



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79111; File No. SR-NYSEArca-2016-96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend NYSE Arca Equities Rule 8.700 and to List and Trade Shares of the Managed Emerging Markets Trust under Proposed Amended NYSE Arca Equities Rule 8.700

October 18, 2016

I. Introduction

On July 1, 2016, 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 amend NYSE Arca Equities Rule 8.700 and to list and trade shares (“Shares”) of the Managed Emerging Markets Trust (“Trust”) under proposed amended NYSE Arca Equities Rule 8.700. The proposed rule change was published for comment in the *Federal Register* on July 21, 2016.³ On August 30, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78345 (July 15, 2016), 81 FR 47447 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Exchange's Description of the Proposal

A. Amendments to NYSE Arca Equities Rule 8.700

NYSE Arca Equities Rule 8.700 permits the trading of Managed Trust Securities on the Exchange. A Managed Trust Security is a security that is registered under the Securities Act of 1933, as amended, and (i) is issued by a trust that (1) is a commodity pool as defined in the Commodity Exchange Act ("CEA") and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission ("CFTC") and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the trust's advisor consistent with the trust's investment objectives, which will only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, each as disclosed in the trust's prospectus; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value ("NAV").⁷ The Exchange proposes to amend NYSE Arca Equities Rule 8.700 to permit the use of swaps on equity indices,

⁵ See Securities Exchange Act Release No. 78727, 81 FR 61268 (September 6, 2016). The Commission designated October 19, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See NYSE Arca Equities Rule 8.700(c)(1).

fixed income indices, commodity indices, commodities, or interest rates.

B. Proposal to List and Trade Shares of the Trust

The Exchange proposes to list and trade Shares of the Trust under proposed amended NYSE Arca Equities Rule 8.700. The Trust is a Delaware statutory trust that will issue Shares representing fractional undivided beneficial interests in the Trust. The Trust is a commodity pool as defined in the CEA and the regulations of the CFTC.⁸ The Trust will be operated by Artivest Advisors LLC, a Delaware limited liability company (“Sponsor”) that is also the Trust’s adviser (“Adviser”), and will be registered under the CEA as a commodity pool operator. The sole member of the Sponsor is Artivest Holdings, Inc., a Delaware corporation. The Adviser is the commodity trading advisor of the Trust and will at all times be either registered as a commodity trading advisor or properly exempt from such registration under the CEA. The Adviser is not a broker-dealer and is not affiliated with a broker-dealer. 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 becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition of and changes to the Trust’s portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.⁹

⁸ According to the Exchange, the Trust will not be an investment company registered under the Investment Company Act of 1940 (“1940 Act”) and will not be required to register under the 1940 Act.

⁹ The activities of the Trust will be limited to (1) issuing Baskets (*i.e.*, blocks of 100,000 Shares) in exchange for cash, (2) paying out of Trust assets any Trust expenses and liabilities not assumed by the Sponsor, (3) delivering proceeds consisting of cash in exchange for Baskets surrendered for redemption, (4) depositing any required margin in the form of cash or other eligible assets with domestic futures commission merchants, foreign futures brokers, or other financial intermediaries or dealers, and (5) investing its

The Bank of New York Mellon, a New York banking corporation, is the trustee of the Trust. Wilmington Trust, National Association, a national banking association, is the Delaware trustee of the Trust. The Bank of New York Mellon also is the administrator, custodian, processing agent, and settlement agent of the Trust. The Trust has engaged Foreside Fund Services, LLC to act as a distributor on its behalf.

Principal and Other Trust Investments

The Trust will pursue long-term total returns by seeking to provide both (1) a long-only exposure to one or more emerging markets equity indices (“index exposure”) and (2) “alpha” returns that are additive to, and are not correlated with, the index exposure (measured over rolling 5-year periods), while seeking to control overall downside risk and volatility.

According to the Exchange, the Trust will primarily trade and invest in futures on emerging market equity indices¹⁰ and foreign currency forward contracts¹⁰, as discussed in more detail below. The Trust’s portfolio may also contain cash which may be used, as needed, to secure the Trust’s trading obligations with respect to its trading positions. Although the Trust’s investment objective is not primarily to hold significant amounts of cash, cash may comprise a significant portion of the NAV of the Trust. Moreover, in order to collateralize futures contracts and forward contracts, the Trust may invest in U.S. government debt instruments, which are U.S. Treasury bills, notes, and bonds of varying maturities that are backed by the full faith and credit of the United States government, or other short-term securities (in each case eligible as margin

cash, at the direction of the Adviser, in a portfolio of futures contracts, forward contracts, and swaps.

¹⁰ The Trust expects to trade futures contracts on U.S. exchanges and non-U.S. exchanges. Not more than 10% of the net assets of the Trust in the aggregate invested in futures contracts will consist of futures contracts whose principal market is not a member of the Intermarket Surveillance Group (“ISG”) or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

deposits under the rules of the Exchange), which may include money market instruments (“Short-Term Securities”). Although the Trust’s investment objective is not primarily to trade and invest in Short-Term Securities, Short-Term Securities may comprise a significant portion of the NAV of the Trust.

Index Exposure Portfolio Construction

According to the Exchange, the Trust will seek to maintain constant exposure to one or more emerging markets equity indices by holding long positions in emerging markets index futures contracts.¹¹ Generally, the Adviser will seek to maintain an emerging markets index exposure equal to 100% of the Trust’s net assets, although this may vary from time to time depending on market conditions. Initially, the Trust will hold long MSCI Emerging Markets Index¹² futures contracts to achieve its index exposure.¹³ The Adviser may in the future invest in additional or different emerging markets index futures contracts.¹⁴

Alpha Portfolio Construction

According to the Exchange, the Trust’s alpha strategy¹⁵ will seek to provide returns that

¹¹ According to the Exchange, the Adviser will look at a variety of factors to determine whether a country is an “emerging market.” Currently, the Adviser views countries as “emerging markets” if they are considered to be developing, emerging, or frontier by sources such as MSCI, the International Monetary Fund, the World Bank, the International Finance Corporation, the United Nations, The Economist magazine, Standard & Poor’s and Dow Jones, or if they are countries with a stock market capitalization of less than 5% of the MSCI World Index. Additional information regarding emerging markets as related to this proposal can be found in the Notice, supra note 3, 81 FR at 47449-50.

¹² Information regarding the MSCI Emerging Markets Index can be found in the Notice, supra note 3, 81 FR at 47450.

¹³ ICE Futures U.S. has been licensed to create futures contracts on the MSCI Emerging Markets Index. ICE Futures U.S. is a member of the ISG.

¹⁴ Information regarding rebalancing and risk management for the index portfolio can be found in the Notice, supra note 3, 81 FR at 47450 and 74752.

¹⁵ According to the Exchange, the Adviser will pursue a strategy based on fundamental

are independent of, and uncorrelated to, the index exposure, by trading and investing primarily in futures contracts and forward contracts relating to emerging markets. The alpha portfolio primarily will be composed of futures contracts on emerging market equity indices and foreign currency forward contracts. According to the Exchange, the Adviser anticipates that as the Trust grows larger, it may also, in certain limited circumstances, invest in exchange-traded swaps, swaps accepted for central clearing (“cleared swaps”), and swaps that are not accepted for central clearing (“uncleared swaps”). These limited circumstances include the following:

- When futures contracts are not available or market conditions do not permit investing in futures contracts (for example, a particular futures contract may not exist or may trade only on an exchange that has not yet been approved by the Trust); and
- When there are position limits, price limits or accountability limits on futures contracts.

According to the Exchange, swaps would only be used by the Trust as a substitute for futures contracts in the limited circumstances described above when the Adviser has determined that it is necessary to use swaps in order for the Trust to remain consistent with the Trust’s investment objective. Further, the Adviser expects that the Trust’s use of swaps, if any, will be of a de minimis nature. Moreover, to the extent that the Trust invests in swaps, it would first make use of exchange-traded swaps if such swaps are available. If an investment in exchange-traded swaps is unavailable, then the Trust would invest in cleared swaps that clear through

analysis and will make investment decisions based on its view of the fundamental value of various financial instruments relative to market prices and expectations. To construct the alpha portfolio, the Adviser will apply both quantitative and qualitative analysis to market and economic data to generate investment ideas, to trade and invest on a discretionary basis, and to manage portfolio risk. The Adviser will form conclusions regarding future economic conditions and future financial instruments pricing based on its review and analysis of macroeconomic factors. From time to time, the Adviser will form thematic, macroeconomic-based “alpha views” regarding its desired exposures to investment themes. Additional information regarding the alpha strategy can be found in the Notice, supra note 3, 81 FR at 47449.

derivatives clearing organizations that satisfy the Trust’s criteria. If an investment in cleared swaps is unavailable, then the Trust would invest in other swaps, including uncleared swaps in the over-the-counter (“OTC”) market. However, no more than 20% of the portfolio may be invested, on both an initial and an ongoing basis, in OTC swaps.¹⁶

Alpha Futures Contracts

The Adviser expects that 75% – 90% of the portfolio’s alpha exposure will be obtained via futures contracts. The Trust expects to take long or short positions in a wide variety of commodity futures contracts (including metals, agriculturals, energies, and softs) and financial futures contracts (including interest rates, currencies and currency indices, U.S. and non-U.S. equity indices, and government bond futures contracts).

Alpha Forward Contracts

The Trust may enter into foreign currency forward contracts, which the Adviser expects may make up 10% – 25% of the portfolio’s alpha exposure.¹⁷ The Adviser does not currently expect to engage in any transactions that would be considered “retail forex” transactions for purposes of the CEA. The Trust will only enter into foreign currency forward contracts related to foreign currencies that have significant foreign exchange turnover and are included in the Bank for International Settlements Triennial Central Bank Survey, September 2013 (“BIS Survey”). Specifically, the Trust may enter into foreign currency forward contracts that provide exposure to such currencies selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.¹⁸

¹⁶ Information regarding rebalancing and risk management for the alpha portfolio can be found in the Notice, supra note 3, 81 FR at 47452.

¹⁷ The Trust may enter into deliverable forward contracts or non-deliverable forward contracts.

¹⁸ The Trust’s forward contracts will be collateralized to the extent required by the relevant

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-96 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁹ to determine whether the proposed rule change 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. 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.

Pursuant to Section 19(b)(2)(B) of the Act,²⁰ 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."²¹

Under the proposal, an authorized participant may place a purchase or redemption order to create or redeem Baskets of Shares on any "Eligible Business Day" (rather than on any

counterparties. The counterparties to the Trust's forward contracts are expected to be brokers, dealers, and other financial institutions. The Adviser will seek to diversify the Trust's counterparty exposure but may from time to time have concentrated exposure to one or more counterparties. However, the Adviser represents that it will not concentrate risks with a single counterparty and will establish policies and procedures to manage counterparty concentration and monitor counterparty creditworthiness. The policies and procedures to monitor counterparty creditworthiness will consider the credit rating of the counterparty and any past experience with the counterparty.

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ Id.

²¹ 15 U.S.C. 78f(b)(5).

Business Day). The proposal defines “Eligible Business Day” to mean any Business Day²² other than a Business Day which immediately precedes two or more days on which there is no scheduled exchange trading session for one or more futures contracts purchased or sold, or that may be purchased or sold, by the Trust on that day. Moreover, purchase and redemption orders must be placed by 1:15 p.m. Eastern Time or the close of regular trading on the New York Stock Exchange, whichever is earlier (“Cutoff Time”). Purchase and redemption orders received after the Cutoff Time on an Eligible Business Day, or on a day that is not an Eligible Business Day, will be treated as received on the next Eligible Business Day. The Exchange does not discuss whether these aspects of the proposal would have any impact on the trading of the Shares, including any impact on arbitrage. The Commission seeks commenters’ views on these aspects of the proposal, and on whether the Exchange’s statements relating to the creation and redemption process support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of an 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.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or

²² Under the proposal, “Business Day” is defined to mean any day other than (a) a Saturday or Sunday; (b) a day on which the Exchange is closed for regular trading; (c) a day on which any of the Adviser, the processing agent, the settlement agent, the trust administrator, the Sponsor or the trustee is authorized or required by law or regulation to remain closed; or (d) a day on which the Federal Reserve wire transfer system is closed for cash wire transfers.

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 that 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.²³

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 AFTER DATE OF 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 AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,²⁴ in addition to any other comments they may wish to submit about the proposed rule change.

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-2016-96 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

²³ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. 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 Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁴ See supra note 3.

100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2016-96. 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-2016-96 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Rebuttal comments should be submitted by **[INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

²⁵ 17 CFR 200.30-3(a)(57).

Robert W. Errett,

Deputy Secretary.

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