



**Martha Redding**  
Associate General Counsel  
Assistant Secretary

May 15, 2019

**VIA E-MAIL**

Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-85751 (SR-NYSEArca-2019-28)

Dear Secretary:

NYSE Arca, Inc. filed the attached Amendment No. 1 to the above-referenced filing on May 14, 2019.

Sincerely,

A handwritten signature in blue ink, appearing to be the initials "MR" followed by a stylized flourish.

Encl. (Amendment No. 1 to SR-NYSEArca-2019-28)

Required fields are shown with yellow backgrounds and asterisks.

Filing by NYSE Arca, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to List and Trade Shares of the Virtus WMC Risk-Managed Alternative Equity ETF

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Samir	Last Name * Patel
Title * Senior Counsel, NYSE Group Inc.	
E-mail * [REDACTED]	
Telephone * [REDACTED]	Fax [REDACTED]


**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 05/14/2019	Senior Counsel
By David De Gregorio	[REDACTED]
(Name *)	



NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) proposes to list and trade shares of the Virtus WMC Risk-Managed Alternative Equity ETF under NYSE Arca Rule 8.600-E.

This Amendment No. 1 to SR-NYSEArca-2019-28 replaces SR-NYSEArca-2019-28 as originally filed and supersedes such filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change is being submitted to the Securities and Exchange Commission (the “Commission”) by Exchange staff pursuant to authority delegated to it by the NYSE Arca Board of Directors.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Michael Cavalier  
Counsel  
NYSE Group, Inc.  
[REDACTED]

Samir Patel  
Senior Counsel  
NYSE Group, Inc.  
[REDACTED]

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

- (a) Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Virtus WMC Risk-Managed Alternative Equity ETF (the “Fund”) under NYSE Arca Rule 8.600-E, which provides generic criteria applicable to the listing and trading of Managed Fund Shares on the Exchange.<sup>1</sup>

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<sup>1</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.

The Fund is a series of ETFs Series I (“Trust”). Virtus ETF Advisors LLC (the “Adviser”) is the investment adviser for the Fund. Wellington Management Company LLP is the sub-adviser to the Fund (the “Sub-Adviser”). The Trust and the Adviser have engaged the Sub-Adviser to manage the Fund’s investments, subject to the oversight and supervision of the Adviser and the Board of Trustees of the Trust.<sup>2</sup> ETF Distributors LLC (“Distributor”), a registered broker-dealer, will act as the distributor for the Fund’s Shares. The Bank of New York Mellon (“BNY Mellon”) will serve as the custodian, administrator and transfer agent (“Transfer Agent”) for the Fund.

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 non-public 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 Sub-Adviser are not registered as broker-dealers. The

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80a-1) (the “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.

<sup>2</sup> The Trust is registered under the 1940 Act. On February 28, 2019, the Trust filed with the Commission Post-Effective Amendment No. 155 to the Trust’s 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. 333-187668 and 811-22819) (“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. 30607 (July 23, 2013) (File No. 812-14080).

Adviser and Sub-Adviser are affiliated with one or more broker-dealers and have implemented and will maintain a “fire wall” with respect to each such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In the event (a) the Adviser or the 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 broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures, each designed to prevent the use and dissemination of material non-public information regarding such portfolio.

### Virtus WMC Risk-Managed Alternative Equity ETF

#### Principal Investments

According to the Registration Statement, the investment objective of the Fund is to seek to provide superior risk-adjusted total returns over the long term. The Fund will seek to achieve its investment objective, under normal market conditions,<sup>3</sup> by (i) investing in a broadly diversified portfolio of global equity securities in both developed and emerging markets, and (ii) implementing a beta management strategy by shorting futures contracts and purchasing and selling options, as further described below. By combining these two strategies, the Sub-Adviser seeks to generate superior total returns (i.e., returns in excess of the average returns of broad global equity market indexes) over a full market cycle with significant downside equity market protection (i.e., protection intended to limit losses in a declining market), consistent with the risk/return profile of investments in long/short equity (also referred to as alternative equity) hedge funds. Although the Sub-Adviser will seek for the Fund’s risk/return profile to be consistent with investments in long/short equity hedge funds, the Fund itself does not invest in hedge funds. Under normal market conditions, the Fund will invest at least 80% of its net assets (plus any borrowings for investment purposes) in equity securities (as discussed below), in derivatives,<sup>4</sup> cash and cash equivalents and other instruments (as discussed below), that have economic characteristics similar to such investments (together, the “Principal Investments”).

The Fund will invest in the following U.S. and non-U.S. exchange-listed equity securities of U.S. and non-U.S. issuers: common stock; preferred stock; convertible preferred stock; rights; warrants; American Depositary Receipts (“ADRs”) and Global Depositary Receipts (“GDRs”); and real estate investment

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<sup>3</sup> The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

<sup>4</sup> The Fund’s investments in derivatives will include investments in both listed derivatives and over-the-counter (“OTC”) derivatives, as those terms are defined in Commentary .01(d) and (e) to NYSE Arca Rule 8.600-E.

trusts (“REITs”) of U.S. and foreign issuers.

The Fund may hold cash and cash equivalents.<sup>5</sup>

The Fund may hold U.S. and non-U.S. exchange-traded futures and U.S. and non-U.S. exchange-traded or over-the-counter (“OTC”) options on equity securities, equity securities indices, and interest rates.

The Fund may invest in forward foreign currency contracts and U.S. and non-U.S. exchange-traded foreign currency futures contracts.

The Fund may enter into short sales of any securities and financial instruments in which the Fund may invest.

The Fund may use derivative instruments described above as a substitute for investing directly in an underlying security or other financial instrument, to seek to enhance returns, to seek to manage or reduce exposure/risk, or to seek to manage foreign currency risk.

#### Non-Principal Investments

While the Fund, under normal market conditions, will invest at least 80% in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments (“Non-Principal Investments”) described below.

The Fund may invest in exchange-traded funds (“ETFs”).<sup>6</sup>

The Fund may invest in convertible bonds.

In addition to U.S. government securities that are cash equivalents as defined in Commentary .01(c) to NYSE Arca Rule 8.600-E, the Fund may invest in other U.S. government securities, which are U.S. government obligations such as U.S. Treasury notes, U.S. Treasury bonds, and U.S. Treasury bills, obligations guaranteed by the U.S. government.

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<sup>5</sup> The term “cash equivalents” is defined in Commentary .01(c) to NYSE Arca Rule 8.600-E.

<sup>6</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. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

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

#### Use of Derivatives by the Fund

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the " Board ") and in accordance with the 1940 Act or as permitted by applicable Commission guidance. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. 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.

#### Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).<sup>7</sup>

#### Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser 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 Sub-Adviser 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 Sub-Adviser 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 net asset value ("NAV"), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

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<sup>7</sup> The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.



### Creation of Creation Units

The Trust issues and sells Shares of the Fund only in aggregations of 50,000 Shares (each aggregation is called a “Creation Unit”) on a continuous basis through the Distributor at the NAV next determined after receipt of an order in proper form on any Business Day.<sup>8</sup> The size of a Creation Unit is subject to change.

The consideration for a purchase of Creation Units generally will consist of cash or an in-kind deposit of a portfolio of securities and other investments (the “Deposit Securities”) for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund’s portfolio and an amount of cash computed as described below (the “Cash Amount”). The Cash Amount together with the Deposit Securities, as applicable, are referred to as the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Cash Amount would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the “Deposit Amount,” which is an amount equal to the aggregate market value of the Deposit Securities, and serves to compensate for any differences between the NAV per Creation Unit and the Deposit Amount.

The Fund, through the National Securities Clearing Corporation (“NSCC”), makes available on each Business Day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.), the list of the names and the required number of securities for each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. Such Fund Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

All orders to create Creation Units generally must be received by the Distributor no later than 3:00 p.m. E.T. on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the Fund as determined on such date.

In addition, the Trust reserves the right to permit the substitution of an amount of cash (i.e., a “cash in lieu” amount) to be added to the Cash Component to replace any Deposit Security which may, among other reasons, not be available in sufficient quantity for delivery, or which may not be eligible for transfer through

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<sup>8</sup> A “Business Day” with respect to the Fund is any day on which the Exchange is open for business.

the Clearing Process (defined below), or which may not be eligible for trading by a Participating Party (defined below).

To be eligible to place orders with the Distributor to create Creation Units of the Fund, an entity or person either must be (1) 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”); or (2) a Depository Trust Company (“DTC”) Participant; which, in either case, must have executed an agreement with the Trust, the Distributor and the Transfer Agent (“Participant Agreement”). A Participating Party and DTC Participant are collectively referred to as an “Authorized Participant.”

#### Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a Business Day.

The Trust, through NSCC, makes available immediately prior to the opening of business on the Exchange (9:30 a.m. E.T.) on each Business Day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. The Fund’s securities received on redemption (“Redemption Instruments”) may not be identical to Deposit Securities that are applicable to creations of Creation Units. Unless cash redemptions are permitted or required for the Fund, the redemption proceeds for a Creation Unit generally consist of Deposit Securities as announced by the Trust on the Business Day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Deposit Securities, less the redemption transaction fee.

In order to redeem Creation Units of the Fund, an Authorized Participant must submit an order to redeem for one or more Creation Units. An order to redeem Creation Units of a Fund using the Clearing Process generally must be received by the Trust not later than 3:00 p.m. E.T. on the Business Day of the request for redemption in order for such order to be effected based on the NAV of the Fund as next determined. An order to redeem Creation Units of the Fund using the NSCC Clearing Process made in proper form but received by the Fund after 3:00 p.m. E.T. will be deemed received on the next Business Day immediately following the day on which such order request is transmitted.

#### Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet 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 will meet all such requirements except for those set forth in Commentary .01 (e), as described below.

The Fund will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600-E with respect to the Fund's investments in OTC derivatives.<sup>9</sup> Specifically, the aggregate gross notional value of the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives.<sup>10</sup> The Exchange proposes that up to 50% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives, that is, forwards and OTC options, that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, "hedge"). The Fund's investments in OTC derivatives, other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate, or credit risk, will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Sub-Adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate, or credit fluctuations on Fund assets. OTC derivatives provide the Fund with additional flexibility as well as a more precise means to effectively attempt to reduce currency, interest rate, or credit fluctuations on Fund assets. Generally, OTC derivatives can be customized to a greater degree than exchange-traded derivatives and can provide a better hedge on Fund assets, as well as allow for more control over the duration of the hedge which can also mitigate trading costs. Therefore, in addition to the Fund's ability to invest 20% of the assets in the Fund's portfolio in OTC derivatives pursuant to NYSE Arca Rule 8.600-E, Commentary .01(e), the Exchange believes it is appropriate to apply a limit of up to 50% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), i.e.,

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<sup>9</sup> Commentary .01(e) to NYSE Arca Rule 8.600-E 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>10</sup> The Adviser and Sub-Adviser monitor counterparty credit risk exposure (including for OTC derivatives) and evaluate counterparty credit quality on a continuous basis.

forwards and options, that are used for hedging purposes, as described above.<sup>11</sup>

The Adviser and Sub-Adviser represent that 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 because OTC derivatives generally provide the Fund with more flexibility to negotiate the exact exposure that the Fund requires, and minimize trading costs because OTC derivatives are not subject to costs of rolling that are associated with listed derivatives.

The Adviser and Sub-Adviser represent that they intend to engage in strategies that utilize foreign currency forward transactions (which are traded OTC) and OTC options, as described above, based on its investment strategies and for hedging purposes. Depending on market conditions, the exposure due to these strategies, including for hedging, may exceed 20% of the Fund's assets. The Adviser represents further that the foreign exchange forward market is OTC, and, as such, it is not possible to implement these strategies efficiently using listed derivatives. In addition, use of OTC options on U.S. and non-U.S. exchange-listed equity securities may be an important means to reduce risk in the Fund's equity investments, or, depending on market conditions, to enhance returns of such investments. If the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund would have to exclude or underweight these strategies and

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<sup>11</sup> The Commission has previously approved an exception from requirements set forth in Commentary .01(e) relating to investments in OTC derivatives similar to those proposed with respect to the Fund in Securities Exchange Act Release Nos. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (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). 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), in which the Nasdaq Stock Market LLC proposed that there would be no limit on the fund's investments in Interest Rate and Currency Derivatives, and that the aggregate weight of all OTC Derivatives other than Interest Rate and Currency Derivatives will not exceed 10% of the fund's assets); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (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), note 13; 85022 (January 31, 2019), 84 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 to List and Trade Shares of the Brandywine GLOBAL-Global Total Return ETF).

would be less diversified, concentrating risk in the other strategies it will utilize.

In addition, by applying the 20% limitation in Commentary .01(e) to Rule 8.600-E, the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were \$100 million and the Fund held \$20 million in Principal Investments with two types of risks (e.g., currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding \$20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding \$10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Exchange notes that, other than Commentary .01(e), the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E and will meet all other requirements of NYSE Arca Rule 8.600-E.

The Adviser and Sub-Adviser represent that the proposed exception described above is consistent with the Fund's investment objective, and will further assist the Adviser and Sub-Adviser to achieve such investment objective.

#### Availability of Information

The Fund's website ([www.virtusetfs.com](http://www.virtusetfs.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) the prior Business Day's NAV; (ii) the reported midpoint of the bid-ask spread at the time of NAV calculation (the "Bid-Ask Price");<sup>12</sup> (iii) a calculation of the premium or discount of the Bid-Ask Price against such NAV; and (iv) data in chart format displaying the frequency distribution of discounts and premiums of the 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 Fund will disclose 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>13</sup>

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<sup>12</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.

<sup>13</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.

On a daily basis, the Fund will disclose 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 any security, and any 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 U.S and non-U.S. exchange-traded options and futures will be available from the exchange on which such instruments are traded. Price information relating to OTC options and currency forwards will be available from major market data vendors. Intra-day price information for U.S. and non-U.S. exchange-traded options on futures will be available from the applicable exchange and from major market data vendors. For U.S. and non-U.S. exchange-listed equity securities, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Price information for cash equivalents and convertible bonds will be available from major market data vendors. Price information regarding U.S. government securities generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Additionally, the Trade Reporting and Compliance Engine ("TRACE") of the Financial Industry Regulatory Authority ("FINRA") will be a source of price information for certain fixed income securities to the extent transactions in such securities are reported to TRACE.<sup>14</sup>

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<sup>14</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 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, ETFs, and other U.S. exchange-traded equity securities will be available via the Consolidated Tape Association ("CTA") high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation ("OCC") are available via the Options Price Reporting Authority ("OPRA"). 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(e) 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, certain exchange-traded equity securities (including 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, certain exchange-traded equity securities (including 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, certain exchange-traded equity securities (including 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”). 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 (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.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund will be calculated after 4:00 p.m. E.T. each trading day.

#### (b) 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 Equities 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 the Sub-

Adviser are not registered as a broker-dealer but both the Adviser and the Sub-Adviser are affiliated with a broker-dealer and have implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. 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 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.

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 Equities 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 Equities 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.

The Exchange believes that it is appropriate and in the public interest to allow the Fund, 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 gross notional value). As noted above, the Adviser and Sub-Adviser believe that it is in the best interests of the Fund’s shareholders for the Fund to be allowed to reduce the currency, interest rate, or credit risk arising from the Fund’s investments using the most efficient financial instruments. The proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective. In addition, the Fund’s investments in OTC derivatives, other than OTC derivatives used to hedge the Fund’s portfolio against currency, interest rate, or credit risk will be limited to

20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. While certain risks can be hedged via listed derivatives, OTC derivatives (such as forwards and options) can be customized to hedge against precise risks. Accordingly, the Adviser and Sub-Adviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate, or credit fluctuations on Fund assets. Therefore, the Exchange believes that increasing the percentage limit in Commentary .01(e), as described above, to the Fund's investments in OTC derivatives, including forwards and options, that are used specifically for hedging purposes would permit the Fund to satisfy its investment objective and reduce investment risks in a more cost-effective manner and, therefore, would help protect investors and the public interest.<sup>15</sup>

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 in that it will facilitate the continued listing and trading of an actively-managed exchange-traded product that, through permitted use of an increased level of OTC derivatives above than currently permitted by the generic listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E, will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that it is appropriate and in the public interest to allow the Fund, 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. Under Commentary .01(e), a series of Managed Fund Shares listed under the "generic" standards may invest up to 20% of its assets (calculated as the aggregate gross notional value) in OTC derivatives. Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in Principal Investments, the 20% limit in Commentary .01(e) to Rule 8.600-E could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund's ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund's assets (on a gross notional value basis) were \$100 million and no listed derivative were suitable to hedge the Fund's risk, under the generic standards the Fund would be limited to holding up to \$20 million gross notional value in OTC derivatives (\$100 million \* 20%). Accordingly, the maximum amount the Fund would be able to invest in Principal

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The Exchange notes that the Commission has previously approved listing and trading of Managed Fund Shares the investments of which are similar to those proposed herein for the Fund. See, e.g., Securities Exchange Act Release No. 82492 (January 12, 2018) 83 FR 2850 (January 19, 2018) (SR-NYSEArca-2017-87) (approving listing of shares of the JP Morgan Long/Short ETF).

Investments while remaining adequately hedged would be \$20 million. The Fund then would hold \$60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.<sup>16</sup>

In addition, by applying the 20% limitation in Commentary .01(e) to Rule 8.600-E, the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were \$100 million and the Fund held \$20 million in Principal Investments and Non-Principal Investments with two types of risks (e.g., currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding \$20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding \$10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

4. 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 listing and trading of an issue of Managed Fund Shares that, through permitted use of an increased level of OTC derivatives above that currently permitted by the generic listing requirements of Commentary .01 to NYSE Arca Equities Rule 8.600-E will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

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<sup>16</sup> Implicit in expanding the ability of the Fund to enter into OTC derivatives solely for hedging purposes is that OTC derivatives will never be 100% of the Fund's portfolio because there will always be an underlying asset that is being hedged.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 - Form of Notice of Proposed Rule Change for Federal Register

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSEARCA-2019-28, Amendment No. 1)

[Date]

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the Virtus WMC Risk-Managed Alternative Equity ETF

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 14, 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 to list and trade shares of the Virtus WMC Risk-Managed Alternative Equity ETF under NYSE Arca Rule 8.600-E. This Amendment No. 1 to SR-NYSEArca-2019-28 replaces SR-NYSEArca-2019-28 as originally filed and supersedes such filing in its entirety. 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 to list and trade shares (“Shares”) of the Virtus WMC Risk-Managed Alternative Equity ETF (the “Fund”) under NYSE Arca Rule 8.600-E, which provides generic criteria applicable to the listing and trading of Managed Fund Shares on the Exchange.<sup>4</sup>

The Fund is a series of ETFs Series I (“Trust”). Virtus ETF Advisors LLC (the “Adviser”) is the investment adviser for the Fund. Wellington Management Company LLP is the sub-adviser to the Fund (the “Sub-Adviser”). The Trust and the Adviser have engaged the Sub-Adviser to manage the Fund’s investments, subject to the oversight and

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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) (the “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.

supervision of the Adviser and the Board of Trustees of the Trust.<sup>5</sup> ETF Distributors LLC (“Distributor”), a registered broker-dealer, will act as the distributor for the Fund’s Shares. The Bank of New York Mellon (“BNY Mellon”) will serve as the custodian, administrator and transfer agent (“Transfer Agent”) for the Fund.

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 non-public 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.

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<sup>5</sup> The Trust is registered under the 1940 Act. On February 28, 2019, the Trust filed with the Commission Post-Effective Amendment No. 155 to the Trust’s 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. 333-187668 and 811-22819) (“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. 30607 (July 23, 2013) (File No. 812-14080).



The Adviser and the Sub-Adviser are not registered as broker-dealers. The Adviser and Sub-Adviser are affiliated with one or more broker-dealers and have implemented and will maintain a “fire wall” with respect to each such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In the event (a) the Adviser or the 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 broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures, each designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### Virtus WMC Risk-Managed Alternative Equity ETF

##### Principal Investments

According to the Registration Statement, the investment objective of the Fund is to seek to provide superior risk-adjusted total returns over the long term. The Fund will seek to achieve its investment objective, under normal market conditions,<sup>6</sup> by (i) investing in a broadly diversified portfolio of global equity securities in both developed and emerging markets, and (ii) implementing a beta management strategy by shorting futures contracts and purchasing and selling options, as further described below. By combining these two strategies, the Sub-Adviser seeks to generate superior total returns (i.e., returns in excess of the average returns of broad global equity market indexes) over a full market cycle with significant downside equity market protection (i.e., protection

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<sup>6</sup> The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

intended to limit losses in a declining market), consistent with the risk/return profile of investments in long/short equity (also referred to as alternative equity) hedge funds. Although the Sub-Adviser will seek for the Fund's risk/return profile to be consistent with investments in long/short equity hedge funds, the Fund itself does not invest in hedge funds. Under normal market conditions, the Fund will invest at least 80% of its net assets (plus any borrowings for investment purposes) in equity securities (as discussed below), in derivatives,<sup>7</sup> cash and cash equivalents and other instruments (as discussed below), that have economic characteristics similar to such investments (together, the "Principal Investments").

The Fund will invest in the following U.S. and non-U.S. exchange-listed equity securities of U.S. and non-U.S. issuers: common stock; preferred stock; convertible preferred stock; rights; warrants; American Depositary Receipts ("ADRs") and Global Depositary Receipts ("GDRs"); and real estate investment trusts ("REITs") of U.S. and foreign issuers.

The Fund may hold cash and cash equivalents.<sup>8</sup>

The Fund may hold U.S. and non-U.S. exchange-traded futures and U.S. and non-U.S. exchange-traded or over-the-counter ("OTC") options on equity securities, equity securities indices, and interest rates.

The Fund may invest in forward foreign currency contracts and U.S. and non-U.S. exchange-traded foreign currency futures contracts.

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<sup>7</sup> The Fund's investments in derivatives will include investments in both listed derivatives and over-the-counter ("OTC") derivatives, as those terms are defined in Commentary .01(d) and (e) to NYSE Arca Rule 8.600-E.

<sup>8</sup> The term "cash equivalents" is defined in Commentary .01(c) to NYSE Arca Rule 8.600-E.

The Fund may enter into short sales of any securities and financial instruments in which the Fund may invest.

The Fund may use derivative instruments described above as a substitute for investing directly in an underlying security or other financial instrument, to seek to enhance returns, to seek to manage or reduce exposure/risk, or to seek to manage foreign currency risk.

#### Non-Principal Investments

While the Fund, under normal market conditions, will invest at least 80% in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments (“Non-Principal Investments”) described below.

The Fund may invest in exchange-traded funds (“ETFs”).<sup>9</sup>

The Fund may invest in convertible bonds.

In addition to U.S. government securities that are cash equivalents as defined in Commentary .01(c) to NYSE Arca Rule 8.600-E, the Fund may invest in other U.S. government securities, which are U.S. government obligations such as U.S. Treasury notes, U.S. Treasury bonds, and U.S. Treasury bills, obligations guaranteed by the U.S. government.

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

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<sup>9</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. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

### Use of Derivatives by the Fund

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the "Board") and in accordance with the 1940 Act or as permitted by applicable Commission guidance. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. 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.

### Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).<sup>10</sup>

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<sup>10</sup> The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

### Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser 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 Sub-Adviser 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 Sub-Adviser 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 net asset value ("NAV"), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

### Creation of Creation Units

The Trust issues and sells Shares of the Fund only in aggregations of 50,000 Shares (each aggregation is called a "Creation Unit") on a continuous basis through the Distributor at the NAV next determined after receipt of an order in proper form on any Business Day.<sup>11</sup> The size of a Creation Unit is subject to change.

The consideration for a purchase of Creation Units generally will consist of cash or an in-kind deposit of a portfolio of securities and other investments (the "Deposit Securities") for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash computed as described below (the "Cash Amount"). The Cash Amount together with the Deposit Securities, as applicable, are referred to as the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

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<sup>11</sup> A "Business Day" with respect to the Fund is any day on which the Exchange is open for business.

The Cash Amount would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the “Deposit Amount,” which is an amount equal to the aggregate market value of the Deposit Securities, and serves to compensate for any differences between the NAV per Creation Unit and the Deposit Amount.

The Fund, through the National Securities Clearing Corporation (“NSCC”), makes available on each Business Day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.), the list of the names and the required number of securities for each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. Such Fund Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

All orders to create Creation Units generally must be received by the Distributor no later than 3:00 p.m. E.T. on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the Fund as determined on such date.

In addition, the Trust reserves the right to permit the substitution of an amount of cash (i.e., a “cash in lieu” amount) to be added to the Cash Component to replace any Deposit Security which may, among other reasons, not be available in sufficient quantity for delivery, or which may not be eligible for transfer through the Clearing Process (defined below), or which may not be eligible for trading by a Participating Party (defined below).

To be eligible to place orders with the Distributor to create Creation Units of the Fund, an entity or person either must be (1) 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”); or (2) a Depository Trust Company (“DTC”) Participant; which, in either case, must have executed an agreement with the Trust, the Distributor and the Transfer Agent (“Participant Agreement”). A Participating Party and DTC Participant are collectively referred to as an “Authorized Participant.”

#### Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a Business Day.

The Trust, through NSCC, makes available immediately prior to the opening of business on the Exchange (9:30 a.m. E.T.) on each Business Day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. The Fund’s securities received on redemption (“Redemption Instruments”) may not be identical to Deposit Securities that are applicable to creations of Creation Units. Unless cash redemptions are permitted or required for the Fund, the redemption proceeds for a Creation Unit generally consist of Deposit Securities as announced by the Trust on the Business Day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Deposit Securities, less the redemption transaction fee.

In order to redeem Creation Units of the Fund, an Authorized Participant must submit an order to redeem for one or more Creation Units. An order to redeem Creation Units of a Fund using the Clearing Process generally must be received by the Trust not

later than 3:00 p.m. E.T. on the Business Day of the request for redemption in order for such order to be effected based on the NAV of the Fund as next determined. An order to redeem Creation Units of the Fund using the NSCC Clearing Process made in proper form but received by the Fund after 3:00 p.m. E.T. will be deemed received on the next Business Day immediately following the day on which such order request is transmitted.

#### Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet 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 will meet all such requirements except for those set forth in Commentary .01 (e), as described below.

The Fund will not comply with the requirements set forth in Commentary .01(e) to NYSE Arca Rule 8.600-E with respect to the Fund’s investments in OTC derivatives.<sup>12</sup> Specifically, the aggregate gross notional value of the Fund’s investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives.<sup>13</sup> The Exchange proposes that up to 50% of the Fund’s assets (calculated as the aggregate gross notional value) may be invested in OTC

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<sup>12</sup> Commentary .01(e) to NYSE Arca Rule 8.600-E 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>13</sup>. The Adviser and Sub-Adviser monitor counterparty credit risk exposure (including for OTC derivatives) and evaluate counterparty credit quality on a continuous basis.



derivatives, that is, forwards and OTC options, that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, "hedge"). The Fund's investments in OTC derivatives, other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate, or credit risk, will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Sub-Adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate, or credit fluctuations on Fund assets. OTC derivatives provide the Fund with additional flexibility as well as a more precise means to effectively attempt to reduce currency, interest rate, or credit fluctuations on Fund assets. Generally, OTC derivatives can be customized to a greater degree than exchange-traded derivatives and can provide a better hedge on Fund assets, as well as allow for more control over the duration of the hedge which can also mitigate trading costs. Therefore, in addition to the Fund's ability to invest 20% of the assets in the Fund's portfolio in OTC derivatives pursuant to NYSE Arca Rule 8.600-E, Commentary .01(e), the Exchange believes it is appropriate to apply a limit of up to 50% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), i.e., forwards and options, that are used for hedging purposes, as described above.<sup>14</sup>

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<sup>14</sup> The Commission has previously approved an exception from requirements set forth in Commentary .01(e) relating to investments in OTC derivatives similar to those proposed with respect to the Fund in Securities Exchange Act Release Nos.

The Adviser and Sub-Adviser represent that 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 because OTC derivatives generally provide the Fund with more flexibility to negotiate the exact exposure that the Fund requires, and minimize trading costs because OTC derivatives are not subject to costs of rolling that are associated with listed derivatives.

The Adviser and Sub-Adviser represent that they intend to engage in strategies that utilize foreign currency forward transactions (which are traded OTC) and OTC options, as described above, based on its investment strategies and for hedging purposes. Depending on market conditions, the exposure due to these strategies, including for hedging, may exceed 20% of the Fund's assets. The Adviser represents further that the foreign exchange forward market is OTC, and, as such, it is not possible to implement these strategies efficiently using listed derivatives. In addition, use of OTC options on

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80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (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). 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), in which the Nasdaq Stock Market LLC proposed that there would be no limit on the fund's investments in Interest Rate and Currency Derivatives, and that the aggregate weight of all OTC Derivatives other than Interest Rate and Currency Derivatives will not exceed 10% of the fund's assets); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (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), note 13; 85022 (January 31, 2019), 84 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 to List and Trade Shares of the Brandywine GLOBAL-Global Total Return ETF).

U.S. and non-U.S. exchange-listed equity securities may be an important means to reduce risk in the Fund's equity investments, or, depending on market conditions, to enhance returns of such investments. If the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund would have to exclude or underweight these strategies and would be less diversified, concentrating risk in the other strategies it will utilize.

In addition, by applying the 20% limitation in Commentary .01(e) to Rule 8.600-E, the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were \$100 million and the Fund held \$20 million in Principal Investments with two types of risks (e.g., currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding \$20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding \$10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Exchange notes that, other than Commentary .01(e), the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E and will meet all other requirements of NYSE Arca Rule 8.600-E.

The Adviser and Sub-Adviser represent that the proposed exception described above is consistent with the Fund's investment objective, and will further assist the Adviser and Sub-Adviser to achieve such investment objective.

#### Availability of Information

The Fund's website ([www.virtusetfs.com](http://www.virtusetfs.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) the prior Business Day's NAV; (ii) the reported midpoint of the bid-ask spread at the time of NAV calculation (the "Bid-Ask Price");<sup>15</sup> (iii) a calculation of the premium or discount of the Bid-Ask Price against such NAV; and (iv) data in chart format displaying the frequency distribution of discounts and premiums of the 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 Fund will disclose 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>16</sup>

On a daily basis, the Fund will disclose 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

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<sup>15</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.

<sup>16</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.

represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding any security, and any 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 U.S and non-U.S. exchange-traded options and futures will be available from the exchange on which such instruments are traded. Price information relating to OTC options and currency forwards will be available from major market data vendors. Intra-day price information for U.S. and non-U.S. exchange-traded options on futures will be available from the applicable exchange and from major market data vendors. For U.S. and non-U.S. exchange-listed equity securities, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Price information for cash equivalents and convertible bonds will be available from major market data vendors. Price information regarding U.S. government securities generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Additionally, the Trade Reporting and Compliance Engine ("TRACE") of the Financial Industry Regulatory Authority ("FINRA") will be a source of price information for certain fixed income securities to the extent transactions in such

securities are reported to TRACE.<sup>17</sup>

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, ETFs, and other U.S. exchange-traded equity securities will be available via the Consolidated Tape Association ("CTA") high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation ("OCC") are available via the Options Price Reporting Authority ("OPRA"). 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

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<sup>17</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.

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(e) 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, certain exchange-traded equity securities (including 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, certain exchange-traded equity securities (including 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, certain exchange-traded equity securities (including 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”). 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 (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.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the

Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund will be calculated after 4:00 p.m. E.T. each trading day.

## 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

Equities 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 the Sub-Adviser are not registered as a broker-dealer but both the Adviser and the Sub-Adviser are affiliated with a broker-dealer and have implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. 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 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.

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 Equities 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 Equities 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.

The Exchange believes that it is appropriate and in the public interest to allow the Fund, 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 gross notional value). As noted above, the Adviser and Sub-Adviser believe that it is in the best interests of the Fund's shareholders for the Fund to be allowed to reduce the currency, interest rate, or credit risk arising from the Fund's investments using the most efficient financial instruments. The proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective. In addition, the Fund's investments in OTC derivatives, other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate, or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. While certain risks can be hedged via listed derivatives, OTC derivatives (such as forwards and options) can be

customized to hedge against precise risks. Accordingly, the Adviser and Sub-Adviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate, or credit fluctuations on Fund assets. Therefore, the Exchange believes that increasing the percentage limit in Commentary .01(e), as described above, to the Fund's investments in OTC derivatives, including forwards and options, that are used specifically for hedging purposes would permit the Fund to satisfy its investment objective and reduce investment risks in a more cost-effective manner and, therefore, would help protect investors and the public interest.<sup>18</sup>

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 in that it will facilitate the continued listing and trading of an actively-managed exchange-traded product that, through permitted use of an increased level of OTC derivatives above than currently permitted by the generic listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E, will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that it is appropriate and in the public interest to allow the Fund, 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. Under Commentary

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<sup>18</sup> The Exchange notes that the Commission has previously approved listing and trading of Managed Fund Shares the investments of which are similar to those proposed herein for the Fund. See, e.g., Securities Exchange Act Release No. 82492 (January 12, 2018) 83 FR 2850 (January 19, 2018) (SR-NYSEArca-2017-87) (approving listing of shares of the JP Morgan Long/Short ETF).

.01(e), a series of Managed Fund Shares listed under the “generic” standards may invest up to 20% of its assets (calculated as the aggregate gross notional value) in OTC derivatives. Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in Principal Investments, the 20% limit in Commentary .01(e) to Rule 8.600-E could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund’s ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund’s assets (on a gross notional value basis) were \$100 million and no listed derivative were suitable to hedge the Fund’s risk, under the generic standards the Fund would be limited to holding up to \$20 million gross notional value in OTC derivatives ( $\$100 \text{ million} * 20\%$ ). Accordingly, the maximum amount the Fund would be able to invest in Principal Investments while remaining adequately hedged would be \$20 million. The Fund then would hold \$60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.<sup>19</sup>

In addition, by applying the 20% limitation in Commentary .01(e) to Rule 8.600-E, the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund’s assets (on a gross notional basis) were \$100 million and the Fund held \$20 million in Principal Investments and Non-Principal Investments with two types of risks (e.g., currency and credit risk) which could not be

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<sup>19</sup> Implicit in expanding the ability of the Fund to enter into OTC derivatives solely for hedging purposes is that OTC derivatives will never be 100% of the Fund’s portfolio because there will always be an underlying asset that is being hedged.

hedged using listed derivatives, the Fund would be faced with the choice of either holding \$20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding \$10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

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 listing and trading of an issue of Managed Fund Shares that, through permitted use of an increased level of OTC derivatives above that currently permitted by the generic listing requirements of Commentary .01 to NYSE Arca Equities Rule 8.600-E 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-2019-28 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-2019-28. 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-2019-28 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>20</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).