

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70055; File No. SR-NYSEArca-2013-52)

July 29, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the First Trust Morningstar Managed Futures Strategy Fund under NYSE Arca Equities Rule 8.600

I. Introduction

On May 15, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the First Trust Morningstar Futures Strategy Fund (“Fund”)³ under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on May 30, 2013.⁴ The Commission received no comments on the proposal. On July 24, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See infra note 5 (noting the change in the name of the Fund in Amendment No. 1).

⁴ See Securities Exchange Act Release No. 69636 (May 24, 2013), 78 FR 32503 (“Notice”).

⁵ In Amendment No. 1, the Exchange: (i) changed the name of the Fund to the First Trust Morningstar Futures Managed Strategy Fund; (ii) clarified that the Fund will seek to exceed, rather than track, the performance of its benchmark (as described below); and (iii) made conforming changes to reflect the clarification in (ii). The Exchange explained that the changes in Amendment No. 1 are intended to ensure that the representations in the Exchange’s 19b-4 filing correspond to the representations made by the Trust in its application for certain exemptive relief under the 1940 Act applicable to the Fund and other actively-managed funds of the Trust. See Investment Company Act Release No. 30029 (April 20, 2012) (File No. 812-13795). According to the Exchange, the changes contained in Amendment No. 1 do not represent a change in the manner in which the Fund would be operated as described in the Exchange’s original 19b-4 filing. In addition,

Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by First Trust Exchange-Traded Fund V (“Trust”),⁶ a statutory trust organized under the laws of the State of Massachusetts and registered with the Commission as an open-end management investment company. The investment adviser to the Fund is First Trust Advisors L.P. (“Adviser”). First Trust Portfolios L.P. will be the principal underwriter and distributor of the Shares. The Bank of New York Mellon Corporation will serve as administrator, custodian, and transfer agent for the Fund. The Exchange states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a fire wall between it and its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.⁷

the revised language conforms to language included in an amendment to the Trust’s registration statement filed with the Commission on July 18, 2013. See infra note 6 and accompanying text.

⁶ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On July 18, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (the “1933 Act”) and under the 1940 Act relating to the Fund (File Nos. 333-181507 and 811-22709) (“Registration Statement”). In addition, the Commission issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795).

⁷ See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser becomes 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 a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

The Exchange states that the Commodity Futures Trading Commission (“CFTC”) has recently adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator (“CPO”). As a result of the instruments that will be held by the Fund, the Adviser has registered as a CPO and is also a member of the National Futures Association.

Investments

The Fund will seek to achieve positive total returns that are not directly correlated to broad market equity or fixed income returns. The Fund uses as a benchmark the Morningstar^(R) Diversified Futures Index^(SM) (the “Benchmark”), which is developed, maintained and sponsored by Morningstar, Inc. (“Morningstar”)⁸ and seeks to exceed the performance of the Benchmark. The Fund is not an “index tracking” ETF. However, the Fund will generally seek to hold similar instruments to those included in the Benchmark and seek exposure to commodities, currencies, and equity indexes included in the Benchmark. The Benchmark seeks to reflect trends (in either direction) in the commodity futures, currency futures, and financial futures markets. The Benchmark is a fully collateralized futures index that offers diversified exposure to global markets through highly-liquid, exchange-listed futures contracts on commodities, currencies, and equity indexes. However, the Fund is not obligated to invest in the same instruments included in the Benchmark. The Exchange states that there can be no assurance that the Fund’s performance will exceed the performance of the Benchmark at any time.

The Fund is not sponsored, endorsed, sold or promoted by Morningstar. Morningstar’s only relationship to the Fund is the licensing of certain service marks and service names of

⁸ Morningstar is not a broker-dealer but is affiliated with a broker-dealer and, with respect to such broker-dealer affiliate, has implemented a fire wall and procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Benchmark.

Morningstar and of the Benchmark, which is determined, composed, and calculated by Morningstar without regard to the Adviser or the Fund. Morningstar has no obligation to take the needs of the Adviser or the Fund into consideration in determining, composing, or calculating the Benchmark.

Under normal market conditions,⁹ the Fund, through FT Cayman Subsidiary, a wholly-owned subsidiary of the Fund organized under the laws of the Cayman Islands (“Subsidiary”), will invest in a diversified portfolio of exchange-listed commodity futures, currency futures, and equity index futures (collectively, “Futures Instruments”) with an aggregate notional value substantially equal to the Fund’s net assets.

The Fund will not invest directly in Futures Instruments. The Fund expects to exclusively gain exposure to these investments by investing in the Subsidiary. The Subsidiary will be advised by the Adviser.¹⁰ The Fund’s investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies, such as the Fund, which limit the ability of investment

⁹ The term “under normal market conditions” includes, but is not limited to: the absence of extreme volatility or trading halts in the fixed income markets, futures markets, or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

¹⁰ The Subsidiary is not registered under the 1940 Act and is not directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary is wholly-owned and controlled by the Fund and is advised by the Adviser. Therefore, because of the Fund’s ownership and control of the Subsidiary, the Subsidiary would not take action contrary to the interests of the Fund or its shareholders. The Fund’s Board of Trustees (“Board”) has oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund’s role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing the assets of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

companies to invest directly in the Futures Instruments. The Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Futures Instruments. Except as otherwise noted, references to the Fund's investments may also be deemed to include the Fund's indirect investments through the Subsidiary. The Fund will invest up to 25% of its total assets in the Subsidiary. The Subsidiary's investments will provide the Fund with exposure to domestic and international markets.

The Fund will invest a substantial portion of its assets in fixed income securities that include U.S. government and agency securities, money market instruments,¹¹ overnight and fixed-term repurchase agreements, cash, and other cash equivalents. The Fund will use the fixed-income securities as investments and to meet asset coverage tests resulting from the Subsidiary's derivative exposure on a day-to-day basis. The Fund may also invest directly in exchange-traded funds ("ETFs")¹² and other investment companies that provide exposure to commodities, equity securities, and fixed income securities, to the extent permitted under the 1940 Act. Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions: (i) 3% of the total outstanding voting stock of any one investment company; (ii) 5% of the Fund's total assets with respect to any one investment company; and (iii) 10% of the Fund's total assets of investment companies in the aggregate. As a whole, the Fund's investments seek to exceed the investment returns of the Benchmark within the limitations of the federal tax requirements applicable to regulated investment companies.

The Benchmark and the Subsidiary's holdings in futures contracts will consist of futures

¹¹ The Fund may invest in shares of money market funds to the extent permitted by the 1940 Act.

¹² For purposes of this proposed rule change, ETFs include securities such as those listed and traded under NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depositary Receipts), and 8.600 (Managed Fund Shares).

contracts providing long, short, and flat exposure, which include, but are not limited to, commodities, equity indexes, and currencies (Euro, Japanese Yen, British Pound, Canadian Dollar, Australian Dollar, and Swiss Franc).¹³ The Subsidiary's exposure will generally be weighted 50% in commodity futures, 25% in equity futures, and 25% in currency futures. The base weights typically will be rebalanced quarterly to maintain the 50%/25%/25% allocation.

The Subsidiary's commodity- and currency-linked investments generally will be limited to investments in listed futures contracts that provide exposure to commodity and non-U.S. currency returns. The Subsidiary will also invest in exchange-listed equity index futures. The Fund and the Subsidiary also may enter into repurchase agreements with counterparties that are deemed to present acceptable credit risks. A repurchase agreement is a transaction in which the Fund and the Subsidiary purchase securities or other obligations from a bank or securities dealer and simultaneously commit to resell them to the bank or securities dealer at an agreed-upon date or upon demand and at a price reflecting a market rate of interest unrelated to the coupon rate or maturity of the purchased obligations.

The Fund, through the Subsidiary, will attempt to capture the economic benefit derived from rising and declining trends based on the moving average price changes of commodity futures, currency futures, and equity index futures. Each of the Subsidiary's investments will generally be positioned long, short, or flat based on its price relative to its average price over a

¹³ According to the Exchange, to be "long" means to hold or be exposed to a security or instrument with the expectation that its value will increase over time. To be "short" means to sell or be exposed to a security or instrument with the expectation that it will fall in value. To be "flat" means to move a position to cash if a short signal is triggered in a security or instrument. The Fund, through the Subsidiary, will benefit if it has a long position in a security or instrument that increases in value or a short position in a security or instrument that decreases in value. Conversely, the Fund, through the Subsidiary, will be adversely impacted if it holds a long position in a security or instrument that declines in value and a short position in a security or instrument that increases in value.

recent period, with the ability to change positions as frequently as daily if the Benchmark is so adjusted. The Fund, through the Subsidiary, may have a higher or lower exposure to any sector or component within the Benchmark at any time.

The Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund will not invest in any non-U.S. equity securities (other than shares of the Subsidiary), and the Subsidiary will not invest in any non-U.S. equity securities.

The Fund's investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies.

Other Investments

The Fund may from time to time purchase securities on a "when-issued" or other delayed-delivery basis. The price of securities purchased in such transactions is fixed at the time the commitment to purchase is made, but delivery and payment for the securities take place at a later date.

The Fund may invest in certificates of deposit issued against funds deposited in a bank or savings and loan association. In addition, the Fund may invest in bankers' acceptances, which are short-term credit instruments used to finance commercial transactions.

The Fund may invest in bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest. In addition, the Fund may invest in commercial paper, which are short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. Master demand notes are direct lending arrangements between the Fund and a

corporation. The Fund may invest in commercial paper only if it has received the highest rating from at least one nationally recognized statistical rating organization or, if unrated, judged by First Trust to be of comparable quality.

The Fund may also invest a portion of its assets in exchange-traded pooled investment vehicles (“Underlying ETPs”) other than registered investment companies that invest principally in commodities.¹⁴

Investment Limitations

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 (i.e., 2X and 3X) of the Fund’s Benchmark. Further the Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage.

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries.¹⁵ This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities.

The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and master

¹⁴ The term “Underlying ETPs” includes Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500). The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges.

¹⁵ See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

demand notes. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.¹⁶

The Fund or the Subsidiary will not invest in options on commodity futures, structured notes, equity-linked derivatives, forwards, or swap contracts.

The Fund intends to qualify, and to elect to be treated as, a separate regulated investment company under Subchapter M of the Internal Revenue Code.¹⁷

A more detailed description of the Shares, Fund, Subsidiary, Benchmark, investment strategies and risks, creation and redemption procedures, and fees, among other things, is included in the Notice and the Registration Statement, as applicable.¹⁸

III. Discussion and Commission's Findings

¹⁶ Long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

¹⁷ 26 U.S.C. 851.

¹⁸ See supra notes 4 and 6, respectively.

After careful review, the Commission finds that the Exchange’s proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,²⁰ which requires, among other things, that the Exchange’s rules be designed 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. The Commission notes that the Fund and the Shares must comply with the rules of the Exchange, including the requirements of NYSE Arca Equities Rule 8.600, to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²¹ 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 Consolidated Tape Association (“CTA”) high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.²² On each business day,

¹⁹ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²² According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from CTA or other data feeds.

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 Equities Rule 8.600(c)(2), that will form the basis for the Fund’s calculation of net asset value (“NAV”) at the end of the business day.²³ The NAV of the Fund will be determined at the close of trading (normally 4:00 p.m. Eastern Time) on each day the New York Stock Exchange is open for business. 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. The intra-day, closing, and settlement prices of the portfolio investments (e.g., Futures Instruments, ETFs, underlying ETPs, and fixed income securities) are also readily available from the national securities and futures exchanges trading such securities and futures, as applicable, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund’s website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares 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 Commission notes that the Exchange will obtain a representation from the issuer of

²³ On a daily basis, for each portfolio security and other financial instrument of the Fund and of the holdings of the Subsidiary, the Fund will disclose the following information on the Fund’s website: ticker symbol (if applicable); name of security, futures contract, and/or financial instrument; number of shares, if applicable, and dollar value of each security, futures contract, and/or financial instrument held; and percentage weighting of each security, futures contract, and/or financial instrument held. The website information will be publicly available at no charge.

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.²⁴ In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁵

Further, the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange,²⁶ will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (“ISG”), including all U.S. securities exchanges and futures exchanges on which futures contracts included in the Benchmark are traded or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the

²⁴ See NYSE Arca Equities Rule 8.600(d)(1)(B).

²⁵ See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 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.

²⁶ The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

portfolio.²⁷

The Exchange represents that the Shares are deemed 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 its proposal to list and trade the Shares, the Exchange has made representations, including:

- (1) The Shares will conform to the initial listing criteria applicable under NYSE Arca Equities Rule 8.600.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁸ 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

²⁷ See supra note 7. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has: (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

²⁸ See supra note 26.

applicable federal securities laws.

- (4) 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 the following: (i) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (iv) how information regarding the Portfolio Indicative Value is disseminated; (v) 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 (vi) trading information.
- (5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,²⁹ as provided by NYSE Arca Equities Rule 5.3.³⁰
- (6) The Chicago Mercantile Exchange (“CME”), the Chicago Board of Trade, the New York Mercantile Exchange (“NYMEX”), and ICE Futures U.S. are members of ISG, and the Exchange may obtain market surveillance information with respect to transactions occurring on the Commodity Exchange (“COMEX”) pursuant to the ISG memberships of CME and NYMEX. The Exchange has in

²⁹ 17 CFR 240.10A-3.

³⁰ See Notice, supra note 4, 78 FR at 32506.

place a comprehensive surveillance sharing agreement with the Kansas City Board of Trade and ICE Futures U.K. relating to trading of applicable components of the Benchmark. In addition, with respect to futures contracts in which the Subsidiary invests, not more than 10% of the weight of such futures contracts in the aggregate shall consist of futures contracts whose principal trading market: (i) is not a member of ISG; or (ii) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX, futures contracts whose principal trading market is COMEX shall not be subject to the prohibition in (i) above.

- (7) Neither the Fund nor the Subsidiary will invest in options on commodity futures, structured notes, equity-linked derivatives, forwards, or swap contracts. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.
- (8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and master demand notes.
- (9) The Fund will not invest in any non-U.S. equity securities, other than shares of the Subsidiary, and the Subsidiary will not invest in any non-U.S. equity securities.
- (10) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice, as modified by Amendment No. 1.³¹

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act³² and the rules and regulations thereunder applicable to a national securities exchange

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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. Please include File Number SR-NYSEARCA-2013-52 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2013-52. This file number should be included on the subject line if e-mail is used. To help the Commission process

³¹ The Commission notes that it does not regulate the market for futures contracts in which the Fund plans to take positions, which, in the U.S., is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures subject to its jurisdiction. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

³² 15 U.S.C. 78f(b)(5).

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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2013-52 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

As discussed above, the Exchange submitted Amendment No. 1 to ensure that its Form 19b-4 corresponds to the representations made by the Trust in its application for certain exemptive relief under the 1940 Act applicable to the Fund and other actively-managed funds of the Trust.³³ According to the Exchange, the revised language does not represent a change in the manner in which the Fund would be operated as described in the Exchange's original 19b-4 filing. In addition, the revised language conforms to language included in an amendment to the

³³ See supra note 5.

Trust's registration statement filed with the Commission on July 18, 2013.³⁴

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³⁵ for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register.

³⁴ See supra note 6 and accompanying text.

³⁵ 15 U.S.C. 78f(b)(2).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³⁶ that the proposed rule change (SR-NYSEArca-2013-52), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Kevin M. O'Neill
Deputy Secretary

³⁶ 15 U.S.C. 78s(b)(2).

³⁷ 17 CFR 200.30-3(a)(12).