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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-85955; File No. SR-NYSEArca-2019-38]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Investments of Aware Ultra-Short Duration Enhanced Income ETF, a Series of Tidal ETF Trust**

May 29, 2019

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 15, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 certain changes regarding investments of Aware Ultra-Short Duration Enhanced Income ETF (the “Fund”), a series of Tidal ETF Trust (the “Trust”). Shares of the Fund currently are listed and traded on the Exchange under NYSE Arca Rule 8.600-E (“Managed Fund Shares”). The proposed change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 Exchange proposes certain changes, described below under “Application of Generic Listing Requirements,” regarding investments of the Fund. The shares (“Shares”) of the Fund commenced trading on the Exchange on January 29, 2019 pursuant to the generic listing standards under Commentary .01 to NYSE Arca Rule 8.600-E<sup>4</sup> (“Managed Fund Shares”).<sup>5</sup>

Toroso Investments, LLC (the “Adviser”) is the investment adviser for the Fund. Aware Asset Management, Inc. (the “Subadviser”) is the subadviser to the Fund. U.S. Bank National Association serves as the custodian (“Custodian”) for the Fund. Tidal ETF Services LLC serves as administrator for the Fund. U.S. Bancorp Fund Services, LLC serves as sub- administrator,

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<sup>4</sup> The Fund’s investments currently comply with the generic requirements set forth in Commentary .01 to Rule 8.600-E.

<sup>5</sup> 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 Rule 5.2-E(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.

fund accountant and transfer agent (“Transfer Agent”) for the Fund.<sup>6</sup> Foreside Fund Services, LLC serves as the distributor (the “Distributor”) for the Fund’s Shares.

Commentary .06 to Rule 8.600-E 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 and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, 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. Commentary .06 to Rule 8.600-E is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2-E(j)(3); however, Commentary .06 in connection with the establishment and maintenance 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 and the Subadviser are not registered as broker-dealers and are not affiliated with a broker-dealer. In the event (a) the Adviser or Subadviser becomes registered as a broker-dealer or affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or is affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer

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<sup>6</sup> The Trust is registered under the 1940 Act. On December 21, 2018, 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 under the 1940 Act relating to the Fund (File Nos. 333-227298 and 811-23377) (“Registration Statement”). The Trust will file an amendment to the Registration Statement as necessary to conform to the representations in this filing. The description of the operation of the Trust and the Fund 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. 33433 (March 29, 2019) (File No. 812-14939).

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.

#### Aware Ultra-Short Duration Enhanced Income ETF

According to the Registration Statement, the investment objective of the Fund is to seek to maximize current income while maintaining a portfolio consistent with the preservation of capital and daily liquidity.

The Fund seeks to achieve its investment objective primarily by investing in “Fixed Income Securities” (as described below).

The Fund’s may invest in the following fixed income instruments (“Fixed Income Securities”) issued by both U.S. and non-U.S. government and private sector issuers:

- U.S. government securities;
- Agency and non-agency asset-backed securities (“ABS”) and mortgage-backed securities (“MBS”) and collateralized mortgage obligations (“CMOs”);<sup>7</sup>
- floating or variable rate securities;
- collateralized bond obligations (“CBOs”), collateralized loan obligations (“CLOs”) and other collateralized debt obligations (“CDOs” and, together with CBOs and CLOs, “CDOs/CBOs/CLOs”);<sup>8</sup>

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<sup>7</sup> For purposes of this filing, non-agency ABS, non-agency MBS, and non-agency CMOs are referred to collectively herein as “Private ABS/MBS.”

<sup>8</sup> For purposes of this filing, CDOs, CBOs and CLOs are excluded from the term Private ABS/MBS. CLOs are securities issued by a trust or other special purpose entity that are collateralized by a pool of loans by U.S. banks and participations in loans by U.S. banks that are unsecured or secured by collateral other than real estate. CBOs are securities issued by a trust or other special purpose entity that are backed by a diversified pool of fixed income securities issued by U.S. or foreign governmental entities or fixed income securities issued by U.S. or corporate issuers. CDOs/CBOs/CLOs are distinguishable

- corporate debt securities;
- municipal securities;
- floating or variable rate securities;
- inflation-indexed bonds;
- inflation-indexed securities issued by the U.S. Treasury, commonly known as “TIPS”;
- commercial paper (in addition to commercial paper that are cash equivalents);<sup>9</sup>
- convertible securities; and
- structured notes.

The Fund may hold cash and cash equivalents.<sup>10</sup>

The Fund may enter into dollar rolls and short sales of Fixed Income Securities. The Fund may also purchase securities and other instruments under when-issued, delayed delivery, to be announced or forward commitment transactions.

The Fund may invest in private placements and Rule 144A securities.

The Fund may hold the following U.S. and non-U.S. equity securities: common stocks, preferred stocks, rights, warrants, exchange-traded notes (“ETNs”),<sup>11</sup> exchange-traded funds

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from ABS because they are collateralized by bank loans or by corporate or government fixed income securities and not by consumer and other loans made by non-bank lenders, including student loans. As discussed below, for purposes of this proposed rule change, CDOs/CBOs/CLOs will not be subject to the 20% limit set forth in Commentary .01(b)(5) to Rule 8.600-E.

<sup>9</sup> See note 10, *infra*.

<sup>10</sup> For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to Rule 8.600-E.

<sup>11</sup> ETNs are securities as described in NYSE Arca Rule 5.2-E(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked

(“ETFs”),<sup>12</sup> and securities of other investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

The Fund may hold the following U.S. and non-U.S. exchange-listed and over-the-counter (“OTC”) derivative instruments: OTC foreign currency forwards ; U.S. and non-U.S. exchange-listed futures and options on stocks, Fixed Income Securities, interest rates, credit, currencies, commodities or related indices; and OTC options on stocks, Fixed Income Securities, interest rates, credit, currencies, commodities or related indices.<sup>13</sup>

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

#### Investment Restrictions

Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

The Fund may invest up to 10% of its total assets in CDOs/CBOs/CLOs.<sup>14</sup>

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Securities).

<sup>12</sup> For purposes of this filing, the term “ETFs” are Investment Company Units (as described in NYSE Arca Rule 5.2-E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100-E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600-E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

<sup>13</sup> Derivative instruments may be used for “hedging,” which means that they may be used when the Sub-Adviser seeks to protect the Fund’s investments from a decline in value resulting from changes to interest rates, market prices, currency fluctuations, or other market factors. Derivative instruments may also be used for other purposes, including to seek to increase liquidity, provide efficient portfolio management, broaden investment opportunities (including taking short or negative positions), implement a tax or cash management strategy, gain exposure to a particular security or segment of the market, modify the effective duration of the Fund’s portfolio investments and/or enhance total return.

<sup>14</sup> As noted above, CDOs/CBOs/CLOs would be excluded from the 20% limit on Private ABS/MBS.

Investments in non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust issues and redeems Shares only in Creation Units of 25,000 Shares on a continuous basis at their NAV per Share next determined after receipt of an order, on any “Business Day”, in proper form pursuant to the terms of the Authorized Participant Agreement (“Participant Agreement”). The NAV of Shares is calculated each Business Day as of the scheduled close of regular trading on the NYSE, generally 4:00 p.m., Eastern Time. A “Business Day” is any day on which the NYSE is open for business. The size of a Creation Unit is subject to change.

The consideration for purchase of a Creation Unit of the Fund generally consists of the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit, constituting a substantial replication of the securities included in the Fund’s portfolio and the Cash Component (defined below), computed as described below.

Notwithstanding the foregoing, the Trust reserves the right to permit or require the substitution of a “cash in lieu” amount (“Deposit Cash”) to be added to the Cash Component to replace any Deposit Security.

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 Shares (per Creation Unit) and the value of the Deposit Securities or Deposit Cash, as applicable.

The Fund, through the National Securities Clearing Corporation (“NSCC”), makes available on each Business Day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund.

The Trust reserves the right to permit or require the substitution of Deposit Cash to replace any Deposit Security, which shall be added to the Cash Component.

To be eligible to place orders with the Transfer Agent to purchase a Creation Unit of the Fund, an entity must be (i) a “Participating Party”, *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the “Clearing Process”), a clearing agency that is registered with the Commission; or (ii) a Depository Trust Company (“DTC”) Participant. In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute a Participant Agreement.

The order cut-off time for the Fund for orders to purchase Creation Units is expected to be 2:00 p.m. Eastern Time, which time may be modified by the Fund from time-to-time by amendment to the Participant Agreement and/or applicable order form.

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 Transfer Agent and only on a Business Day.

With respect to the Fund, the Custodian, through the NSCC, makes available prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each Business Day, the list of the names and share 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”). Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit are paid either in-kind or in cash, or 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—as announced by the Custodian on the Business Day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of 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”), less a fixed redemption transaction fee, as applicable. In the event that the Fund Securities have a value greater than the NAV of Shares, a compensating cash payment equal to the differential is 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 value representing one or more Fund Securities.<sup>15</sup>

Orders to redeem Creation Units must be submitted in proper form to the Transfer Agent prior to 4:00 p.m. Eastern Time.

#### Use of Derivatives by the Fund

Investments in derivative instruments will be made in accordance with the Fund’s investment objectives and policies.

To limit the potential risk associated with such transactions, the Fund may enter into offsetting transactions or segregate or “ earmark ” assets determined to be liquid by the Adviser in

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<sup>15</sup> The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares wholly or partially in cash, such transactions will be effected in the same manner for all Authorized Participants.

accordance with procedures established by the Fund's Board of Trustees (the "Board"). In addition, the Fund has included 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.

#### Impact on Arbitrage Mechanism

The Adviser and the Subadviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives. The Adviser and the Subadviser understand that market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser and the Subadviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their NAV, which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

#### Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the changes described below would result in the portfolio for the Fund not meeting all of the "generic" listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(a)(1), Commentary .01(b)(1), Commentary .01(b)(4) and Commentary .01(b)(5).<sup>16</sup>

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<sup>16</sup> Commentary .01(b)(5) to NYSE Arca Rule 8.600-E provides that non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-

Specifically, the Fund:

- will not comply with the requirement in Commentary .01(b)(1) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of \$100 million or more. Instead, the Exchange proposes that components, excluding Private ABS/MBS and CDOs/CBOs/CLOs that, in the aggregate, account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs would not be subject to a requirement for a minimum original principal amount outstanding.
- will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (i.e., Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund. CDOs/CBOs/CLOs will not be subject to the 20% limit set forth in Commentary .01(b)(5); however, the Fund's investments in CDOs/CBOs/CLOs will be limited to 10% of the Fund's total assets.
- will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria in

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backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

Commentary .01(b)(4) in respect of its investments in Private ABS/MBS.<sup>17</sup>

Instead, the Exchange proposes that all Fixed Income Securities, excluding Private ABS/MBS, will meet the criteria in Commentary .01(b)(4). Private ABS/MBS will be limited to 20% of the Fund's total assets and will not be required to comply with the criteria in Commentary .01(b)(4)(a) through (e) to NYSE Arca Rule 8.600-E.

- will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600-E in connection with the Fund's investments in non-exchange traded investment company securities.

Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(1) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of \$100 million or more.

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<sup>17</sup> Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

Instead, the Exchange proposes that components, excluding Private ABS/MBS and CDOs/CBOs/CLOs, that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs would not be subject to a requirement for a minimum original principal amount outstanding. At least 50% of the fixed income weight of the Fund's portfolio, excluding Private ABS/MBS and CDOs/CBOs/CLOs, would continue to be subject to a substantial minimum (i.e., \$50 million) original principal amount outstanding. By excluding Private ABS/MBS and CDOs/CBOs/CLOs from this requirement, the Fund will be able to better diversify its holdings in such securities, and would be able to invest in a larger variety of Private ABS/MBS and CDOs/CBOs/CLOs that have characteristics consistent with the Fund's investment objective to maximize current income while maintaining a portfolio consistent with the preservation of capital and daily liquidity. These characteristics may include, for example, Private ABS/MBS and CDOs/CBOs/CLOs with investment grade credit rating or liquidity comparable to fixed income securities with a much greater amount outstanding.

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (i.e., Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

This alternative requirement is appropriate because the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than

many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Fund's Board, and the Adviser does not expect that investments in Private ABS/MBS of up to 20% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.<sup>18</sup> The Exchange notes that the Commission has previously approved the listing of actively managed ETFs that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately-issued ABS and MBS (i.e., Private ABS/MBS).<sup>19</sup> Thus, it is appropriate to expand the limit on the Fund's investments in Private ABS/MBS set forth in Commentary .01(b)(5) of the generic listing standards.

As noted above, the Fund will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the

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<sup>18</sup> Rule 22e-4(b) under the 1940 Act requires, among other things, that a fund "adopt and implement a written liquidity risk management program that is reasonably designed to assess and manage its liquidity risk." The rule is "designed to promote effective liquidity risk management throughout the open-end investment company industry, thereby reducing the risk that funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders." See Release Nos. 33-10233; IC-32315; File No. S7-16-15 (October 13, 2016).

<sup>19</sup> See, e.g., Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR-NASDAQ-2017-039) (permitting the Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR-NYSEArca-2015-111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR-NYSEArca-2014-017) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR-NYSEArca-2014-134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MSB and other ABS, without any limit on the type of such MBS and ABS). See also Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF under NYSE Arca Rule 8.600-E).

criteria in Commentary .01(b)(4).<sup>20</sup> The Exchange proposes that the Private ABS/MBS, will not be required to comply with the criteria in Commentary .01(b)(4)(a) through (e) to NYSE Arca Rule 8.600-E. In this regard, the Exchange proposes to provide that the Fund will not invest more than 20% of the Fund's total assets in Private ABS/MBS. CDOs/CBOs/CLOs, however, will be subject to the criteria in Commentary .01(b)(4)(a) through (e)<sup>21</sup> and the Fund will not invest more than 10% of the Fund's total assets in CDOs/CBOs/CLOs.<sup>22</sup> The Exchange believes that this 10% limitation will help the Fund maintain portfolio diversification and will reduce manipulation risk. In addition, the Adviser does not expect that investments in CDOs/CBOs/CLOs of up to 10% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.<sup>23</sup>

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<sup>20</sup> Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country. In the First Prior Order, the Commission approved an exception from Commentary .01(b)(4) to provide that fixed income securities that do not meet any of the criteria in Commentary .01(b)(4) will not exceed 10% of the total assets of the Fund.

<sup>21</sup> As noted above, CDOs/CBOs/CLOs would be excluded from the 20% limit on Private ABS/MBS.

<sup>22</sup> For purposes of this filing, CDOs/CBOs/CLOs are not deemed to be ABS for purposes of the restriction on the Fund's holdings of Private ABS/MBS. See note 8, supra.

<sup>23</sup> The Exchange notes that the Commission has approved a proposed rule change permitting an issue of Managed Fund Shares to hold up to 30% of the weight of the fixed income securities portion of the fund's portfolio to consist of non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities. See Securities Exchange Act Release No. 84826 (December 14, 2018), 83 FR 65386 (December 20, 2018) (SR-NYSEArca-2018-25) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, Regarding the Continued Listing and Trading of Shares of the Natixis Loomis Sayles Short Duration Income ETF).

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria set forth in Commentary .01(b)(4).<sup>24</sup> In addition, the Commission has approved proposed rule changes permitting investments by an issuer of Managed Fund Shares to exclude non-U.S. Government, non-agency, non-GSE and other privately-issued ABS and MBS (as described in such proposed rule changes) from the provisions of rules comparable to Commentary .01(b)(4).<sup>25</sup>

In addition, the Fund's investment in Private ABS/MBS and CDOs/CBOs/CLOs will be subject to the Fund's liquidity risk management program as approved by the Fund's Board.<sup>26</sup>

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<sup>24</sup> See, e.g., Exchange Act Release Nos. 67894 (September 20, 2012) 77 FR 59227 (September 26, 2012) (SR-BATS-2012-033) (order approving the listing and trading of shares of the iShares Short Maturity Bond Fund); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR-NYSEArca-2013-71) (order approving the listing and trading of shares of the SPDR SSgA Ultra Short Term Bond ETF, SPDR SSgA Conservative Ultra Short Term Bond ETF and SPDR SSgA Aggressive Ultra Short Term Bond ETF).

<sup>25</sup> See Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR-NASDAQ-2017-128) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of the Western Asset Total Return ETF); See also, Securities Exchange Act Release Nos. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR-NASDAQ-2017-128) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of the Western Asset Total Return ETF); 85022 (January 31, 2019), 25 FR 2265 (February 6, 2019) (SR-NASDAQ-2018-080) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2 and 3, To List and Trade Shares of the BrandywineGLOBAL-Global Total Return ETF).

<sup>26</sup> Rule 22e-4(b) under the 1940 Act requires, among other things, that a fund "adopt and implement a written liquidity risk management program that is reasonably designed to assess and manage its liquidity risk." The rule is "designed to promote effective liquidity risk management throughout the open-end investment company industry, thereby reducing the risk that funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders." See Release Nos. 33-10233; IC-32315; File No. S7-16-15 (October 13, 2016).

The liquidity procedures generally include public disclosure by the Fund of its liquidity and redemption practices. The Fund's holdings in Private ABS/MBS and CDOs/CBOs/CLOs would be encompassed within the Fund's liquidity risk management program.

The Fund may invest in shares of investment company securities (other than ETFs), which are equity securities. Therefore, to the extent the Fund invests in shares of other non-exchange-traded open-end management investment company securities, the Fund will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600-E (U.S. Component Stocks) with respect to its equity securities holdings.<sup>27</sup>

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<sup>27</sup> Commentary .01(a) to Rule 8.600-E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2-E(j)(3)) and Non-U.S. Component Stocks (as described in Rule 5.2-E(j)(3)). Commentary .01(a)(1) to Rule 8.600-E (U.S. Component Stocks) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least \$75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

However, it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600-E. Investments in other non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder.<sup>28</sup> Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600-E exclude certain "Derivative Securities Products" that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2-E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100-E) and Managed Fund Shares (as

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(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

<sup>28</sup> The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder. See, e.g., Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR-NYSEArca-2016-79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Rule 8.600-E).

described in NYSE Arca Rule 8.600-E)).<sup>29</sup> In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) to exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600-E), the Commission stated that “based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.” The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months are tailored to exchange-traded securities (i.e., U.S. Component Stocks) and not to mutual fund shares, which do not trade in the

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<sup>29</sup> The Commission initially approved the Exchange’s proposed rule change to exclude “Derivative Securities Products” (i.e., Investment Company Units and securities described in Section 2 of Rule 8) and “Index-Linked Securities (as described in Rule 5.2-E(j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2-E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units)(“2008 Approval Order”). See also Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Rule 8.600-E To Adopt Generic Listing Standards for Managed Fund Shares). See also Amendment No. 7 to SR-NYSEArca-2015-110, available at <https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf>.

secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act, and application of Commentary .01(a)(1)(A) through (D) would not serve the purposes served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies where such funds were permitted to invest in the shares of other registered investment companies that are not ETFs or money market funds.<sup>30</sup> Thus, it is appropriate to permit the Fund to invest up to 20% of its total assets in other non-exchange-traded open-end management investment company securities.

The Adviser and Subadviser represent that the proposed exceptions from the requirements of Commentary .01 to Rule 8.600-E described above are consistent with the Fund's investment objective, and will further assist the Adviser and Subadviser to achieve such investment objective. Deviations from the generic requirements are necessary for the Fund to

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<sup>30</sup> See, e.g., Securities Exchange Act Release Nos. 79053 (October 5, 2016), 81 FR 70468 (October 12, 2016) (SR-BatsBZX-2016-35) (permitting the JPMorgan Global Bond Opportunities ETF to invest in “investment company securities that are not ETFs”); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR-BATS-2014-056) (permitting the U.S. Fixed Income Balanced Risk ETF to invest in “exchange traded and non-exchange traded investment companies (including investment companies advised by the Adviser or its affiliates) that invest in such Fixed Income Securities”); 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15), (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF under NYSE Arca Rule 8.600-E).

achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Exchange accordingly believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1), (b)(1), (b)(4) and (b)(5) to Rule 8.600-E. The Exchange notes that, other than Commentary .01(a)(1), (b)(1), (b)(4) and (b)(5) to Rule 8.600-E, the Fund's portfolio will meet all other requirements of Rule 8.600-E.

#### Availability of Information

The Fund's website ([www.awareetf.com](http://www.awareetf.com)) will include 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) daily trading volume, the prior Business Day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the "Bid/ Ask Price"),<sup>31</sup> 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

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<sup>31</sup> The Bid/Ask Price of the Fund's Shares 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.

Fund discloses on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600-E(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the Business Day.<sup>32</sup>

On a daily basis, the Fund discloses the information required under NYSE Arca Rule 8.600-E(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, 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 Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding securities and other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and the Fund's Forms N-CSR and Forms N-SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR, Form N-PX and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov).

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Price information relating to OTC options and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. For exchange-traded common stocks, preferred

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<sup>32</sup> Under accounting procedures followed by the Fund, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

stocks, rights, warrants, ETNs and ETFs, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Intraday and other price information for the fixed income securities in which the Fund invests will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (“TRACE”) of the Financial Industry Regulatory Authority (“FINRA”) will be a source of price information for corporate bonds, privately-issued securities, MBS and ABS, to the extent transactions in such securities are reported to TRACE.<sup>33</sup> Money market funds are typically priced once each Business Day and their prices will be available through the applicable fund’s website or from major market data vendors. Price information regarding U.S. government securities, repurchase agreements, reverse repurchase agreements and cash equivalents generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

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 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. Exchange-traded options quotation and last sale

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<sup>33</sup> Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For fixed income securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

information for options cleared via the Options Clearing Corporation are available via the Options Price Reporting Authority. In addition, the Portfolio Indicative Value (“PIV”), as defined in NYSE Arca Rule 8.600-E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

#### 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. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E 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 Rule 8.600-E(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. E.T. in accordance with NYSE Arca Rule 7.34-E (Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on

the NYSE Arca 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.

With the exception of the requirements of Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5) as described above under “Application of Generic Listing Requirements,” the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E. The Exchange represents that for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange has obtained 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.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. 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,

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”). The Exchange is able to access from FINRA, as needed, trade information for certain Fixed Income Securities held by the Fund reported to TRACE.

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

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued

listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m)-E.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act 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, 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 Rule 8.600-E. 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. The Adviser and Subadviser are not registered as broker-dealers or affiliated with a broker-dealer. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, certain exchange-traded options and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is able to access

from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

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. The website for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E 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 Rule 8.600-E(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted. In addition, as noted above, investors have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. In the aggregate, at least 90% of the weight of the Fund's holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a CSSA. For purposes of calculating

this limitation, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.

As discussed above, the Fund will not comply with the requirement in Commentary .01(b)(1) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of \$100 million or more. Instead, the Exchange proposes that components, excluding Private ABS/MBS and CDOs/CBOs/CLOs, that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs would not be subject to a requirement for a minimum original principal amount outstanding. The Exchange believes this alternative is appropriate because at least 50% of the fixed income weight of the Fund's portfolio, excluding Private ABS/MBS and CDOs/CBOs/CLOs, would continue to be subject to a substantial minimum (i.e., \$50 million) original principal amount outstanding. In addition, by excluding Private ABS/MBS and CDOs/CBOs/CLOs from this requirement, the Fund will be able to better diversify its holdings in such securities, and would be able to invest in a larger variety of Private ABS/MBS and CDOs/CBOs/CLOs that have characteristics consistent with the Fund's investment objective to maximize current income while maintaining a portfolio consistent with the preservation of capital and daily liquidity. These characteristics may include, for example, Private ABS/MBS and CDOs/CBOs/CLOs with investment grade credit rating or liquidity comparable to fixed income securities with a much greater amount outstanding.

As noted above, the Fund may invest in shares of non-exchange-traded investment company securities, which are equity securities. Therefore, to the extent the Fund invests in shares of non-exchange-traded open-end management investment company securities, the

Fund will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600-E (U.S. Component Stocks) with respect to its equity securities holdings.<sup>34</sup> The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600-E. Investments in non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder. Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

As noted above, the Fund will not comply with the requirement in Commentary .01(b)(5) that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. Instead, Private ABS/MBS will, in the aggregate, not exceed more than 20% of the total assets of the Fund.

This alternative requirement is appropriate because the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased

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<sup>34</sup> See note 27, supra.

diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Fund's Board, and the Adviser does not expect that investments in Private ABS/MBS of up to 20% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.<sup>35</sup> The Exchange notes that the Commission has previously approved the listing of actively managed ETFs that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately-issued ABS and MBS (i.e., Private ABS/MBS).<sup>36</sup> Thus, it is appropriate to expand the limit on the Fund's investments in Private ABS/MBS set forth in Commentary .01(b)(5) of the generic listing standards.

As noted above, the Fund will not comply with the requirement that securities that in aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria in Commentary .01(b)(4).<sup>37</sup> The Exchange proposes that the Private ABS/MBS, will not be required to comply with the criteria in Commentary .01(b)(4)(a) through (e) to NYSE Arca Rule 8.600-E. In this regard, the Exchange proposes to provide that the Fund will not invest more than 20% of the Fund's total assets in Private ABS/MBS. CDOs/CBOs/CLOs, however, will be subject to the criteria in Commentary .01(b)(4)(a) through (e)<sup>38</sup> and the Fund will not invest more than 10% of the Fund's total assets in CDOs/CBOs/CLOs.<sup>39</sup> The Exchange believes

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<sup>35</sup> See note 18, supra.

<sup>36</sup> See note 19, supra.

<sup>37</sup> See note 17, supra.

<sup>38</sup> As noted above, CDOs/CBOs/CLOs would be excluded from the 20% limit on Private ABS/MBS.

<sup>39</sup> For purposes of this filing, CDOs/CBOs/CLOs are not deemed to be ABS for purposes of the restriction on the Fund's holdings of Private ABS/MBS. See note 8, supra.

that this 10% limitation will help the Fund maintain portfolio diversification and will reduce manipulation risk. In addition, the Adviser does not expect that investments in CDOs/CBOs/CLOs of up to 10% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.

In addition, the Fund's investment in Private ABS/MBS and CDOs/CBOs/CLOs will be subject to the Fund's liquidity risk management program as approved by the Fund's Board.<sup>40</sup> The liquidity procedures generally include public disclosure by the Fund of its liquidity and redemption practices. The Fund's holdings in Private ABS/MBS and CDOs/CBOs/CLOs would be encompassed within the Fund's liquidity risk management program.

The Adviser and Subadviser represent that the proposed exceptions from the requirements of Commentary .01 to Rule 8.600-E described above are consistent with the Fund's investment objective, and will further assist the Adviser and Subadviser to achieve such investment objective. Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Exchange accordingly believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1), (b)(1), (b)(4) and (b)(5) to Rule

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<sup>40</sup> See note 18, supra.

8.600-E. The Exchange notes that, other than Commentary .01(a)(1), (b)(1), (b)(4) and (b)(5) to Rule 8.600-E, the Fund's portfolio will meet all other requirements of Rule 8.600-E.

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 continued listing and trading Shares of the Fund, and 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. 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2019-38 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-2019-38. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-38 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Vanessa A. Countryman,**  
*Acting Secretary.*

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<sup>41</sup> 17 CFR 200.30-3(a)(12).

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