt Securities. The Manager allocates the Fidelity Total Bond ETF's assets across investment-grade, high yield, and emerging market Debt Securities. The Manager may invest up to 20% of the Fund's assets in lower-quality Debt Securities. The Fidelity Total Bond ETF may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short term bond ETFs mutual funds or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).

The Manager uses the Barclays U.S. Universal Bond Index (the "Universal Index") as a guide in structuring and selecting the investments of the Fidelity Total Bond ETF and selecting its investments, and in allocating the Fidelity Total Bond ETF's assets across the investment-grade, high yield, and emerging market asset classes. The Manager manages the Fidelity Total

Bond ETF to have similar overall interest rate risk to the Universal Index. The Manager considers other factors when selecting the Fund's investments, including the credit quality of the issuer, security-specific features, current valuation relative to alternatives in the market, short-term trading opportunities resulting from market inefficiencies, and potential future valuation. In managing the Fund's exposure to various risks, including interest rate risk, the Manager considers, among other things, the market's overall risk characteristics, the market's current pricing of those risks, information on the Fund's competitive universe and internal views of potential future market conditions.

As described in the Prior Total Bond Notice, the Manager may invest the Fidelity Total Bond ETF's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.

While, as described above, the Manager normally invests at least 80% of assets of Fidelity Limited Term Bond ETF in investment-grade Debt Securities (and will normally invest at least 80% of assets of the Fidelity Investment Grade Bond ETF in investment-grade Debt Securities), and the Manager normally invests at least 80% of assets of the Fidelity Total Bond ETF in Debt Securities, the Manager may invest up to 20% of a Fund's assets in other securities and financial instruments ("Other Investments", as described in the Prior Total Bond Notice).

As described in the Prior Corporate Bond Notice and Prior Total Bond Notice, as part of a Fund's Other Investments, (i.e., up to 20% of a Fund's assets), each Fund may invest in restricted securities, which are subject to legal restrictions on their sale.⁸

⁸ Restricted securities are subject to legal restrictions on their sale. Restricted securities generally can be sold in privately negotiated transactions, pursuant to an exemption from registration under the Securities Act, or in a registered public offering. Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A. Rule 144A permits certain qualified institutional buyers, such as

II. Proposed Change

The Exchange proposes that each Fund may include Rule 144A securities within a Fund's principal investments in debt securities (i.e., debt securities in which at least 80% of a Fund's assets are invested). As discussed below, the Exchange believes it is appropriate for Rule 144A securities to be included as principal investments of a Fund in view of (1) the high level of liquidity in the market for such securities compared to other debt securities asset classes, and (2) the high level of transparency in the market for Rule 144A securities, particularly in light of reporting of transaction data in such securities through the Trade Reporting and Compliance Engine ("TRACE") operated by the Financial Industry Regulatory Authority ("FINRA").

FMR has represented to the Exchange that Rule 144A securities account for approximately 20% of daily trading volume in U.S. corporate bonds. Dealers trade and report transactions in Rule 144A securities in the same manner as registered corporate bonds. While the average number of daily trades and U.S. dollar volume in registered corporate bonds is much higher than in Rule 144A securities, the average lot size is higher for Rule 144A securities.⁹ Specifically, the average lot size for 144A securities for the period January 1, 2015 through August 31, 2015 was approximately \$2.2 million, compared to an average lot size for the same period of approximately \$500,000 for registered corporate bonds.

In addition, in 2013, the Commission approved FINRA rules relating to dissemination of

a Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act.

⁹ Source: MarketAxess Trace Data. For example, for the period January 1, 2015 through August 31, 2015, for registered bonds and Rule 144A securities with \$1 billion to \$1.999 billion the average daily dollar volume outstanding was approximately \$6.8 billion and \$1.7 billion, respectively, and the average lot size was \$666,647 and \$2,398,292, respectively.

information regarding transactions in Rule 144A securities in TRACE.¹⁰ In approving FINRA’s proposed rule change to amend its rules regarding dissemination of Rule 144A transactions, the Commission stated:

Real-time dissemination of last-sale information could aid dealers in deriving better quotations, because they would know the prices at which other market participants had recently transacted in the same or similar instruments. This information could aid all market participants in evaluating current quotations, because they could inquire why dealer quotations might differ from the prices of recently executed transactions. Furthermore, post-trade transparency affords market participants a means of testing whether dealer quotations before the last sale were close to the price at which the last sale was executed. In this manner, post-trade transparency can promote price competition between dealers and more

¹⁰ See Securities Exchange Act Release Nos. 70009 (July 19, 2013), 78 FR 44997 (July 25, 2103) (SR–FINRA–2013–029) (notice of filing of a proposed rule change relating to the dissemination of transactions in TRACE-Eligible securities effected pursuant to Rule 144A); 70345 (September 6, 2013), 78 FR 56251 (September 12, 2013) (SR–FINRA–2013–029) (order approving proposed rule change relating to the dissemination of transactions in TRACE-Eligible securities effected pursuant to Rule 144A). In the proposed rule change, FINRA proposed to amend FINRA Rule 6750 to provide for the dissemination of Rule 144A transactions, provided the asset type (e.g., corporate bonds) currently is subject to dissemination under FINRA Rule 6750; to amend the dissemination protocols to extend the dissemination caps currently applicable to the non-Rule 144A transactions in such asset type (e.g., non-Rule 144A corporate bond transactions) to Rule 144A transactions in such securities; to amend FINRA Rule 7730 to establish a data set for real-time Rule 144A transaction data and a second data set for historic Rule 144A transaction data, to amend the definition of “Historic TRACE Data” to reference the three data sets currently included therein and the proposed fourth data set; and to make other clarifying and technical amendments. FINRA Rule 6730(a) requires any transaction in a TRACE-Eligible security to be reported to TRACE as soon as practicable but no later than within 15 minutes of the transaction, subject to specified exceptions. FINRA Rule 6730(c) requires the trade report to contain information on size, price, time of execution, amount of commission, the date of settlement and other information.

efficient price discovery and ultimately lower transaction costs in the market for Rule 144A securities.

Transactions executed by FINRA members became subject to dissemination through FINRA's TRACE on June 30, 2014, thus providing a level of transparency to the Rule 144A market comparable to that of registered bonds.¹¹

The Exchange notes that, while the proposed rule change would categorize Rule 144A securities within a Fund's principal investments in debt securities, any investments in Rule 144A securities, of course, would be required to comply with restrictions under the 1940 Act and rules thereunder relating to investment in illiquid assets.¹² As stated in the Prior Corporate Bond

¹¹ In its June 30, 2014 press release "FINRA Brings 144A Corporate Debt Transactions Into the Light", FINRA stated: 144A transactions—resales of restricted corporate debt securities to large institutions called qualified institutional buyers (QIBs)—account for a significant portion of the volume in corporate debt securities. In the first quarter of 2014, 144A transactions comprised nearly 13 percent of the average daily volume in investment-grade corporate debt, and nearly 30 percent of the average daily volume in high-yield corporate debt. 144A transactions comprised nearly 20 percent of the average daily volume in the corporate debt market as a whole. Through the Trade Reporting and Compliance Engine (TRACE), FINRA will disseminate 144A transactions subject to the same dissemination caps that are currently in effect for non-144A transactions. The same dissemination cap for investment-grade corporate bonds (\$5 million) applies to both 144A and non-144A corporate bond transactions, and the \$1 million dissemination cap for high-yield corporate bonds similarly applies to both 144A and non-144A transactions. 144A transactions are also subject to the same 15-minute reporting requirement as non-144A corporate debt transactions. See also, FINRA Regulatory Notice 13-35 October 2013.

¹² 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 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

Notice and Prior Total Bond Notice, each 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 Manager or Sub-Advisers. Each Fund monitors its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include 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.¹³

Moreover, as stated in the Prior Corporate Bond Notice and Prior Total Bond Notice, each Fund does not currently intend to purchase any asset if, as a result, more than 10% of its net assets would be invested in assets that are deemed to be illiquid because they are subject to legal or contractual restrictions on resale or because they cannot be sold or disposed of in the ordinary course of business at approximately the prices at which they are valued. For purposes of a Fund's illiquid assets limitation discussed above, if through a change in values, net assets, or other circumstances, a Fund were in a position where more than 10% of its net assets were invested in

Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act.

¹³ In its recent rulemaking proposal relating to open-end fund liquidity risk management programs, the Commission noted that “[s]ecurities offered pursuant to rule 144A under the Securities Act may be considered liquid depending on certain factors”. The Commission, citing to the “Statement Regarding ‘Restricted Securities’” (see note 11, above), noted: “The Commission stated [in the “Statement Regarding ‘Restricted Securities’”] that ‘determination of the liquidity of Rule 144A securities in the portfolio of an investment company issuing redeemable securities is a question of fact for the board of directors to determine, based upon the trading markets for the specific security’ and noted that the board should consider the unregistered nature of a rule 144A security as one of the factors it evaluates in determining its liquidity.” See Release Nos. 33-9922; IC-31835; File Nos. S7-16-15; S7-08-15 (September 22, 2015); note 94.

illiquid assets, it would consider appropriate steps to protect liquidity.

The Prior Corporate Bond Notice and Prior Total Bond Notice stated that various factors may be considered in determining the liquidity of a Fund's investments, including: (1) the frequency of trades and quotes for the asset; (2) the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; (3) dealer undertakings to make a market in the asset; and (4) the nature of the asset and the nature of the marketplace in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the asset).

The Exchange believes that the size of the Rule 144A market (approximately 20% of daily trading volume in U.S. corporate bonds), the active participation of multiple dealers utilizing trading protocols that are similar to those in the corporate bond market, and the transparency of the 144A market resulting from reporting of Rule 144A transactions in TRACE will deter manipulation in trading the Shares.

Except for the change described above, all other representations made in the Prior Corporate Bond Releases and the Prior Total Bond Releases remain unchanged.¹⁴ The Funds will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The Exchange represents that the trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities

¹⁴ See note 4, supra. All terms referenced but not defined herein are defined in the Prior Corporate Bond Notice and Prior Total Bond Notice.

laws.¹⁵ 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 Exchange or FINRA, on behalf of the Exchange, communicate as needed regarding trading in the Shares and exchange-listed equity securities (including ADRs) 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 and exchange-listed equity securities (including ADRs) from such markets and other entities. The Exchange may obtain information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁶ In addition, as stated in the Prior Corporate Bond Releases and the Prior Total Bond Releases, investors have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁷ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to,

¹⁵ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

¹⁶ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all of the components of the portfolio for a Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement

¹⁷ 15 U.S.C. 78f(b)(5).

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 Exchange believes it is appropriate for Rule 144A securities to be included as principal investments of a Fund in view of (1) the high level of liquidity in the market for such securities compared to other debt securities asset classes, and (2) the high level of transparency in the market for Rule 144A securities, particularly in light of reporting of transaction data in such securities through TRACE. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in 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. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to TRACE. The Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers and have each implemented a fire wall with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the portfolios, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolios. Each 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 Manager or Sub-Advisers.

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 has in place surveillance

procedures that are adequate to properly monitor trading in 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. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to TRACE. 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 Funds and the Shares, thereby promoting market transparency. Transaction information relating to Rule 144A securities will be available via TRACE. Moreover, the Portfolio Indicative Value with respect to Shares of each Fund 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, each Fund will disclose on the Trust's website the Disclosed Portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day. The Trust's website will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Trading in Shares of a 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 a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Portfolio Indicative Value, 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. The Exchange believes that the size of the Rule 144A market (approximately 20% of daily trading volume in U.S. corporate bonds), the active participation of multiple dealers utilizing trading protocols that are similar to those in the corporate bond market, and the transparency of the Rule 144A market resulting from reporting of Rule 144A transactions in TRACE will deter manipulation in trading the Shares. Any investments in Rule 144A securities would be required to comply with restrictions under the 1940 Act and rules thereunder relating to investment in illiquid assets. Each Fund does not currently intend to purchase any asset if, as a result, more than 10% of its net assets would be invested in assets that are deemed to be illiquid because they are subject to legal or contractual restrictions on resale or because they cannot be sold or disposed of in the ordinary course of business at approximately the prices at which they are valued. Various factors may be considered in determining the liquidity of a Fund's investments, including: (1) the frequency of trades and quotes for the asset; (2) the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; (3) dealer undertakings to make a market in the asset; and (4) the nature of the asset and the nature of the marketplace in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the asset). The Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors have ready access to information

regarding each Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 believes the proposed rule change is designed to allow the Funds to invest in a broader range of debt securities thereby helping the Funds to achieve their respective investment objective.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-2016-70 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-2016-70. 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 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-2016-70, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Robert W. Errett
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

