

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78804; File No. SR-NYSEMKT-2016-58)

September 9, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1, Relating to Amendments to NYSE MKT Rules 1600 *et seq.* and the Listing Rules Applicable to the Shares of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund

On May 24, 2016, NYSE MKT LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the listing rules applicable to the shares (“Shares”) of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund (collectively, “Funds”), which the Exchange currently lists and trades. The Commission published notice of the proposed rule change in the Federal Register on June 13, 2016.³ On July 28, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 2, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78000 (June 7, 2016), 81 FR 38232.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 78432, 81 FR 51248 (August 3, 2016). The Commission designated September 9, 2016, as the date by which the Commission would either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

filed.⁶ The Commission received one comment on the proposed rule change.⁷ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. The Exchange's Description of the Proposal⁹

The Exchange currently lists and trades the Shares pursuant to NYSE MKT Rules 1600 et seq. (Trading of Trust Units).¹⁰ To accommodate certain changes to the Funds discussed below,

⁶ In Amendment No. 1, the Exchange amended Commentary .01 to Exchange Rule 1602 to add the following new text: (1) All statements and representations contained in such proposal regarding (a) the description of the portfolio holdings, (b) limitations on portfolio holdings, or (c) the applicability of Exchange rules and surveillance procedures shall be complied with on a continuing basis and the issuer of such issue of Trust Units shall notify the Exchange of any material noncompliance with such statements and representations; and (2) the Exchange will consider the suspension of trading and delisting (if applicable) of an issue of Trust Units under Sections 1001 through 1010 of the NYSE MKT Company Guide if the issuer of such security notifies the Exchange of an event of material noncompliance. Amendment No. 1 is available at: <https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/rule-filings/filings/2016/NYSEMKT-2016-58.pdf>.

⁷ See comment letter dated July 4, 2016, available at: <https://www.sec.gov/comments/sr-nysemkt-2016-58/nysemkt201658-1.pdf>.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ For additional information regarding, among other things, the Funds, the Shares, investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of net asset value, distributions, taxes, see Amendment No. 1, supra note 6; Pre-Effective Amendment No. 1 to the registration statement on Form S-3 (File No. 333-205590), filed on November 30, 2015 (the Diversified Fund); and Pre-Effective Amendment No. 1 to the registration statement on Form S-3 (File No. 333-205587), filed on November 30, 2015 (the Long/Short Fund).

¹⁰ See also Securities Exchange Act Release No. 61807 (March 31, 2010), 75 FR 17818 (April 7, 2010) (SR-NYSEAmex-2010-09) (order approving listing and trading of shares of the Nuveen Diversified Commodity Fund) (“Prior Diversified Order”); and Securities Exchange Act Release No 67223 (June 20, 2012) (SR-NYSEAmex-2012-24) (order approving listing and trading of shares of the Nuveen Long/Short Commodity Total Return Fund) (“Prior Long/Short Order” and, together with the Prior Diversified Order, “Prior Orders”). The Exchange was formerly known as NYSE Amex LLC.

the Exchange proposes to amend NYSE MKT Rules 1600 et seq. and certain representations made in support of the listing rules for the Shares upon which the Prior Orders were conditioned.

Currently, the Funds are structured as actively managed closed-end commodity pools. On December 19, 2014, Nuveen Investments, parent company of Nuveen Commodities Asset Management, LLC (“Manager”), announced that it had approved a plan to convert the Funds into open-end exchange-traded products (each such plan, a “Conversion”), which would involve instituting processes for continual creation and redemption of the Shares at net asset value (“NAV”) on any business day. At meetings of shareholders in 2015, the shareholders of each Fund approved the Conversions. According to the Exchange, the purpose of the Conversions is to promote the trading of the Funds’ Shares at prices equal to or near their NAV.¹¹

A. Amendments to NYSE MKT Rules 1600 et seq.

Under NYSE MKT Rule 1600, a Trust Unit is a security that is issued by a trust (“Trust”), or other similar entity, that is constituted as a commodity pool and holds investments comprising, or otherwise based on, any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, and/or commodities. The Exchange proposes to amend Rules 1600 et seq. in several respects.

Among other things, the Exchange proposes to amend its Rule 1600(b)(ii) by: (1) allowing Trusts to invest in securities; and (2) providing that Trust Units be issued and redeemed continuously in specified aggregate amounts at the next determined NAV. The Exchange also proposes to amend Rule 1602(a)(ii) to provide that the Exchange will obtain a representation

¹¹ Since the Conversion Plan Announcement, each Fund has traded at a reduced discount to NAV: from December 18, 2014, to March 9, 2016, the discount to NAV has been reduced for the Diversified Fund from 18.02% to 5.11% and for the Long/Short Fund from 19.80% to 3.75%. See Amendment No. 1, supra note 6, at 5, n.5.

from the issuer of each series of Trust Units that the NAV and the “Disclosed Portfolio”¹² will be made available to all market participants at the same time. Further, the Exchange proposes to amend Rule 1602(b)(ii) to provide that, if the Exchange becomes aware that the Disclosed Portfolio or NAV per share with respect to a series of Trust Units is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the Disclosed Portfolio or NAV per share is available to all market participants.

The Exchange also proposes to provide in Rule 1602(b)(iii) that each series of Trust Units will be listed or traded subject to application of the following criteria: (1) the “Intraday Indicative Value” for shares¹³ will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Units trade on the Exchange; (2) the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time; and (3) 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.¹⁴

¹² “Disclosed Portfolio” is defined as the identities and quantities of the assets held by a Trust that will form the basis for that Trust’s calculation of the NAV at the end of the business day. See proposed NYSE MKT Rule 1600(b)(iii).

¹³ “Intraday Indicative Value” is defined as the estimated indicative value of a Trust Unit based on current information regarding the value of the assets in the Disclosed Portfolio. See proposed Rule 1600(b)(iv).

¹⁴ Proposed Rule 1600(b)(v) defines “Reporting Authority” as, in respect of a particular series of Trust Units, the Exchange, an institution, or a reporting or information service designated by the Trust or the Exchange or by the exchange that lists a particular series of Trust Units (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, (i) the Intraday Indicative Value, (ii) the Disclosed Portfolio, (iii) the amount of any cash distribution to holders of Trust Units, (iv) NAV, and (v) other information relating to the issuance, redemption, or trading of Trust Units. A series of Trust Units may have more than one Reporting Authority, each having

Moreover, the Exchange proposes in Commentary .04 to Rule 1600 that, if a Trust's advisor is affiliated with a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. Personnel who make decisions on the Trust's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable portfolio.

B. Descriptions of the Funds

Each Fund currently is a commodity pool managed by the Manager. The Manager is a Delaware limited liability company that is registered as a commodity pool operator ("CPO") with the Commodity Futures Trading Commission ("CFTC"). The Manager is a wholly-owned subsidiary of Nuveen Investments, Inc. ("Nuveen Investments"). The Manager is responsible for determining the Funds' overall investment strategies and overseeing their implementation. The Manager also manages the Funds' business affairs and provides certain legal, accounting, and other administrative services.

Gresham Investment Management LLC ("Commodity Subadviser"), an affiliate of the Manager, manages each Fund's commodity futures investment strategy. The Commodity Subadviser is a Delaware limited liability company and is registered with the CFTC as a commodity trading advisor and as a CPO and is a member of the National Futures Association. Additionally, the Commodity Subadviser is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act").

Nuveen Asset Management, LLC ("Collateral Subadviser" and, together with the Commodity Subadviser, the "Subadvisers"), an affiliate of the Manager, manages each Fund's

different functions.

investments in U.S. government securities, other short-term, high grade fixed income securities, and cash equivalents (“collateral”). The Collateral Subadviser is registered with the Commission as an investment adviser under the Advisers Act.

State Street Bank and Trust Company serves as transfer agent, registrar for the Shares, and custodian and administrator of the assets of each Fund, pursuant to which it performs NAV calculations, accounting and other fund administrative services. After the Conversions, it also will receive and process orders from Authorized Participants to create and redeem Shares of each Fund.

C. Post-Conversion Changes and Amended Representations Regarding the Funds

At the time of the Conversions, the Shares would be assigned new CUSIP numbers, and the name of the Funds would change: the name of the Diversified Fund would change to the NuShares Gresham Adaptive Commodity ETF, and the name of the Long/Short Fund would change to the NuShares Gresham Long/Short Commodity ETF. Currently, the Funds are not investment companies within the meaning of the Investment Company Act of 1940, as amended (“Investment Company Act”), and they would not become investment companies after the Conversions. The Manager would announce in advance the expected effective date of the Conversions via press releases and Form 8-K filings. Those press releases would include a summary of changes to the Funds that would occur in connection with the Conversions. The Exchange also would issue a notice to members approximately 10 days prior to the date of effectiveness of the Conversion, and another notice to members on the business day prior to the date Shares would trade under the new CUSIP.

In connection with the Conversions, the Manager intends to implement additional changes to both Funds that the Manager believes will better align the Funds' features with their newly-adopted ETP structure. The charts below summarize those changes.

Changes to Diversified Fund		
	Before Conversion	After Conversion
Fund name	Nuveen Diversified Commodity Fund	NuShares Gresham Adaptive Commodity ETF
Ticker	CFD	GAC
Distribution Policy	Pays regular monthly distributions	Discontinue regular monthly Distributions
Share Repurchases	Active share repurchase program	Discontinue share repurchase Program
Investment Strategy	Long-only commodity strategy	Long-biased commodity strategy-weightings determined on a monthly basis; if the price of a commodity contract is higher than its six-month simple moving average, the commodity contract will be held at its target weight; conversely, if the price is below the six-month simple moving average, the commodity weight will be reduced by half
	Invest in forwards	No longer invest in forwards
	Option writing program	Discontinue option writing program
	Collateral invested in cash equivalents, U.S. government securities and other short-term high-grade debt securities, including corporate debt, with terms not exceeding one year	Collateral invested in U.S. government securities, with terms not exceeding one year, and cash equivalents

Changes to Long/Short Fund		
	Before Conversion	After Conversion
Fund name	Nuveen Long/Short Commodity Total Return Fund	NuShares Gresham Long/Short Commodity ETF
Ticker	CTF	GLS
Distribution Policy	Pays regular monthly distributions	Discontinue regular monthly distributions
Share	Active share repurchase Program	Discontinue share repurchase

Repurchases		Program
Investment Strategy	Long/short commodity futures strategy based on the Morningstar Long/Short Commodity Index	Long/short commodity futures strategy based on the Gresham Long/Short Commodity Index
	Uses momentum-based model to calculate 12-month moving price averages that are used to determine whether a commodity futures position is held long or short	Long/short commodity strategy— Momentum-based model will employ shorter-term moving averages (such as 6-months) to determine whether a commodity futures position in the Index is held long or short (or flat, for petroleum-related commodities). Weightings are determined on a monthly basis; if the price of a commodity contract is higher than its six-month simple moving average, the commodity is assigned a long position; conversely, if the price is below the six-month simple moving average, it is assigned a short position.
	Will not short <u>energy</u> futures- if model signals to short energy futures, positions will instead be held “flat” (i.e., in cash)	Will not short <u>petroleum</u> -based futures-if model signals to short petroleum-based futures, positions will instead be held “flat” (i.e., in cash)
	Invest in forwards	No longer invest in forwards
	Option writing program	Discontinue option writing program
	Collateral invested in cash equivalents, U.S. government securities and other short-term high-grade debt securities, including corporate debt, with terms not exceeding one year	Collateral invested in short-term U.S. government securities and cash equivalents

After the Conversions, each Fund’s principal investments are not expected to change.

Under normal market conditions,¹⁵ each Fund will continue to invest in (i) commodity futures

¹⁵ With respect to each Fund, the term “under normal market conditions” includes, but is not limited to, the absence of extreme volatility or trading halts in the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as a systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

contracts that provide exposure to the global commodity markets (“Commodity Futures”) listed on U.S. and non-U.S. futures exchanges¹⁶ having various expiration dates, and (ii) collateral consisting of U.S. government securities and cash equivalents, some of which are maintained on deposit with a Fund’s commodity broker as margin, to collateralize a Fund’s positions in the Commodity Futures. Moreover, as stated above, the Funds will not invest in forwards or options following the Conversions. In addition, each Fund’s Commodity Futures investments will, at all times, be fully collateralized (i.e., the “notional value”—the value of the underlying commodity at the contract’s spot price—of the Fund’s commodity exposure will not exceed the market value of the Fund’s net assets).

Whereas in support of the Prior Orders the Exchange represented that 25% of each Fund’s collateral will be committed as “initial” and “variation” margin, the Funds now represent that, following the Conversions, approximately 10-25% of each Fund’s collateral would be committed as initial and variation margin and be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, to secure the futures contract positions.¹⁷ The remaining 75-90% of a Fund’s collateral (as opposed to a set 75%, as represented in support of the Prior Orders) would continue be held in a separate collateral investment account managed by the Collateral Subadviser. The eligible collateral investments would also change following the

¹⁶ Each Fund would make investments in Commodity Futures in agriculture, energy, foods and fibers, industrial metals, livestock, and precious metals, and would take positions in Commodity Futures related to approximately 30 commodities. Each Fund would continue to allocate its investments to Commodity Futures pursuant to the Commodity Subadviser’s proprietary strategy. See Amendment No. 1, supra note 6, at 17. Not more than 10% of the net assets of a Fund, in the aggregate, shall consist of futures contracts whose principal market is not a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. See Amendment No. 1, supra note 6, at 15, n.17.

¹⁷ Those assets would be held in a commodity futures account maintained by SG Americas Securities, LLC, the Funds’ clearing broker, which serves as a futures commission merchant and broker-dealer registered with the CFTC and the Commission.

Conversion – the Funds would no longer invest in money market funds or repurchase agreements. Instead, they would invest in short-term U.S. government securities and cash equivalents.

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEMKT-2016-58 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁸ to determine whether the proposed rule change, as modified by Amendment No. 1 should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for the submission of additional analysis regarding the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”²⁰

The pre-existing Shares after the Conversions would not be deemed new securities but would continue to trade on the Exchange without interruption. As discussed above, the

¹⁸ 15 U.S.C. 78s(b)(2)(B).

¹⁹ Id.

²⁰ 15 U.S.C. 78f(b)(5).

Exchange states that: (1) ahead of the Conversions, the Manager would announce via press releases and Form 8-K filings the expected effective date of the Conversions; (2) those press releases would include a summary of changes to the Funds that would occur in connection with the Conversions; (3) NYSE MKT would issue a notice to members approximately 10 days prior to the date of effectiveness of the Conversion, and another notice to members on the business day prior to the date Shares would trade under the new CUSIP. Because the Shares will continue to be listed and traded on the Exchange without interruption as the Funds transition from a closed-end to an open-end structure, the Commission seeks comment on whether the Exchange's proposal is designed to sufficiently ensure that the trading of the Shares during the Conversions will be orderly and without undue market confusion or disruption.

Separately, the Exchange proposes to amend Commentary .01 to its Rule 1602, which pertains to initial and continued listing requirements for Trust Units, to provide that "the issuer of [an] issue of Trust Units shall notify the Exchange of any material noncompliance with [any] statements and representations" and that "the Exchange will consider suspending trading in and, if applicable, delisting of, an issue of Trust Units if the issuer of such security notifies the Exchange of material noncompliance" (emphasis added). The Commission believes that it is critical that listed issues, including those of exchange traded products such as the Funds, comply with exchange listing standards on an ongoing basis and that listing exchanges rigorously enforce those rules. Accordingly, the Commission, seeks comment on whether the Exchange's proposed amendment to Commentary .01 that proposes to "consider" suspension and delisting only for "material" noncompliance of the Exchange's listing standards is consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed

to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²¹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change.

²¹ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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. Please include File Number SR-NYSEMKT-2016-58 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 Numbers SR-NYSEMKT-2016-58. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2016-58 and should be submitted on or before [insert date 21

days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Brent J. Fields
Secretary

²² 17 CFR 200.30-3(a)(57).