

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80657; File No. SR-NYSEArca-2017-09)

May 11, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; 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

I. Introduction

On January 30, 2017, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change regarding investments of the Janus Short Duration Income ETF (“Fund”), which is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on February 17, 2017.³ On March 13, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On March 30, 2017, 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rule change.⁴ On April 10, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.⁵ The Commission received no comments on the proposed rule change. The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 80028 (February 13, 2017), 82 FR 11089.

⁴ See Securities Exchange Act Release No. 80346, 82 FR 16643 (April 5, 2017).

⁵ In Amendment No. 2, the Exchange: (1) proposes to revise the limit on the Fund’s investments in over-the-counter (“OTC”) derivatives that are used for hedging purposes,

is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2⁶

The Shares of the Fund are currently listed and traded on the Exchange under Commentary .01 to NYSE Arca Equities Rule 8.600, which provides generic listing standards for Managed Fund Shares.⁷ The Shares are offered by Janus Detroit Street Trust ("Trust"), which is registered with the Commission as an open-end management investment company.⁸ Janus Capital Management LLC ("Adviser") is the Fund's investment adviser.⁹ ALPS Distributors,

from unlimited in the original proposal to up to 50% of the Fund's assets (calculated as the aggregate gross notional value); (2) clarifies how certain Fund holdings will be valued for purposes of the net asset value ("NAV") and Portfolio Indicative Value ("PIV") calculations; (3) supplements the description of the quantitative information available on the Fund's website; (4) supplements the description of the surveillance procedures for the shares of the Fund ("Shares"); and (5) makes other conforming, clarifying, and technical changes. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-09/nysearca201709.htm>.

⁶ The Commission notes that additional information regarding the Trust (as defined below), the Fund, its investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in Amendment No. 2 and the Registration Statement (as defined below), as applicable. See Amendment No. 2, supra note 5, and Registration Statement, infra note 8.

⁷ Shares of the Fund commenced trading on the Exchange on November 17, 2016 pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600.

⁸ The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On November 16, 2016, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333-207814 and 811-23112) ("Registration Statement"). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31540 (March 30, 2015) (File No. 812-13819).

⁹ The Adviser is not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented and will maintain a "fire wall" with respect to such

Inc. is the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company serves as the custodian, administrator, and transfer agent for the Fund.

Principal and Other Investments

According to the Exchange, the Fund seeks to provide a steady income stream with capital preservation across various market cycles. The Fund seeks to outperform the London Interbank Offered Rate 3-month rate by 2-3% through various market cycles with low volatility. The Fund pursues its investment objective by investing, under normal market conditions,¹⁰ at least 80% of its net assets in a portfolio of financial instruments described below.

According to the Exchange, the Fund may invest in Fixed Income Instruments,¹¹ which

broker-dealer regarding access to information concerning the composition of and/or changes to the Fund's portfolio. In the event (a) the 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 of 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.

¹⁰ The term "normal market conditions" is defined in NYSE Arca Equities Rule 8.600(c)(5).

¹¹ According to the Exchange, Fixed Income Instruments are the following: U.S. and non-U.S. corporate debt securities; preferred stock of foreign issuers, foreign bank obligations, and U.S. dollar or foreign currency-denominated obligations of foreign governments or supranational entities or their subdivisions, agencies, and instrumentalities; agency and non-agency asset-backed securities; principal exchange rate linked securities; zero coupon, step coupon, and pay-in-kind securities; U.S. Government securities, including inflation-indexed bonds issued by the U.S. Government, Treasury bills, notes and bonds, Treasury Inflation-Protected Securities, and obligations issued or guaranteed by U.S. Government agencies and instrumentalities that are backed by the full faith and credit of the U.S. Government; inflation-indexed bonds not issued by the U.S. Government, including municipal inflation-indexed bonds, inflation-indexed bonds issued by foreign governments, and corporate inflation-indexed bonds; debt securities issued by states or local governments and their agencies, authorities, and other government-sponsored enterprises; custodial receipts; Build America Bonds; variable and floating rate obligations; Brady Bonds; bank obligations; fixed income privately-placed securities and fixed income unregistered securities; exchange-traded or OTC bank capital securities; subordinated or junior debt; credit-linked trust certificates, traded custody

may be represented by derivatives. The Fund may invest in exchange-traded closed-end funds (“CEFs”) that invest substantially all of their assets in Fixed Income Instruments. The Fund may invest in futures and options on futures on interest rates, foreign currencies, and Eurodollars. The Fund may enter into forward contracts to purchase and sell Fixed Income Instruments and foreign currencies. The Fund may invest in options on foreign currencies either on exchanges or in the OTC market. The Fund may invest in options on U.S. and foreign government securities that may be traded on foreign exchanges and OTC in foreign countries. The Fund may write exchange-traded or OTC covered and uncovered put and call options and buy exchange-traded or OTC put and call options on securities that are traded on U.S. and foreign securities exchanges. The Fund may write straddles (combinations of put and call options on the same underlying security). The Fund may purchase and write exchange-listed and OTC put and call options on securities indices. The Fund may purchase or write covered and uncovered put and call options on interest rate swaps. The Fund may enter into swap agreements or utilize swap-related products, which are the following: total return swaps based on Fixed Income Instruments or an index thereon; interest rate swaps; and credit default swaps (“CDS”) and index credit default swaps based on Fixed Income Instruments. The Fund may invest in swaps on U.S. and foreign currencies. The Fund may enter into single-name CDS agreements.

While the Fund, under normal market conditions, invests at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in foreign currency transactions on a spot (cash) basis.

receipts, and participation interests; structured notes and indexed securities; and money market instruments.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.¹² The Fund monitors 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 assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund is diversified within the meaning of the 1940 Act.

The Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.¹³

The Fund will not concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by a regulatory authority having jurisdiction from time to time.

Application of Generic Listing Requirements

As noted above, the Shares are currently listed and traded on the Exchange under Commentary .01 to NYSE Arca Equities Rule 8.600, which provides generic listing standards for

¹² Under the guidelines established by the Trust's Board of Trustees ("Board"), the Adviser will consider the following factors: (1) the frequency of trades and quoted prices for the security; (2) the number of dealers willing to purchase or sell the security and the number of other potential purchasers; (3) the willingness of dealers to undertake to make a market in the security; and (4) the nature of the security and the nature of the marketplace trades, including the time needed to dispose of the security, the method of soliciting offers, and the mechanics of the transfer.

¹³ 26 U.S.C. 851.

Managed Fund Shares. Commentary .01(e) to NYSE Arca Equities Rule 8.600 currently requires that, on both an initial and ongoing basis, no more than 20% of the Fund's assets may be invested in OTC derivatives (calculated as the aggregate gross notional value of the OTC derivatives). The Exchange now proposes that up to 50% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate, or credit risk arising from the Fund's investments, including forwards, OTC options, and OTC swaps. 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.

According to the Exchange, other than Commentary .01(e), the Fund's portfolio will meet all other requirements of NYSE Arca Equities Rule 8.600.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,¹⁵ 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.

¹⁴ 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).

¹⁵ 15 U.S.C. 78f(b)(5).

As noted above, 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 are used to reduce currency, interest rate, or credit risk arising from the Fund's investments, including forwards, OTC options, and OTC swaps.¹⁶ The Exchange states that the Adviser believes that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. The Exchange states that OTC derivatives can be tailored to hedge the specific risk arising from the Fund's investments and may be a more efficient hedging vehicle than listed derivatives. The Exchange also states that if the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund might have to "over hedge" or "under hedge" if round lot sizes in listed derivatives were not available. As proposed, on a daily basis, the Fund will disclose on its website the information regarding the Disclosed Portfolio required under NYSE

¹⁶ According to the Exchange, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will monitor the financial standing of counterparties on an ongoing basis. This monitoring may include information provided by credit agencies, as well as the Adviser's credit analysts and other team members who evaluate approved counterparties using various methods of analysis, including but not limited to earnings updates, the counterparty's reputation, the Adviser's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation. Moreover, the Exchange states that investments in derivative instruments are 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 segregates or "earmarks" assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. 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.

Arca Equities Rule 8.600(c)(2) to the extent applicable.¹⁷ The website information will be publicly available at no charge.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁸ 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. The PIV, 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 Exchange's Core Trading Session. 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. Intra-day and closing price information regarding CEFs will be available from the exchange on which such securities are traded. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Instruments will be

¹⁷ NYSE Arca Equities Rule 8.600(c)(2) requires that the website for each series of Managed Fund Shares disclose the following information regarding the Disclosed Portfolio, to the extent applicable: (A) ticker symbol; (B) CUSIP or other identifier; (C) description of the holding; (D) with respect to holdings in derivatives, the identity of the security, commodity, index or other asset upon which the derivative is based; (E) the strike price for any options; (F) the quantity of each security or other asset held as measured by (i) par value, (ii) notional value, (iii) number of shares, (iv) number of contracts, and (v) number of units; (G) maturity date; (H) coupon rate; (I) effective date; (J) market value; and (K) percentage weighting of the holding in the portfolio.

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

available from major market data vendors. Price information relating to forwards, currencies, OTC options and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation is available via the Options Price Reporting Authority. In addition, the Fund's website includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

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 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. Trading in Shares of the Fund 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.¹⁹ Moreover, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Adviser is not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented and will maintain a "fire wall" with respect to such broker-dealer regarding access to information

¹⁹ These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments constituting 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.

concerning the composition of and/or 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.²⁰

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), the Fund's portfolio will meet all other requirements of NYSE Arca Equities Rule 8.600.
- (2) Up to 50% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate, or credit risk arising from the Fund's investments, including forwards, OTC options, and OTC swaps. 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.
- (3) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance.
- (4) 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

²⁰ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

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.

- (5) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain CEFs, certain exchange-traded bank capital securities, 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 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. The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.
- (6) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (7) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.²¹

²¹ See 17 CFR 240.10A-3.

The Exchange represents that all statements and representations made in the filing regarding (1) the description of the portfolio; (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 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 monitor²² 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 Equities Rule 5.5(m).

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act²³ and Section 11A(a)(1)(C)(iii) of the Act²⁴ and the rules and regulations thereunder applicable to a national securities exchange.

²² 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.

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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-2017-09 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-2017-09. 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; 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-2017-09 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 Amendments No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of Amendment No. 2 in the Federal Register. As noted above, Amendment No. 2 revises the proposed rule change by changing the proposed limit on the Fund's investments in OTC derivatives that are used for hedging purposes, from an unlimited amount to up to 50% of the Fund's assets. Amendment No. 2 also provides clarifications and additional information to the proposed rule change. The changes and additional information in Amendment No. 2 helped the Commission to evaluate, among other things, whether the listing and trading of the Shares would be consistent with the protection of investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁵ to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

²⁵ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NYSEArca-2017-09), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Eduardo A. Aleman
Assistant Secretary

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).