

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87190; File No. SR-NYSEArca-2019-57)

October 1, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade Shares of the Franklin Liberty Systematic Style Premia ETF, a Series of the Franklin Templeton ETF Trust under NYSE Arca Rule 8.600-E

I. Introduction

On August 8, 2019, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list shares (“Shares”) of the Franklin Liberty Systematic Style Premia ETF (“Fund”) under NYSE Arca Rule 8.600-E. The proposed rule change was published for comment in the Federal Register on August 20, 2019.⁴ The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

II. Summary of the Exchange’s Description of the Proposed Rule Change⁵

The Exchange proposes to list and trade the Shares under NYSE Arca Rule 8.600-E, which governs the listing and trading of Managed Funds Shares on the Exchange. The Fund is a series of the Franklin Templeton ETF Trust (“Trust”).⁶ Franklin Advisers, Inc. (“Adviser”) will

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 86659 (Aug. 8, 2019), 84 FR 43196 (“Notice”).

⁵ For more information regarding the Fund and the Shares, see Notice, supra note 4.

⁶ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On July 31, 2019, the Trust filed a registration statement on Form N-1A relating to the Fund (File Nos. 333-208873 and 811-23124).

be the investment adviser to the Fund.⁷ Franklin Templeton Distributors, Inc. will be the distributor of the Shares. State Street Bank and Trust Company will be the custodian and transfer agent for the Fund. According to the Exchange, the Fund will seek to provide absolute return.

According to the Exchange, the Fund's portfolio will not meet the generic listing requirements of Commentary .01(e) to NYSE Arca Rule 8.600-E, which requires that, on both an initial and a continuing basis, no more than 20% of the assets in the Fund's portfolio may be invested in OTC derivatives (calculated as the aggregate gross notional value of the OTC derivatives). The Exchange states that the aggregate gross notional value of the Fund's investments in OTC derivatives is expected to exceed this limit. The Exchange states that, other than Commentary .01(e) to Rule 8.600-E, the Shares will meet all other requirements of Rule 8.600-E.

A. Principal Investments

According to the Exchange, under normal market conditions,⁸ at least 80% of the Fund's assets will be invested in the securities and financial instruments described below.

The Fund may invest in the following derivatives: (1) futures contracts on U.S. and foreign equity, interest rate/bond and commodity indices; (2) U.S. and foreign equity and

⁷ The Exchange states that the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

⁸ The term "normal market conditions" is defined in NYSE Arca Rule 8.600-E(c)(5).

commodity-linked total return swaps; and (3) currency forward contracts. The Fund may hold its commodity-linked derivative instruments indirectly through a wholly-owned subsidiary established in the Cayman Islands (“Subsidiary”). The Subsidiary will only invest in commodity-linked total return swaps and futures on commodity indices and will also hold any necessary cash or cash equivalents as collateral. No more than 25% of the Fund’s total assets may be invested in the Subsidiary.

The Fund may hold cash and cash equivalents.⁹

The Fund may hold U.S. and foreign bonds (including convertible bonds), debentures and non-cash equivalent U.S. government securities (other than debt securities with variable interest rates, as referenced below).

The Fund may hold U.S. and foreign exchange-traded common stock, preferred stock (including convertible preferred stock), rights and warrants of U.S. and foreign companies.

The Fund may engage in short sales in securities and financial instruments in which the Fund may invest, including short sales “against the box.”¹⁰

B. Other Investments

While the Fund, under normal market conditions, will invest at least 80% of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in ETFs.¹¹

⁹ The term “cash equivalents” is defined in Commentary .01(c) to NYSE Arca Rule 8.600-E.

¹⁰ According to the Exchange, short sales “against the box” are transactions in which the Fund sells a security short but it also owns an equal amount of the securities sold short or owns securities that are convertible or exchangeable, without payment of further consideration, into an equal amount of such security.

The Fund may invest in U.S. and foreign corporate debt.

The Fund may invest in foreign governmental and supranational debt securities.

The Fund may invest in U.S. and foreign exchange-listed and non-exchange-traded “Depository Receipts”.¹²

The Fund may invest in the following debt securities with variable interest rates: floating rate, adjustable rate and inverse floating rate debt securities.

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

C. Investment 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, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund’s investments will not be used to seek performance that

¹¹ The Exchange states that, for purposes of this filing, “ETFs” are Investment Company Units (as described in NYSE Arca Rule 5.2-E(j)(3)); Portfolio Depository 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.

¹² According to the Exchange, many securities of foreign issuers are represented by American Depository Receipts (ADRs), Global Depository Receipts (GDRs), and European Depository Receipts (EDRs) (collectively, “Depository Receipts”). Generally, Depository Receipts in registered form are designed for use in the U.S. securities market and Depository Receipts in bearer form are designed for use in securities markets outside the U.S. ADRs evidence ownership of, and represent the right to receive, securities of foreign issuers deposited in a domestic bank or trust company or a foreign correspondent bank. Prices of ADRs are quoted in U.S. dollars, and ADRs are traded in the U.S. on exchanges or over-the-counter. EDRs and GDRs are typically issued by foreign banks or trust companies and evidence ownership of underlying securities issued by either a foreign or a U.S. corporation. EDRs and GDRs may not necessarily be denominated in the same currency as the underlying securities into which they may be converted. No more than 10% of the equity weight of the Fund’s portfolio will be invested in non-exchange-traded ADRs.

is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).¹³

D. Failure to Satisfy Commentary .01(e) to NYSE Arca Rule 8.600-E

Commentary .01(e) to Rule 8.600-E requires that an actively managed fund whose shares are generically listed must not invest more than 20% of its assets (calculated as the aggregate gross notional value of the OTC derivatives) in OTC derivatives on both an initial and a continuing basis.

The Exchange states that, based on the Fund's investment strategies, the Fund's exposure to foreign currency forward transactions and U.S. and foreign equity and commodity-linked total return swaps (which swaps will be traded OTC) is expected to exceed 20% of the Fund's assets.¹⁴ According to the Exchange, this will provide the Fund with additional flexibility to manage risk associated with its investments. The Exchange states that, depending on market conditions, it may be critical that the Fund utilize available OTC swaps and currency forwards to efficiently gain exposure to equities, currencies and commodities, in furtherance of the Fund's investment objective. The Exchange states that because foreign currency forward transactions and total return swaps will be traded OTC, it is not possible to implement these strategies efficiently using listed derivatives. According to the Exchange, swaps on 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. The Exchange states that, if the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund would have to exclude or

¹³ 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.

¹⁴ According to the Fund, the Adviser and its affiliates actively monitor counterparty credit risk exposure (including for OTC derivatives) and evaluate counterparty credit quality on a continuous basis.

underweight these strategies and would be less diversified, concentrating risk in its other strategies.

The Exchange states the proposed exception to Commentary .01(e) to Rule 8.600-E would be consistent with other funds that the Commission has approved for listing and trading on an exchange.¹⁵

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.¹⁶

In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the Exchange's rules be 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 a national market system, and, in general, to protect investors and the public interest.

As noted above, the Exchange proposes that the aggregate gross notional value of the Fund's investments in OTC derivatives may exceed the 20% limit in Commentary .01(e) to NYSE Arca Rule 8.600-E. The Exchange believes that this exception is generally consistent

¹⁵ See, e.g., Securities Exchange Act Release Nos. 82492 (January 12, 2018), 83 FR 2850 (January 19, 2018) (SR-NYSEArca-2017-87) (approving a proposed rule change to list and trade shares of the JPMorgan Long/Short ETF under NYSE Arca Rule 8.600-E, which provides that the aggregate gross notional value of the Fund's investments in OTC derivatives may exceed 20%); 79683 (December 23, 2016), 81 FR 96539 (December 30, 2016) (SR-NYSEArca-2016-82); 77904 (May 25, 2016), 81 FR 35101 (June 1, 2016) (SR-NYSEArca-2016-17)

¹⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

with previous filings for the listing of ETFs approved by the Commission.¹⁸ The Fund will disclose on its website information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600-E(c)(2) to the extent applicable. The Exchange represents that the Fund's disclosure of its derivative positions in the Disclosed Portfolio will include information that market participants can use to value the derivative positions intraday.¹⁹ The website information will be publicly available at no charge.²⁰

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. 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. Trading in the Shares 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. Moreover, trading in the Shares will be subject to NYSE Arca Rule 8.600-E(d)(2)(D), which sets forth circumstances under which Shares may be halted.

The Exchange states that the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to that broker-dealer affiliate regarding access to information concerning the composition of and/or

¹⁸ See supra note 15. See also Securities Exchange Act Release No. 82080 (November 15, 2017), 82 FR 55449 (November 21, 2017) (approving a proposed rule change to list and trade shares of the JPMorgan Managed Futures ETF under NYSE Arca Rule 8.600-E, which provides that the aggregate gross notional value of the investments in OTC derivatives may exceed 20% of the fund's assets).

¹⁹ See Notice, supra note 4, 84 FR at 43199.

²⁰ See id.

changes to the Fund’s portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.²¹ The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²² which sets forth Congress’s finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. The Portfolio Indicative Value (“PIV”) for the Fund, 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 Exchange’s Core Trading Session.²³ Information regarding market price and trading volume for 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 portfolio holdings of the Fund that are U.S. exchange-listed, including common stocks, preferred stocks, warrants, rights, ETFs, and U.S. exchange-traded Depository Receipts will be available via the CTA high speed line. Quotation

²¹ See NYSE Arca Rule 8.600–E(d)(2)(B)(ii).

²² 15 U.S.C. 78k–1(a)(1)(C)(iii).

²³ Currently, it is the Exchange’s understanding that several major market data vendors display and/ or make widely available PIVs taken from the CTA or other data feeds. See Notice, supra note 4, 84 FR at 43201, n.20.

and last sale information for such U.S. exchange-listed securities, as well as U.S. and foreign exchange-traded futures will be available from the exchanges on which they are listed and from major market data vendors. Quotation information for cash equivalents, bonds, debentures, swaps, foreign governmental and supranational debt securities, U.S. Government securities, debt securities with variable interest rates and U.S. and foreign corporate debt may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Price information for non-exchange-traded Depositary Receipts is available from major market data vendors.

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. In support of this proposal, the Exchange represents that:

- (1) Other than Commentary .01(e) to Rule 8.600-E, the Shares will meet all other requirements of Rule 8.600-E.
- (2) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.
- (3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, and 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 applicable federal securities laws.²⁴

- (4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities, certain futures, and certain exchange-traded options 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 such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. 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 Trade Reporting and Compliance Engine.
- (5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its Equity Trading

²⁴ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) 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; (d) how information regarding the PIV and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

- (6) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (7) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.²⁵
- (8) The Fund’s investments, including derivatives, will be consistent with the Fund’s investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund’s primary broad-based securities benchmark index (as defined in Form N–1A).

The Exchange represents that all statements and representations made in the filing regarding: (1) the description of the portfolio holdings or reference assets; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the issuer must notify the Exchange of any failure by

²⁵ See 17 CFR 240.10A–3.

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 monitor²⁶ 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-E(m).

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁷ and Section 11A(a)(1)(C)(iii) of the Act²⁸ and the rules and regulations thereunder applicable to a national securities exchange.

²⁶ The Commission notes that certain proposals for the listing and trading of exchange traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-NYSEArca-2019-57), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Jill M. Peterson
Assistant Secretary

²⁹ 15 U.S.C. 78s(b)(1).

³⁰ 17 CFR 200.30-3(a)(12).