



8011-01

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87409; File No. SR-NYSEArca-2019-73]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Permitting the Continued Listing and Trading of the WisdomTree Emerging Markets Multifactor Fund and the WisdomTree International Multifactor Fund**

October 28, 2019

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 15, 2019, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to permit the continued listing and trading of the WisdomTree Emerging Markets Multifactor Fund and the WisdomTree International Multifactor Fund, under NYSE Arca Rule 8.600-E (“Managed Fund Shares”). The proposed rule 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

Pursuant to NYSE Arca Rule 8.600-E, the Exchange proposes to permit the continued listing and trading of the WisdomTree Emerging Markets Multifactor Fund (“Emerging Markets Fund”) and the WisdomTree International Multifactor Fund (“International Fund”) (each a Fund, and collectively, the “Funds”), that do not otherwise meet the standards set forth in Rule 8.600-E, Commentary .01(e), as described below. The shares (“Shares”) of the Funds commenced trading on the Exchange on August 10, 2018 pursuant to the generic listing criteria in Commentary .01 to NYSE Arca Rule 8.600-E (“Managed Fund Shares”).<sup>4</sup>

The Shares are offered by the WisdomTree Trust (the “Trust”). WisdomTree Asset Management, Inc. (the “Adviser”) acts as adviser to the Funds. Mellon Investments Corporation

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<sup>4</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) 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.

acts as sub-adviser (the “Sub-Adviser”) to the Funds. The Trust is registered with the Commission as an investment company and has most recently updated its registration statement on Form N-1A (“Registration Statement”) with the Commission on behalf of the Funds that includes disclosure described herein.<sup>5</sup>

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.<sup>6</sup> In addition, Commentary .06 further requires that personnel who make decisions on the investment company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. The Sub-Adviser is

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<sup>5</sup> See Registration Statement (File Nos. 333-132380 and 811-21864) and filings dated August 1, 2019. The description of the operation of the Trust and the Funds herein is based, in part, on the information in the Registration Statement.

<sup>6</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser, Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

affiliated with multiple broker-dealers and has implemented and will maintain a “fire wall” with respect to such broker-dealers and their personnel regarding access to information concerning the composition and/or changes to a Fund’s portfolio. In addition, Sub-Adviser personnel who make decisions regarding a Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such Fund’s portfolio. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange submits this proposal in order to allow the Funds to hold OTC currency swaps and OTC currency forwards in a manner that may not comply with Commentary .01(e) to Rule 8.600-E.<sup>7</sup> Specifically, the aggregate gross notional value of each Fund’s investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives.<sup>8</sup> The Exchange proposes that up to 50% of each Fund’s assets (calculated as the aggregate gross notional value of the OTC derivatives) may be invested in OTC derivatives, that is, currency swaps and currency forwards, that are used to reduce (that is,

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<sup>7</sup> In particular, the Funds may not meet the requirement under Commentary .01(e) to Rule 8.600-E, which provides that a portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

<sup>8</sup> The Adviser and Sub-Adviser monitor counterparty credit risk exposure (including for OTC derivatives) and evaluate counterparty credit quality on a continuous basis.

“hedge”) currency risk arising from each Fund’s investments. Each Fund’s investments in OTC derivatives, other than OTC derivatives used to hedge each Fund’s portfolio against currency risk, will be limited to 20% of the assets in each Fund’s portfolio, calculated as the aggregate gross notional value of such OTC derivatives. The only OTC derivatives that each Fund may invest in are currency swaps and currency forwards.

Otherwise, the Funds comply with, and will continue to comply with, all other listing requirements on an initial and continued listing basis under Commentary .01(e) to Rule 8.600-E for Managed Fund Shares (“Generic Listing Standards”).

#### WisdomTree Emerging Markets Multifactor Fund

According to the Registration Statement, the Emerging Markets Fund seeks capital appreciation. The Emerging Markets Fund is actively managed using a model-based approach and seeks to achieve its investment objective by investing primarily in equity securities of emerging markets that exhibit certain characteristics that the Adviser believes to be indicative of positive future returns based on a model developed by the Adviser. The Adviser seeks to identify equity securities of emerging markets countries that have the highest potential for returns based on proprietary measures of fundamental factors, such as value and quality, and technical factors, such as momentum and correlation. The Adviser employs a quantitative model to identify which securities the Emerging Markets Fund might purchase and sell and opportune times for purchases and sales. At a minimum, the Emerging Markets Fund’s portfolio will be rebalanced quarterly according to the Adviser’s quantitative model, although a more active approach may be taken depending on such factors as market conditions and investment opportunities, and the number of holdings in the Emerging Markets Fund may vary. The Sub-Adviser, with oversight by the Adviser, is responsible for the day-to-day management of the

Emerging Markets Fund's portfolio in implementing the foregoing models-based approach.

The Adviser's strategy, as implemented by the Sub-Adviser, seeks to manage the Emerging Markets Fund's currency risk by dynamically hedging currency fluctuations in the relative value of the applicable foreign currencies against the U.S. dollar (the "Emerging Markets Currency Hedge"), ranging from a 0% to 100% hedge. The hedge ratios are adjusted as frequently as weekly utilizing signals such as interest rate differentials, momentum, and value.

Under normal market conditions,<sup>9</sup> the Emerging Markets Fund will hold only the following instruments: Non-U.S. Component Stocks,<sup>10</sup> U.S. Component Stocks<sup>11</sup> (in addition to U.S. exchange-listed exchange-traded funds ("ETFs")),<sup>12</sup> American Depositary Receipts ("ADRs"), cash and cash equivalents,<sup>13</sup> OTC currency forwards and OTC currency swaps. As noted above, all of the Emerging Markets Fund's holdings meet, and will continue to meet, the Generic Listing Standards with the exception of its holdings in OTC currency forwards and OTC currency swaps, which, following the effectiveness of this proposal, may exceed the requirement under Rule 8.600-E, Commentary .01(e), that prohibits the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).

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<sup>9</sup> The term "normal market conditions" is defined in NYSE Arca Rule 8.600-E(c)(5).

<sup>10</sup> See Commentary .01(a)(2) to Rule 8.600-E.

<sup>11</sup> See Commentary .01(a)(1) to Rule 8.600-E.

<sup>12</sup> For purposes of this filing, the term "ETFs" includes 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. The Fund will not invest in inverse or leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

<sup>13</sup> For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to Rule 8.600-E.

## WisdomTree International Multifactor Fund

According to the Registration Statement, the International Fund seeks capital appreciation. The International Fund is actively managed using a model-based approach and seeks to achieve its investment objective by investing primarily in equity securities of developed markets, excluding the United States and Canada, that exhibit certain characteristics that the Adviser believes to be indicative of positive future returns based on a model developed by the Adviser. The Adviser seeks to identify equity securities of developed countries, excluding the United States and Canada, that have the highest potential for returns based on proprietary measures of fundamental factors, such as value and quality, and technical factors, such as momentum and correlation. The Adviser employs a quantitative model to identify which securities the International Fund might purchase and sell and opportune times for purchases and sales. At a minimum, the International Fund's portfolio will be rebalanced quarterly according to the Adviser's quantitative model, although a more active approach may be taken depending on such factors as market conditions and investment opportunities, and the number of holdings in the International Fund may vary. The Sub-Adviser, with oversight by the Adviser, is responsible for the day-to-day management of the International Fund's portfolio in implementing the foregoing models-based approach.

The Adviser's strategy, as implemented by the Sub-Adviser, seeks to manage the International Fund's currency risk by dynamically hedging currency fluctuations in the relative value of the applicable foreign currencies against the U.S. dollar (the "International Multifactor Currency Hedge" and collectively, with the Emerging Markets Currency Hedge, the "Currency Hedge"), ranging from a 0% to 100% hedge. The hedge ratios are adjusted as frequently as weekly utilizing signals such as interest rate differentials, momentum, and value.

Under normal market conditions, the International Fund will hold only the following instruments: Non-U.S. Component Stocks, U.S. Component Stocks (in addition to U.S. exchange-listed ETFs), ADRs, cash and cash equivalents, and OTC currency forwards and OTC currency swaps. As noted above, the International Fund's holdings meet the Generic Listing Standards with the exception of its holdings in OTC currency forwards and OTC currency swaps, which may not meet the requirement under Rule 8.600-E, Commentary .01(e) that prevents the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).<sup>14</sup>

The Trust is required to comply with Rule 10A-3 under the Act<sup>15</sup> for the initial and continued listing of the Shares of each Fund. In addition, the Exchange represents that the Shares of each Fund will meet and be subject to all other requirements of the Generic Listing Standards and continued listing requirements for Managed Fund Shares under Exchange Rule 8.600-E. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and portfolio indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds. The Trust, on behalf of the Funds, has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not or the Shares are not in compliance with the applicable listing requirements, the Exchange will

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<sup>14</sup> Because the Fund is not in compliance with Rule 8.600-E, Commentary .01(e), the Exchange has commenced delisting proceedings pursuant to Rule 5.5-E(m), including issuing a deficiency notification.

<sup>15</sup> 17 CFR 240.10A-3.

commence delisting procedures under Exchange Rule 5.5-E(m).

#### Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolios for the Funds will not meet all of the Generic Listing Standards of Commentary .01 to NYSE Arca Rule 8.600-E applicable to the listing of Managed Fund Shares. Each Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(e) (with respect to OTC Derivatives), as described below.<sup>16</sup>

As described above, the Funds meet all of the Generic Listing Standards except with respect to their holdings in OTC currency forwards and OTC currency swaps, which would be used to achieve their respective Currency Hedge. The Exchange believes that this proposal does not raise any novel or substantive issues for the Commission to review because there are numerous filings that were either effective upon filing or that the Commission has approved for the listing and trading of series of Managed Fund Shares that employ similar hedging strategies.<sup>17</sup>

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<sup>16</sup> See note 7, *supra*.

<sup>17</sup> See Securities Exchange Act Release Nos. 85474 (March 29, 2019), 84 FR 13371 (April 4, 2019) (SR-CboeBZX-2019-019) (notice of filing and immediate effectiveness of a proposed rule change to make certain changes to the listing rule governing the listing and trading of the shares of the WisdomTree Japan Multifactor Fund and the WisdomTree Europe Multifactor Fund to allow each fund to hedge its foreign currency exposure with up to 50% gross notional exposure to OTC currency swaps); 84143 (September 14, 2018), 83 FR 47659 (September 20, 2018) (SR-CboeBZX-2018-019) (order approving the listing and trading of eighteen series of Managed Fund Shares that allowed each series to hedge its foreign equity position with up to 50% gross notional exposure to OTC currency swaps); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (SR-NYSEArca-2018-75) (order approving the listing and trading of a series of Managed Fund Shares that may hold up to 50% of the aggregate gross notional value of the fund's portfolio in OTC derivatives for the purpose of reducing currency, interest rate, credit, or duration risk, in addition to allowing the fund to hold an additional 20% of non-hedging OTC derivatives); 82591 (January 26, 2018), 83 FR 4707 (February 1, 2018) (SR-BatsBZX-2017-54) (the "Inflation Hedged Fund") (order approving the listing and

Further, the Exchange believes that, while the portfolios of the Funds may not meet Commentary .01(e) to Rule 8-600-E, the policy issues that the rule is intended to address are otherwise mitigated by the structure and purpose of the Currency Hedge within the Funds.<sup>18</sup> Specifically, the Exchange believes that the policy issues that Commentary .01(e) to Rule 8-600-E is intended to address are mitigated by the way that the Funds would use OTC currency forwards and OTC currency swaps. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract and to minimize counterparty risk. While the Currency Hedge positions taken by the Funds may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. The Funds will attempt to limit counterparty risk in OTC currency forwards and OTC currency

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trading of a series of Managed Fund Shares that could gain up to 50% gross notional exposure to OTC derivatives in order to hedge against inflation in the fund's portfolio); and 83363 (June 1, 2018), 83 FR 26531 (June 7, 2018) (SR-CboeBZX-2018-036) (notice of filing and immediate effectiveness of a proposal to allow the Inflation Hedged Fund to move increase its potential exposure to OTC derivative instruments from 50% to 60% of the fund's gross notional value). See also SR-NYSEArca-2017-09 (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600); SR-NYSEArca-2018-75 (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Regarding the Listing and Trading of Shares of the PGIM Ultra Short Bond ETF); SR-NYSEArca-2018-98 (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, To List and Trade Shares of the iShares Commodity Multi-Strategy ETF Under NYSE Arca Rule 8.600-E); and SR-NYSEArca-2018-83 (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, Regarding Changes to Investments of the iShares Bloomberg Roll Select Commodity Strategy ETF).

<sup>18</sup> Each Fund expects to invest in excess of 80% of its net assets in Non-U.S. Component Stocks in a manner that will comply with the Generic Listing Standards.

swaps by: (i) entering into such contracts only with counterparties that Adviser and/or Sub-Adviser believes are creditworthy; (ii) limiting a Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

#### Availability of Information

As noted above, the Funds will each comply with the requirements for Managed Fund Shares related to Disclosed Portfolio, Net Asset Value ("NAV"), and the Portfolio Indicative Value. Additionally, the intra-day, closing and settlement prices of Non-U.S. Component Stocks, U.S. Component Stocks, ADRs, and ETFs will be readily available from the securities exchanges on which such securities are traded, as well as published or other public sources, or online information services such as Bloomberg or Reuters. Intraday price quotations on OTC currency forwards and OTC currency swaps are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for cash equivalents will be available from major market data vendors. Each Fund's Disclosed Portfolio will be available on the issuer's website ([www.WisdomTree.com](http://www.WisdomTree.com)) free of charge. Each Fund's website will include the prospectus for the applicable Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. 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. The Exchange has appropriate rules to facilitate trading in the shares during all trading sessions.

### Surveillance

The Exchange represents that trading in the Shares are subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff 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.<sup>19</sup>

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, U.S. Component Stocks, ETFs, ADRs and certain of the Non-U.S. Component Stocks that are held by each Fund 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 such securities and financial instruments from such markets and other entities.<sup>20</sup> In addition, the Exchange may obtain information

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<sup>19</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>20</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

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 the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and portfolio indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds.

The issuer must notify the Exchange of any failure by a 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 a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E (m).

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>21</sup> in general and Section 6(b)(5) of the Act<sup>22</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to

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<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposal is consistent with Rule 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices because the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address, specifically Commentary .01(e) to Rule 8.600-E, related to OTC derivatives holdings, are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. Specifically, the Exchange believes that the policy issues that Commentary .01(e) to Rule 8.600-E is intended to address are mitigated by the way that the Funds would use OTC currency forwards and OTC currency swaps. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract and to minimize counterparty risk. As noted above, while the Currency Hedge positions that might be taken by the Funds may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. The Funds will attempt to limit counterparty risk in OTC currency forwards and OTC currency swaps by: (i) entering into such contracts only with counterparties the Adviser and/or Sub-Adviser believes are creditworthy; (ii) limiting a Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

The Exchange also notes that there are numerous filings that were either effective upon

filing or that the Commission has approved for the listing and trading of series of Managed Fund Shares that employ similar hedging strategies.<sup>23</sup>

The Exchange believes that it is appropriate and in the public interest to allow the Funds, for hedging purposes only, to exceed the 20% limit in Commentary .01(e) to Rule 8.600-E of portfolio assets that may be invested in OTC derivatives to a maximum of 50% of Fund assets (calculated as the aggregate gross notional value of the OTC derivatives). Under Commentary .01(e), a series of Managed Fund Shares listed under the Generic Listing Standards may invest up to 20% of its assets (calculated as the aggregate gross notional value) in OTC derivatives. Because the Funds, in furtherance of their investment objective, may invest a substantial percentage of their investments in OTC currency forwards and OTC currency swaps, the 20% limit in Commentary .01(e) to Rule 8.600 could result in the Funds being unable to fully pursue their investment objective while attempting to sufficiently mitigate investment risks. The inability of the Funds to adequately hedge their holdings would effectively limit the Funds' ability to invest in certain instruments, or could expose the Funds to additional investment risk.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Funds on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Trading of the Funds through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and portfolio indicative values, and the applicability of Exchange listing rules

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<sup>23</sup> See note 17, supra.

specified in this filing shall constitute continued listing requirements for the Funds. The Trust, on behalf of the Funds, has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5.5-E(m).

As described above, all ADRs and ETFs will be listed on a U.S. national securities exchange, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange may obtain information regarding trading in the Funds, U.S. Component Stocks, ETFs, ADRs, and certain Non-U.S. Component Stocks held by each Fund via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 of Managed Fund Shares 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>24</sup> and Rule 19b-4(f)(6) thereunder.<sup>25</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>26</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>27</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>28</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>29</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that there are numerous filings that were either effective upon filing or that the Commission approved for the listing and trading of series of Managed Fund

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>27</sup> 17 CFR 240.19b-4(f)(6).

<sup>28</sup> Id.

<sup>29</sup> 17 CFR 240.19b-4(f)(6)(iii).

Shares that employ similar hedging strategies<sup>30</sup> and does not believe this proposal raises new or novel issues. The Commission also notes that, except for the changes in this proposed rule change, the Funds comply with, and will continue to comply with, all other listing requirements on an initial and continued listing basis under Commentary .01(e) to Rule 8.600-E. The Commission therefore believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>31</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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-2019-73 on the subject line.

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<sup>30</sup> See note 17, supra.

<sup>31</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2019-73. 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-2019-73 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>32</sup> 17 CFR 200.30-3(a)(12).

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