

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74433; File No. SR-NYSEArca-2015-02)

March 4, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to NYSE Arca Equities Rule 8.600 to Adopt Generic Listing Standards for Managed Fund Shares

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 February 17, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. The text of 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.

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

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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.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares. Under the Exchange’s current rules, a proposed rule change must be filed with the Securities and Exchange Commission (“SEC” or “Commission”) for the listing and trading of each new series of Managed Fund Shares. The Exchange believes that it is appropriate to codify certain rules within Rule 8.600 that would generally eliminate the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process.

Background

Rule 8.600 sets forth certain rules related to the listing and trading of Managed Fund Shares.<sup>4</sup> Under Rule 8.600(c)(1), the term “Managed Fund Share” means a security that:

(a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser (hereafter “Adviser”) consistent with the Investment Company’s investment objectives and policies;

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<sup>4</sup> See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (order approving NYSE Arca Equities Rule 8.600 and listing and trading of shares of certain issues of Managed Fund Shares) (the “Approval Order”). The Approval Order approved the rules permitting the listing and trading of Managed Fund Shares, trading hours and halts, listing fees applicable to Managed Fund Shares, and the listing and trading of several individual series of Managed Fund Shares.

(b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and

(c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

Effectively, Managed Fund Shares are securities issued by an actively-managed open-end Investment Company (i.e., an actively-managed exchange-traded fund ("ETF")). Because Managed Fund Shares are actively-managed, they do not seek to replicate the performance of a specified passive index of securities. Instead, they generally use an active investment strategy to seek to meet their investment objectives. In contrast, an open-end Investment Company that issues Investment Company Units ("Units"), listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that generally correspond to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

All Managed Fund Shares listed and/or traded pursuant to Rule 8.600 (including pursuant to unlisted trading privileges) are subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.<sup>5</sup>

In addition, Rule 8.600(d) currently provides for the criteria that Managed Fund Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Managed Fund Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading

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<sup>5</sup> See Approval Order, *supra* note 4, at 19547.

new series of Managed Fund Shares on the Exchange requires that the Exchange submit a proposed rule change with the Commission. In this regard, Commentary .01 to Rule 8.600 specifies that the Exchange will file separate proposals under Section 19(b) of the Act (hereafter, a “proposed rule change”) before listing and trading of [sic] shares of an issue of Managed Fund Shares.

#### Proposed Changes to Rule 8.600

The Exchange would amend Commentary .01 to Rule 8.600 to specify that the Exchange may approve Managed Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to SEC Rule 19b-4(e) under the Act, which pertains to derivative securities products (“SEC Rule 19b-4(e”).<sup>6</sup> SEC Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,<sup>7</sup> if the Commission has approved, pursuant to section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which “passive” ETFs are listed under NYSE Arca Equities Rule 5.2(j)(3).

The Exchange would also specify within Commentary .01 to Rule 8.600 that components of Managed Fund Shares listed pursuant to SEC Rule 19b-4(e) must satisfy on an initial and continued basis certain specific criteria, which the Exchange would include within Commentary

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<sup>6</sup> 17 CFR 240.19b-4(e). As provided under SEC Rule 19b-4(e), the term “new derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

.01, as described in greater detail below. As proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares with components that do not satisfy the additional criteria described below or components other than those specified below. For example, if the components of a Managed Fund Share exceeded one of the applicable thresholds, the Exchange would file a separate proposed rule change before listing and trading such Managed Fund Share. Similarly, if the components of a Managed Fund Share included a security or asset that is not specified below, the Exchange would file a separate proposed rule change.

The Exchange would also add to the “generic” criteria of Rule 8.600(d) by specifying that all Managed Fund Shares must have a stated investment objective, which must be adhered to under normal market conditions.<sup>8</sup>

Finally, the Exchange would also amend the continued listing requirement in Rule 8.600(d)(2)(A) by changing the requirement that a Portfolio Indicative Value for Managed Fund Shares be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange to a requirement that a Portfolio Indicative Value be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).

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<sup>7</sup> 17 CFR 240.19b-4(c)(1). As provided under SEC Rule 19b-4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

<sup>8</sup> The Exchange would also add a new defined term under Rule 8.600(c)(5) to specify that the term “normal market conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

## Proposed Managed Fund Share Portfolio Standards

The Exchange is proposing standards that would pertain to Managed Fund Shares to qualify for listing and trading pursuant to SEC Rule 19b-4(e). These standards would be grouped according to security or asset type. The Exchange notes that the standards proposed for a Managed Fund Share portfolio that holds domestic equity securities, Derivative Securities Products and Index-Linked Securities are based in large part on the existing equity security standards applicable to Units in Commentary .01 to Rule 5.2(j)(3). The standards proposed for a Managed Fund Share portfolio that holds fixed income securities are based in large part on the existing fixed income security standards applicable to Units in Commentary .02 to Rule 5.2(j)(3). Many of the standards proposed for other types of holdings in a Managed Fund Share portfolio are based on previous proposed rule changes for specific series of Managed Fund Shares.<sup>9</sup>

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<sup>9</sup> See Securities Exchange Act Release Nos. 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR-NYSEArca-2011-95) (the “PIMCO Total Return Approval”) and 72666 (July 3, 2014), 79 FR 44224 (July 30, 2014) (SR-NYSEArca-2013-122) (the “PIMCO Total Return Use of Derivatives Approval”); 69244 (March 27, 2013), 78 FR 19766 (April 2, 2013) (SR-NYSEArca-2013-08) (the “SPDR Blackstone/GSO Senior Loan Approval”); 68870 (February 8, 2013), 78 FR 11245 (February 15, 2013) (SR-NYSEArca-2012-139) (the “First Trust Preferred Securities and Income Approval”); 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR-NYSEArca-2013-33) (the “International Bear Approval”); 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR-NYSEArca-2010-04) (the “WisdomTree Real Return Approval”); and 67054 (May 24, 2012), 77 FR 32161 (May 31, 2012) (SR-NYSEArca-2012-25) (the “WisdomTree Brazil Bond Approval”). Certain standards proposed herein for Managed Fund Shares are also based on previous proposed rule changes for specific series of Units for which Commission approval for listing was required due to the Units not satisfying certain standards of Commentary .01 and .02 to Rule 5.2(j)(3). See Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR-NYSEArca-2012-92) (the “iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series Approval”); 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR-NYSEArca-2010-120) (the “SPDR Nuveen S&P High Yield Municipal Bond ETF Approval”); 63176 (October 25, 2010), 75 FR 66815 (October 29, 2010) (SR-NYSEArca-2010-94) (the “iShares Taxable Municipal Bond Fund Approval”); and 69373 (April 15, 2013), 78 FR 23601 (April 19, 2013) (SR-NYSEArca-

Proposed Commentary .01(a) would describe the standards for a Managed Fund Share portfolio that holds equity securities, including U.S. Component Stocks,<sup>10</sup> Derivative Securities Products,<sup>11</sup> and Index-Linked Securities<sup>12</sup> listed on a national securities exchange, as follows:

(1) 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 must have a minimum market value of at least \$75 million;<sup>13</sup>

(2) 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 must 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;<sup>14</sup>

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

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2012-108) (the “NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Approval”).

<sup>10</sup> For the purposes of Commentary .01 and this proposal, the term “U.S. Component Stocks” would have the same meaning as defined in NYSE Arca Equities Rule 5.2(j)(3).

<sup>11</sup> For the purposes of Commentary .01 and this proposal, the term “Derivative Securities Products” would have the same meaning as defined in NYSE Arca Equities Rule 7.34(a)(4)(A).

<sup>12</sup> Index-Linked Securities are securities listed under NYSE Arca Equities Rule 5.2(j)(6).

<sup>13</sup> This proposed text is identical to the corresponding text of Commentary .01(a)(A)(1) to Rule 5.2(j)(3), except for the omission of the reference to “index,” which is not applicable, and the addition of the reference to Index-Linked Securities.

(excluding Derivative Securities Products and Index-Linked Securities) must not exceed 65% of the equity weight of the portfolio;<sup>15</sup>

(4) The portfolio must include a minimum of 13 component stocks; provided, however, that there would be no minimum number of component stocks if (a) 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 (b) 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;<sup>16</sup>

(5) Equity securities (excluding unsponsored American Depository Receipts (“ADRs”)) in the portfolio must be U.S. Component Stocks listed on a national securities exchange and must be NMS Stocks as defined in Rule 600 of Regulation NMS;<sup>17</sup>

(6) For Derivative Securities Products and Index-Linked Securities, no more than 25% of the equity weight of the portfolio could include leveraged and/or inverse leveraged Derivative Securities Products or Index-Linked Securities; and

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<sup>14</sup> This proposed text is identical to the corresponding text of Commentary .01(a)(A)(2) to Rule 5.2(j)(3), except for the omission of the reference to “index,” which is not applicable, and the addition of the reference to Index-Linked Securities.

<sup>15</sup> This proposed text is identical to the corresponding text of Commentary .01(a)(A)(3) to Rule 5.2(j)(3), except for the omission of the reference to “index,” which is not applicable, and the addition of the reference to Index-Linked Securities.

<sup>16</sup> This proposed text is identical to the corresponding text of Commentary .01(a)(A)(4) to Rule 5.2(j)(3), except for the omission of the reference to “index,” which is not applicable, the addition of the reference to Index-Linked Securities, and the reference to the 100% limit applying to the “equity portion” of the portfolio – this last difference included [sic] because these proposed standards in Commentary .01(a) to Rule 8.600 permit the inclusion of non-equity securities, whereas Commentary .01 to Rule 5.2(j)(3) only applies to equity securities.

<sup>17</sup> 17 C.F.R. 240.600. This proposed text is identical to the corresponding text of Commentary .01(a)(A)(5) to Rule 5.2(j)(3), except for the addition of “equity” to make



(7) ADRs may be sponsored or unsponsored. However no more than 10% of the equity weight of the portfolio shall consist of unsponsored ADRs.

Proposed Commentary .01(b) would describe the standards for a Managed Fund Share portfolio that holds fixed income securities, which are debt securities<sup>18</sup> that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. The applicable portfolio holdings standards would be as follows:

(1) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio shall meet the following:

(i) each shall have a minimum original principal amount outstanding of \$100 million or more;<sup>19</sup> or

(iii) [sic] if a municipal bond component, such component shall be issued in an offering with an aggregate size, as set forth in the official statement of the offering, of \$100 million or

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clear that the standard applies to “equity securities”, the exclusion of unsponsored ADRs, and the omission of the reference to “index,” which is not applicable.

<sup>18</sup> Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. Debt securities also include variable and floating rate securities.

<sup>19</sup> This text of proposed Commentary .01(b)(1)(i) to Rule 8.600 is based on the corresponding text of Commentary .02(a)(2) to Rule 5.2(j)(3) .

more;<sup>20</sup>

(2) No component fixed-income security (excluding Treasury Securities and GSE Securities) could represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio must not in the aggregate account for more than 65% of the fixed income weight of the portfolio,<sup>21</sup>

(3) An underlying portfolio (excluding exempted securities) must include a minimum

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<sup>20</sup> This proposed text is similar to the amendment to Commentary .02(a)(2) to Rule 5.2(j)(3) as proposed in SR-NYSEArca-2015-01. See Securities Exchange Act Release No. 74175 (January 29, 2015), 80 FR 6150 (February 4, 2015) (notice of filing of proposed rule change amending NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 relating to listing of Investment Company Units based on municipal bond indexes). Proposed rule changes for series of Units previously listed and traded on the Exchange pursuant to Rule 5.2(j)(3) similarly included the ability for such Units' holdings to include municipal bond components with individual principal amount outstanding of less than \$100 million. See, e.g., iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series Approval, supra note 9, at 61807; SPDR Nuveen S&P High Yield Municipal Bond ETF Approval, supra note 9, at 9066; and iShares Taxable Municipal Bond Fund Approval, supra note 9, at 66815-6. The proposed rule takes into account features of municipal bonds that differ from those of most other Fixed Income Securities. Principally, municipal bonds are issued with either "serial" or "term" maturities or some combination thereof. The official statement issued in connection with a municipal bond offering describes the terms of the bonds and the issuer and/or obligor on the related bonds, which is comprised of a number of specific maturity sizes. The entire issue (sometimes referred to as the "deal size") receives the same credit rating and the various maturities are all subject to the provisions set forth in the official statement. The entire issue is based on a specified project or group of related projects and funded by the same revenue or other funding sources identified in the official statement. The Exchange believes that the proposed rule change is reasonable and appropriate in that pricing and liquidity of such maturity sizes is predominately based on the common characteristics of the aggregate issue of which the municipal bond is part. Thus, consideration of the aggregate issue rather than the individual bond component does not raise concerns regarding pricing or liquidity of the index components or of the Units overlying the applicable municipal bond index.

<sup>21</sup> This proposed text is identical to the corresponding text of Commentary .02(a)(4) to Rule 5.2(j)(3), except for the omission of the reference to "index," which is not applicable.

of 13 non-affiliated issuers;<sup>22</sup>

(4) Component securities that in [sic] 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; and

(5) Non-agency mortgage-related and other asset-backed securities components of a portfolio shall not account for more than 20% of the weight of the fixed income portion of the portfolio.

Proposed Commentary .01(c) would describe the standards for a Managed Fund Share portfolio that holds cash and cash equivalents.<sup>23</sup> Specifically, the portfolio may hold short-term instruments with maturities of less than 3 months. There would be no limitation to the percentage of the portfolio invested in such holdings. Short-term instruments would include, without limitation, the following:<sup>24</sup>

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<sup>22</sup> This proposed text is identical to the corresponding text of Commentary .02(a)(5) to Rule 5.2(j)(3), except for the omission of the reference to “index,” which is not applicable, and the exclusion of the text “consisting entirely of.”

<sup>23</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include cash and cash equivalents. See, e.g., SPDR Blackstone/GSO Senior Loan Approval, supra note 9, at 19768-69 and First Trust Preferred Securities and Income Approval, supra note 9, at 76150.

<sup>24</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly specified short-term instruments with respect to their inclusion in Managed

- (1) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities;
- (2) certificates of deposit issued against funds deposited in a bank or savings and loan association;
- (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;
- (4) repurchase agreements and reverse repurchase agreements;
- (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and
- (6) commercial paper, which are short-term unsecured promissory notes.

Proposed Commentary .01(d) would describe the standards for a Managed Fund Share portfolio that holds listed and centrally cleared derivatives, including futures, options and cleared 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.<sup>25</sup> There would be no limitation to the percentage of the portfolio invested in such holdings; provided, however, that, in the aggregate, at least 90% of the weight of such holdings invested in futures and exchange-traded options shall consist of futures and options whose principal market is a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange has a

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Fund Share holdings. See, e.g., First Trust Preferred Securities and Income Approval, supra note 9, at 76150-51.

<sup>25</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Share holdings to include listed derivatives. See, e.g., WisdomTree Real Return Approval, supra note 9, at 13617 and WisdomTree Brazil Bond Approval, supra note 9, at 32163.

comprehensive surveillance sharing agreement (“CSSA”).<sup>26</sup> Additionally, proposed Commentary .01(d)(2) requires certain information to be included on the website of each series of Managed Fund Shares holding any listed and centrally cleared derivative.<sup>27</sup> The required information includes the following, to the extent relevant: ticker symbol, CUSIP or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each such derivative held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio.

Proposed Commentary .01(e) would describe the standards for a Managed Fund Share portfolio that holds over the counter (“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.<sup>28</sup> There would be no limitation to the percentage of the portfolio invested in such holdings. Additionally, proposed Commentary .01(e)(2) requires certain information to be included on the website of each series of Managed

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<sup>26</sup> ISG is comprised of an international group of exchanges, market centers, and market regulators that perform front-line market surveillance in their respective jurisdictions. See <https://www.isgportal.org/home.html>.

<sup>27</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as applicable to the type of holding. See, e.g., PIMCO Total Return Use of Derivatives Approval, *supra* note 9, at 44227.

<sup>28</sup> A proposed rule change for series of Units previously listed and traded on the Exchange pursuant to Rule 5.2(j)(3) similarly included the ability for such Units’ holdings to include OTC derivatives, specifically OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS and therefore do not satisfy the requirements of Commentary .01(a)(A) to Rule 5.2(j)(3). See, e.g., NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Approval, *supra* note 9, at 23602.

Fund Shares holding any OTC derivative.<sup>29</sup> The required information includes the following, to the extent relevant: ticker symbol, CUSIP or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each such derivative held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio.

Proposed Commentary .01(f) would describe the standards for a Managed Fund Share portfolio that holds illiquid assets.<sup>30</sup> The portfolio could hold up to an aggregate amount of 15%

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<sup>29</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included disclosure requirements with respect to each portfolio holding, as applicable to the type of holding. See, e.g., PIMCO Total Return Use of Derivatives Approval, supra note 9, at 44227.

<sup>30</sup> Proposed rule changes for previously-listed series of Managed Fund Shares have similarly included the ability for such Managed Fund Shares to include illiquid assets. See, e.g., International Bear Approval, supra note 9, at 30375-76. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933). See also First Trust Preferred Securities and Income Approval, supra note 9, at 76151, n. 16. The Exchange understands that a number of factors are currently considered by investment companies in reaching liquidity decisions. Examples of factors that would be reasonable for a board of directors to take into account with respect to a Rule 144A security (but which would not necessarily be determinative) would include, among others: (1) the frequency of trades and quotes for the security; (2) the number of dealers willing to purchase or sell the security and the number of other potential purchasers; (3) dealer undertakings to make a market in the security; and (4) the nature of the security and the nature of the marketplace trades (e.g.,

of the weight of its portfolio (calculated at the time of investment) in assets deemed illiquid by the Adviser.<sup>31</sup>

The changes proposed herein would not have an impact on the existing rules applicable to the listing and trading of Managed Fund Shares, which address, for example, net asset value, creation and redemption of shares, availability of information, trading halts, surveillance and information bulletins.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Fund Shares. Additionally, the Exchange believes that the proposed portfolio standards for listing and trading Managed Fund Shares, many of which track existing Exchange rules relating to Units, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares.<sup>32</sup> These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

In support of this proposal, the Exchange represents that:<sup>33</sup>

(1) the Managed Fund Shares will continue to conform to the initial and continued listing criteria under Rule 8.600;

(2) the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of the Managed Fund Shares in all trading sessions and to deter and detect violations

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the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>31</sup> If a Managed Fund Share portfolio holds Rule 144A securities, such securities would be subject to this 15% threshold if deemed to be illiquid by the Adviser. However, if deemed to be liquid by the Adviser, such Rule 144A securities would be subject to the other applicable standards.

<sup>32</sup> See Approval Order, supra note 4 at 19548.

<sup>33</sup> The Exchange made similar representations in the Approval Order. See id. at 19549.

of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Managed Fund Shares;

(3) prior to the commencement of trading of a particular series of Managed Fund Shares, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in a Bulletin of the special characteristics and risks associated with trading the Managed Fund Shares, including procedures for purchases and redemptions of Managed Fund Shares, suitability requirements under NYSE Arca Equities Rule 9.2(a), the risks involved in trading the Managed Fund Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated, information regarding the Portfolio Indicative Value, prospectus delivery requirements, and other trading information. In addition, the Bulletin will disclose that the Managed Fund Shares are subject to various fees and expenses, as described in the Registration Statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Finally, the Bulletin will disclose that the net asset value for the Managed Fund Shares will be calculated after 4 p.m. ET each trading day; and

(4) the issuer of a series of Managed Fund Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Managed Fund Shares, as provided under NYSE Arca Equities Rule 5.3.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that ETP Holders or issuers would have in complying with the proposed change.

## 2. Statutory Basis



The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>34</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>35</sup> in particular, because it is 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 proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. Specifically, after more than six years under the current process, whereby the Exchange is required to file a proposed rule change with the Commission for the listing and trading of each new series of Managed Fund Shares, the Exchange believes that it is appropriate to codify certain rules within Rule 8.600 that would generally eliminate the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Managed Fund Shares that have investment portfolios that are similar to investment portfolios for Units, which have been approved for listing and trading, thereby creating greater efficiencies in the listing process for the Exchange and the Commission. In this regard, the Exchange notes that the standards proposed for Managed Fund Share portfolios that include domestic equity securities, Derivative Securities Products, and Index-Linked Securities are based in large part on the existing equity security standards applicable to Units in Commentary .01 to Rule 5.2(j)(3) and that the standards proposed for Managed Fund Share portfolios that include fixed income securities are based in large part on the existing fixed income standards applicable to Units in Commentary .02 to Rule

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<sup>34</sup> 15 U.S.C. 78f(b).

5.2(j)(3). Additionally, many of the standards proposed for other types of holdings of series of Managed Fund Shares are based on previous proposed rule changes for specific series of Managed Fund Shares.<sup>36</sup> With respect to the proposed exclusion of Derivative Securities Products and Index-Linked Securities from the requirements of proposed Commentary .01(a) of Rule 8.600, the Exchange believes it is appropriate to exclude Index-Linked Securities as well as Derivative Securities Products from certain component stock eligibility criteria for Managed Fund Shares in so far as Derivative Securities Products and Index-Linked Securities are themselves subject to specific quantitative listing and continued listing requirements of a national securities exchange on which such securities are listed. Derivative Securities Products and Index-Linked Securities that are components of a fund's portfolio would have been listed and traded on a national securities exchange pursuant to a proposed rule change approved by the Commission pursuant to Section 19(b)(2) of the Act<sup>37</sup> or submitted by a national securities exchange pursuant to Section 19(b)(3)(A) of the Act<sup>38</sup> or would have been listed by a national securities exchange pursuant to the requirements of Rule 19b-4(e) under the Act.<sup>39</sup> The Exchange also notes that Derivative Securities Products and Index-Linked Securities are derivatively priced, and, therefore, the Exchange believes that it would not be necessary to apply the proposed generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio component weighting) applicable to equity securities other than Derivative Securities Products or Index-

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<sup>35</sup> 15 U.S.C. 78f(b)(5).

<sup>36</sup> See supra, note 9.

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>39</sup> 17 CFR 240.19b-4(e).

Linked Securities (e.g., common stocks) to such products.<sup>40</sup>

With respect to the proposed amendment to the continued listing requirement in Rule 8.600(d)(2)(A) to require dissemination of a Portfolio Indicative Value at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34), such requirement conforms to the requirement applicable to the dissemination of the Intraday Indicative Value for Investment Company Units in Commentary .01(c) and Commentary .02(c) to NYSE Arca Equities Rule 5.2(j)(3). In addition, such dissemination is consistent with representations made in proposed rule changes for issues of Managed Fund Shares previously approved by the Commission.<sup>41</sup>

The proposed rule change is also designed to protect investors and the public interest because Managed Fund Shares listed and traded pursuant to Rule 8.600, including pursuant to the proposed new portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.<sup>42</sup>

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Managed Fund Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in

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<sup>40</sup> See Securities Exchange Act Release Nos. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (SR-NYSEArca-2008-29) (notice of filing of proposed rule change to amend eligibility criteria for components of an index underlying Investment Company Units); 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29) (order approving proposed rule change to amend eligibility criteria for components of an index underlying Investment Company Units).

<sup>41</sup> See, e.g., Approval Order, supra note 4; International Bear Approval, supra note 9.

<sup>42</sup> See Approval Order, supra note 4, at 19547.

the Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Managed Fund Shares with other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Managed Fund Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the components are traded, or with which the Exchange has in place a CSSA.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b-4(e) under the Act by allowing Managed Fund Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Fund Shares that do not satisfy the additional criteria described above.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

**B. Self-Regulatory Organization’s Statement on Burden on Competition**

In accordance with Section 6(b)(8) of the Act,<sup>43</sup> 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 purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Managed Fund Shares and result in a significantly more efficient process surrounding the listing and trading of Managed Fund Shares, which will enhance competition among market participants, to the benefit of

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<sup>43</sup> 15 U.S.C. 78f(b)(8).

investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Managed Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Managed Fund Shares more competitive by applying uniform listing standards with respect to Managed Fund Shares portfolio holdings.

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

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

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

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

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comments on the following questions:

1. According to the Exchange, many of the requirements of the proposed rule applicable to equity and fixed income securities holdings are identical to the requirements for equity and fixed income index-based ETFs, respectively.<sup>44</sup>

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<sup>44</sup> See proposed Commentaries .01(a) and (b) to NYSE Arca Equities Rule 8.600.

a. Do commenters believe that these requirements for index-based ETFs should equally apply to the listing and trading of Managed Fund Shares? If so, why? If not, why not?

b. Do commenters believe that the requirements for index-based ETFs that the Exchange proposes to apply to Managed Fund Shares are adequate to deter manipulation irrespective of similarities between the two types of products? If so, why? If not, why not?

2. In addition, as noted by the Exchange, some of the requirements of the proposed rule are identical to certain, specifically tailored requirements referenced in other previously approved proposed rule changes pertaining to the listing and trading of specific series of Managed Fund Shares. What are commenters' views on whether these specifically tailored requirements for certain series of Managed Fund Shares ought to equally apply to all Managed Fund Shares by virtue of being incorporated into these proposed generic listing standards?

3. Do commenters believe that the proposed listing requirements are adequate to deter manipulation and other trading abuses of the price of generically listed Managed Fund Shares? If so, why? If not, why not?

4. Under the proposed rule, there would be no limitation to the percentage of the portfolio invested in short-term cash equivalents or derivative instruments. In addition, under the proposed rule, there would be no limitation as to the types of short-term cash equivalents or derivative instruments that could be held in the portfolio. To what extent, if at all, should the proposed generic listing standards restrict the holding of these portfolio components? If so, how and why? If not, why not?

5. Do commenters have views on whether the proposed generic listing requirements

for Managed Fund Shares have adequately accounted for all types of assets that a portfolio can hold? Should the proposed rules include additional or fewer restrictions? Are there other measures that the Commission and the Exchange should consider with respect to a portfolio of Managed Fund Shares that are generically listed?

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-2015-02 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-02. 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, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-02 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>45</sup>

Brent J. Fields  
Secretary

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<sup>45</sup> 17 CFR 200.30-3(a)(12).