



**Martha Redding**  
Senior Counsel  
Assistant Secretary

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December 30, 2015

**VIA E-MAIL**

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

Re: Securities Exchange Act Rel. 34-76590 (SR-NYSEArca-2015-93)

Dear Mr. Fields:

NYSE Arca, Inc. filed the attached Amendment No. 1 to the above-referenced filing on December 29, 2015.

Sincerely,

A handwritten signature in blue ink, appearing to be "BJF".

Encl. (Amendment No. 1 to SR-NYSEArca-2015-93)

Required fields are shown with yellow backgrounds and asterisks.

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

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

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

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

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

Proposal relating to listing and trading of shares of Cumberland Municipal Bond ETF under NYSE Arca Equities Rule 8.600

**Contact Information**

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

First Name \* Michael      Last Name \* Cavalier  
 Title \* Counsel NYSE Regulation Inc  
 E-mail \* [REDACTED]  
 Telephone \* [REDACTED]      Fax [REDACTED]

**Signature**

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

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

(Title \*)  
 Assistant Secretary

Date 12/29/2015  
 By Martha Redding  
 (Name \*)

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

Martha Redding, [REDACTED]

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

Add Remove View

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

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

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

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

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): Cumberland Municipal Bond ETF.

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

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

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

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

Michael Cavalier  
Counsel  
NYSE Group, Inc.  
(212) 656-2474

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

- (a) Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Managed Fund Shares<sup>3</sup>: Cumberland Municipal Bond ETF (the “Fund”),<sup>4</sup> a series of the ETFis Series Trust I (“Trust”).<sup>5</sup>

The investment adviser to the Fund will be Virtus ETF Advisers LLC (the “Adviser”). The Fund’s sub-adviser will be Cumberland Advisors Inc. (“Sub-Adviser”). Virtus ETF Solutions LLC will serve as the Fund’s operational administrator. ETF Distributors LLC will serve as the distributor (the “Distributor”) of Fund Shares on an agency basis. The Bank of New York

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<sup>3</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>4</sup> The Securities and Exchange Commission (“Commission”) has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR-NYSEArca-2013-33) (order approving Exchange listing and trading of International Bear ETF); 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR-NYSEArca-2013-01) (order approving Exchange listing and trading of Newfleet Multi-Sector Income ETF). The Commission has approved for Exchange listing and trading shares of two actively managed funds of the PIMCO ETF Trust that principally hold municipal bonds. See Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No.63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR-NYSEArca-2010-120).

<sup>5</sup> The Trust is registered under the 1940 Act. On May 20, 2015, 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) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333-187668 and 811-22819) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30607 (July 23, 2013) (File No. 812-14080) (“Exemptive Order”).

Mellon (the “Administrator”) will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund.<sup>6</sup>

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser (but not the Sub-Adviser) is affiliated with one or more broker-dealers and the Adviser has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or Sub-Adviser become registered broker-dealers 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 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.

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<sup>6</sup> This Amendment No. 1 to SR-NYSEArca-2015-93 replaces SR-NYSEArca-2015-93 as originally filed and supersedes such filing in its entirety.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-Adviser and their 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.

## Description of the Fund

### Principal Investments

According to the Registration Statement, the Fund will seek to provide a competitive level of current income exempt from federal income tax, while preserving capital. The Fund, under normal market conditions,<sup>8</sup> will invest at least eighty percent (80%) of the Fund's net assets in debt securities whose interest is, in the opinion of bond counsel for the issuer at the time of issuance, exempt from U.S. federal income tax ("Municipal Bonds"). The Sub-Adviser will invest the Fund's assets using a barbell strategy, which means that the Sub-Adviser will overweight the Fund's investments in Municipal Bonds with maturities on the short and long ends of the fixed income yield curve, while underweighting exposure to Municipal Bonds with intermediate maturities.

According to the Registration Statement, Municipal Bonds in which the Fund may invest include one or more of the following:

- general obligation bonds, which are typically backed by the full faith, credit, and taxing power of the issuer;
- revenue bonds, which are typically secured by revenues generated by the issuer;
- discount bonds, which may be originally issued at a discount to par value or sold at market price below par value;
- premium bonds, which are sold at a premium to par value;
- zero coupon bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity; and
- private activity bonds, which are typically issued by or on behalf of local or state government for the purpose of financing the project of a private user.

The Fund will have no target duration for its investment portfolio, and the Sub-Adviser may target a shorter or longer average portfolio duration based on the Sub-Adviser's forecast of interest rates and view of fixed-income markets generally.<sup>9</sup> The Sub-Adviser will generally apply a heavier weight toward

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<sup>8</sup> 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 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.

<sup>9</sup> Duration measures the interest rate sensitivity of a debt security by assessing and weighting the present value of the security's payment pattern. Generally, the longer the maturity, the greater the duration and, therefore, the greater effect interest rate changes have on the price of the security.

Municipal Bonds with shorter maturities during periods of high interest rates and longer maturities during periods of lower interest rates.<sup>10</sup>

With respect to credit quality, under normal market conditions, at least 90% of the Fund's assets invested in Municipal Bonds will be in Municipal Bonds rated "A" or better by at least one major credit rating agency or, if unrated, deemed to be of comparable quality by the Sub-Adviser. From time to time, the Fund may concentrate (i.e., invest more than 25% of its total assets) in particular sectors. The Fund may sell investments for a variety of reasons, such as to adjust the portfolio's average maturity, duration, or overall credit quality, or to shift assets into and out of higher-yielding or lower-yielding securities or certain sectors.

According to the Registration Statement, under normal market conditions, at least 80% of the Fund's income will be exempt from federal income taxes. However, a significant portion of the Fund's income could be derived from securities subject to the alternative minimum tax.

#### Other Investments

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

The Fund may invest in equity securities, both directly and indirectly through investment in shares of exchange-traded funds ("ETFs")<sup>11</sup>, other investment companies, and other types of securities and instruments described below. The equity portion of the Fund's portfolio may include common stocks traded on securities exchanges or in the over-the-counter ("OTC") market. In addition to common stocks, the equity portion of the Fund's portfolio may also include exchange-traded and OTC preferred stocks, and exchange-traded and OTC

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<sup>10</sup> The Adviser represents that, under normal market conditions, each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least \$100 million. In addition, no Municipal Bond held by the Fund will exceed 30% of the Fund's net assets, and the five most heavily weighted Municipal Bonds held by the Fund will not in the aggregate account for more than 50% of the Fund's assets; and the Fund will hold Municipal Bonds of a minimum of 13 non-affiliated issuers.

<sup>11</sup> The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

warrants.<sup>12</sup>

The Fund may purchase taxable municipal bonds when the Sub-Adviser believes they offer opportunities for the Fund, or variable rate demand notes (VRDNs) that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates.

The Fund may invest in exchange-traded and OTC securities convertible into common stock. Such securities are the following: convertible bonds and convertible preferred stocks.<sup>13</sup>

The Fund may invest directly and indirectly in cash equivalents, namely, money market instruments that are the following: U.S. Government obligations or corporate debt obligations (including those subject to repurchase agreements); banker's acceptances<sup>14</sup> and certificates of deposit<sup>15</sup> of domestic branches of banks, commercial paper<sup>16</sup>, and master notes<sup>17</sup>.

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<sup>12</sup> With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group ("ISG") or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (except for non-exchange-traded investment company securities) will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. See note 29, infra.

<sup>13</sup> The criteria in note 12 above also will apply to exchange-traded convertible preferred stocks and exchange-traded stocks into which convertible bonds may be converted.

<sup>14</sup> Banker's acceptances are time drafts drawn on and "accepted" by a bank. When a bank "accepts" such a time draft, it assumes liability for its payment. When the Fund acquires a banker's acceptance, the bank that "accepted" the time draft is liable for payment of interest and principal when due. The banker's acceptance carries the full faith and credit of such bank.

<sup>15</sup> A certificate of deposit is an unsecured, interest bearing debt obligation of a bank.

<sup>16</sup> Commercial paper is an unsecured, short-term debt obligation of a bank, corporation, or other borrower. Commercial paper maturity generally ranges from two to 270 days and is usually sold on a discounted basis rather than as an interest-bearing instrument. The Fund will invest directly in commercial paper only if it is rated in one of the top two rating categories by Moody's, S&P or Fitch or, if not rated, is of equivalent quality in the Adviser's opinion. Commercial paper may include master notes of the same quality. Master notes are unsecured

In order to maintain sufficient liquidity, to implement investment strategies or for temporary defensive purposes, the Fund may invest a significant portion of its assets in shares of one or more money market funds. Generally, money market mutual funds are registered investment companies that seek to earn income consistent with the preservation of capital and maintenance of liquidity by investing primarily in high quality money market instruments.

The Fund may invest in the securities of other non-exchange-traded investment company securities in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.<sup>18</sup>

The Fund may write U.S. exchange-traded call and put options on securities, ETFs or security indexes to seek income or may purchase or write U.S. exchange-traded put or call options for hedging purposes.

The Fund may purchase securities on a when-issued basis or for settlement at a future date (forward commitment) if the Fund holds sufficient liquid assets to meet the purchase price.

Additionally, the Trust, on behalf of the Fund, has claimed an exclusion from the definition of the term “commodity pool operator” pursuant to Rule 4.5 under the Commodity Exchange Act, as amended (the “CEA”). Therefore, the Fund is not subject to regulation or registration as a commodity pool operator under the CEA.

#### Investment Restrictions

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. 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 assets.

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obligations which are redeemable upon demand of the holder and which permit the investment of fluctuating amounts at varying rates of interest.

<sup>17</sup> Master notes may be acquired by the Fund through the master note program of the Fund’s custodian bank.

<sup>18</sup> 15 U.S.C. 80a-12(d)(1)(E),(F) and (G).

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.<sup>19</sup>

The Fund will seek to qualify for treatment as a regulated investment company under the Internal Revenue Code of 1986.<sup>20</sup>

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in "Creation Units" on a continuous basis through the Distributor, at their net asset value ("NAV") next determined after receipt, on any business day, for an order received in proper form. All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of Shares (50,000 Shares per Creation Unit). The Creation Unit size is subject to change. Cash creations will be the default mechanism for creation of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for creation of Shares, upon approval of the Distributor. In such case, the consideration for purchase of a Creation Unit of the Fund generally will consist of an in-kind deposit of "Deposit Securities" for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and a "Cash Component" computed as described below. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit", which represents the minimum initial and subsequent investment amount for a Creation

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<sup>19</sup> The Commission has stated that 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).

<sup>20</sup> 26 U.S.C. 851.

Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.*, the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component will be such negative amount, and the creator will be entitled to receive cash from the Fund in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

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

The identity and number of Shares of the Deposit Securities required for the Fund Deposit for the Fund will change as rebalancing adjustments and corporate action events occur from time to time. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash - *i.e.*, a “cash in lieu” amount - to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, that may not be eligible for transfer or that may not be eligible for trading by an “Authorized Participant” (as described below) or the investor for which it is acting.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through NSCC, also will make available on each business day the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

#### Procedures for Creation of Creation Units

To be eligible to place orders to create a Creation Unit of the Fund, an entity must be (i) a “Participating Party”, *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of NSCC (the “Clearing Process”) or a clearing agency that is registered with the Commission, or (ii) a Depository Trust Company (“DTC”) Participant and, in each case, must have executed an agreement with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units (“Participant

Agreement”). A Participating Party and DTC Participant are collectively referred to as an “Authorized Participant”.

All orders to create Creation Units must be received by the Distributor no later than the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time), in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

#### Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. Cash redemptions will be the default mechanism for redemptions of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for redemption of Shares, upon approval of the Distributor. In such case, the redemption proceeds for a Creation Unit generally consist of Deposit Securities, as announced by the Administrator on the business day of the request for redemption received in proper form, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Deposit Securities (the “Cash Redemption Amount”), less a redemption transaction fee. In the event that the Deposit Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

With respect to the Fund, the Administrator, through NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Deposit Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

If it is not possible to effect deliveries of the Deposit Securities, the Trust may in its discretion exercise its option to redeem such shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit.<sup>21</sup> In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next

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<sup>21</sup>

The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, to offset the Trust's brokerage and other transaction costs associated with the disposition of Deposit Securities).

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the Exchange is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the Exchange is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable; or (4) in such other circumstance as is permitted by the Commission.

#### Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each day that the Exchange is open. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The pricing and valuation of portfolio securities will be determined in good faith in accordance with procedures approved by, and under the direction of, the Trust's Board of Trustees ("Board"). In determining the value of the Fund's assets, equity securities will be generally valued at market using quotations from the primary market in which they are traded. Debt securities (other than short-term investments) will be valued on the basis of broker quotes or valuations provided by a pricing service, which in determining value will utilize information regarding recent sales, market transactions in comparable securities, quotations from dealers, and various relationships between securities. Other assets, such as accrued interest, accrued dividends and cash also will be included in determining the NAV. The Fund normally will use third party pricing services to obtain portfolio security prices.

Municipal Bonds, money market instruments, convertible bonds, taxable municipal bonds, and VRDNs will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market.

Exchange-traded equity securities, including common stocks, ETFs, preferred stocks, convertible preferred stocks and warrants, will be valued at market value,

which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. If market prices are unavailable or the Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Trust's Board.

Equity securities traded in the OTC market, including common stocks, preferred stocks, and warrants, will be valued at the last reported sale price on the valuation date. OTC traded convertible preferred stocks will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Securities of non-exchange-traded investment company securities registered under the 1940 Act, including money market funds, will be valued at NAV.

Option contracts will be valued at their most recent sale price on the applicable exchange. If no such sales are reported, these contracts will be valued at their most recent bid price.

To the extent the assets of the Fund are invested in other open-end investment companies that are registered under the 1940 Act, the Fund's NAV will be calculated based upon the NAVs reported by such registered open-end investment companies.

Securities and assets for which market quotations are not readily available or which cannot be accurately valued using the Fund's normal pricing procedures will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. Fair value pricing may be used, for example, in situations where (i) portfolio securities, such as securities with small capitalizations, are so thinly traded that there have been no transactions for that security over an extended period of time; (ii) an event occurs after the close of the exchange on which a portfolio security is principally traded that is likely to change the value of the portfolio security prior to the Fund's NAV calculation; (iii) the exchange on which the portfolio security is principally traded closes early; or (iv) trading of the particular portfolio security is halted during the day and does not resume prior to the Fund's NAV calculation. The Board will monitor and evaluate the Fund's use of fair value pricing, and periodically reviews the results of any fair valuation under the Trust's policies.

#### Availability of Information

The Fund's website ([www.cumberetfs.com](http://www.cumberetfs.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1)

daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>22</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's website will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>23</sup>

The Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of Shares of the Fund will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each business day. Authorized Participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise the Fund's basket on a given day.

The approximate value of the Fund's investments on a per-Share basis, the Indicative Intra-Day Value ("IIV"), will be disseminated every 15 seconds during

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<sup>22</sup> The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>23</sup> Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

the Exchange Core Trading Session. The IIV should not be viewed as a “real-time” update of NAV because the IIV will be calculated by an independent third party and may not be calculated in the exact same manner as NAV, which will be computed daily.

The IIV for the Fund will be calculated by dividing the “Estimated Fund Value” as of the time of the calculation by the total number of outstanding Shares. “Estimated Fund Value” is the sum of the estimated amount of cash held in the Fund’s portfolio, the estimated amount of accrued interest owing to the Fund and the estimated value of the securities held in the Fund’s portfolio, minus the estimated amount of the Fund’s liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund’s website. In determining the estimated value for each of the component securities, the IIV will use last sale, market prices or other methods that would be considered appropriate for pricing securities held by registered investment companies.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Fund’s shareholder reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust’s SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission’s website at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the Consolidated Tape Association (“CTA”) high-speed line, and from the national securities exchange on which they are listed. Price information regarding non-U.S. exchange-traded equity securities held by the Fund will be available from the exchanges trading such assets.

Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds, taxable municipal bonds, convertible bonds, OTC traded convertible preferred stocks, corporate debt obligations, VRDNs, and cash equivalents. Price information for investment company securities (other than ETFs) will be available from the applicable investment company’s website and from market data vendors. Intra-day and closing price information for OTC equity securities will be available from major market data vendors. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Quotation and last sale information for exchange-traded options will be available via the Options Price Reporting Authority and from the applicable U.S. options exchange. In addition, the IIV, (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be

widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.<sup>24</sup> The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>25</sup> 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. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will 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 Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in

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<sup>24</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

<sup>25</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

compliance with Rule 10A-3<sup>26</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio<sup>27</sup> as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>28</sup>

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.<sup>29</sup>

FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in

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<sup>26</sup> 17 CFR 240.10A-3.

<sup>27</sup> The term "Disclosed Portfolio" is defined in NYSE Arca Equities Rule 8.600(c)(2).

<sup>28</sup> 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.

<sup>29</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

the Shares, options and certain exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board ("MSRB") relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) 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 (6) trading information.

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

#### (b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>30</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options and certain exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Fund may not purchase or hold illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid assets. The Adviser and Sub-Adviser are not registered as broker-dealers but the Adviser is affiliated with one or more broker-dealers and has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the CTA high-speed line, and from the national securities exchange on which they are listed. The Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Moreover, 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. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. 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. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

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

Not applicable.

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

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

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

Not applicable.

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

Not applicable.

11. Exhibits

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

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSEARCA-2015-93, Amendment No. 1)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of Cumberland Municipal Bond ETF under NYSE Arca Equities Rule 8.600

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 29, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): Cumberland Municipal Bond ETF. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares<sup>4</sup>: Cumberland Municipal Bond ETF (the “Fund”),<sup>5</sup> a series of the ETFis Series

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<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> The Securities and Exchange Commission (“Commission”) has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR-NYSEArca-2013-33) (order approving Exchange listing and trading of International Bear ETF); 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR-NYSEArca-2013-01) (order approving Exchange listing and trading of Newfleet Multi-Sector Income ETF). The Commission has approved for Exchange listing and trading shares of two actively managed funds of the PIMCO ETF Trust that principally hold municipal bonds. See Securities

Trust I (“Trust”).<sup>6</sup>

The investment adviser to the Fund will be Virtus ETF Advisers LLC (the “Adviser”). The Fund’s sub-adviser will be Cumberland Advisors Inc. (“Sub-Adviser”). Virtus ETF Solutions LLC will serve as the Fund’s operational administrator. ETF Distributors LLC will serve as the distributor (the “Distributor”) of Fund Shares on an agency basis. The Bank of New York Mellon (the “Administrator”) will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund.<sup>7</sup>

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or

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Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No.63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR-NYSEArca-2010-120).

<sup>6</sup> The Trust is registered under the 1940 Act. On May 20, 2015, 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) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333-187668 and 811-22819) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30607 (July 23, 2013) (File No. 812-14080) (“Exemptive Order”).

<sup>7</sup> This Amendment No. 1 to SR-NYSEArca-2015-93 replaces SR-NYSEArca-2015-93 as originally filed and supersedes such filing in its entirety.

changes to such investment company portfolio.<sup>8</sup> In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser (but not the Sub-Adviser) is affiliated with one or more broker-dealers and the Adviser has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or Sub-Adviser become registered broker-dealers 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 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

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<sup>8</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-Adviser and their 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.

information regarding such portfolio.

#### Description of the Fund

#### Principal Investments

According to the Registration Statement, the Fund will seek to provide a competitive level of current income exempt from federal income tax, while preserving capital. The Fund, under normal market conditions,<sup>9</sup> will invest at least eighty percent (80%) of the Fund's net assets in debt securities whose interest is, in the opinion of bond counsel for the issuer at the time of issuance, exempt from U.S. federal income tax ("Municipal Bonds"). The Sub-Adviser will invest the Fund's assets using a barbell strategy, which means that the Sub-Adviser will overweight the Fund's investments in Municipal Bonds with maturities on the short and long ends of the fixed income yield curve, while underweighting exposure to Municipal Bonds with intermediate maturities.

According to the Registration Statement, Municipal Bonds in which the Fund may invest include one or more of the following:

- general obligation bonds, which are typically backed by the full faith, credit, and taxing power of the issuer;
- revenue bonds, which are typically secured by revenues generated by the issuer;
- discount bonds, which may be originally issued at a discount to par

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<sup>9</sup> 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 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.

value or sold at market price below par value;

- premium bonds, which are sold at a premium to par value;
- zero coupon bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity; and
- private activity bonds, which are typically issued by or on behalf of local or state government for the purpose of financing the project of a private user.

The Fund will have no target duration for its investment portfolio, and the Sub-Adviser may target a shorter or longer average portfolio duration based on the Sub-Adviser's forecast of interest rates and view of fixed-income markets generally.<sup>10</sup> The Sub-Adviser will generally apply a heavier weight toward Municipal Bonds with shorter maturities during periods of high interest rates and longer maturities during periods of lower interest rates.<sup>11</sup>

With respect to credit quality, under normal market conditions, at least 90% of the Fund's assets invested in Municipal Bonds will be in Municipal Bonds rated "A" or better by at least one major credit rating agency or, if unrated, deemed to be of comparable quality by the Sub-Adviser. From time to time, the Fund may concentrate

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<sup>10</sup> Duration measures the interest rate sensitivity of a debt security by assessing and weighting the present value of the security's payment pattern. Generally, the longer the maturity, the greater the duration and, therefore, the greater effect interest rate changes have on the price of the security.

<sup>11</sup> The Adviser represents that, under normal market conditions, each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least \$100 million. In addition, no Municipal Bond held by the Fund will exceed 30% of the Fund's net assets, and the five most heavily weighted Municipal Bonds held by the Fund will not in the aggregate account for more than 50% of the Fund's assets; and the Fund will hold Municipal Bonds of a minimum of 13 non-affiliated issuers.

(i.e., invest more than 25% of its total assets) in particular sectors. The Fund may sell investments for a variety of reasons, such as to adjust the portfolio's average maturity, duration, or overall credit quality, or to shift assets into and out of higher-yielding or lower-yielding securities or certain sectors.

According to the Registration Statement, under normal market conditions, at least 80% of the Fund's income will be exempt from federal income taxes. However, a significant portion of the Fund's income could be derived from securities subject to the alternative minimum tax.

#### Other Investments

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

The Fund may invest in equity securities, both directly and indirectly through investment in shares of exchange-traded funds ("ETFs")<sup>12</sup>, other investment companies, and other types of securities and instruments described below. The equity portion of the Fund's portfolio may include common stocks traded on securities exchanges or in the over-the-counter ("OTC") market. In addition to common stocks, the equity portion of the Fund's portfolio may also include exchange-traded and OTC preferred stocks, and

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<sup>12</sup> The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

exchange-traded and OTC warrants.<sup>13</sup>

The Fund may purchase taxable municipal bonds when the Sub-Adviser believes they offer opportunities for the Fund, or variable rate demand notes (VRDNs) that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates.

The Fund may invest in exchange-traded and OTC securities convertible into common stock. Such securities are the following: convertible bonds and convertible preferred stocks.<sup>14</sup>

The Fund may invest directly and indirectly in cash equivalents, namely, money market instruments that are the following: U.S. Government obligations or corporate debt obligations (including those subject to repurchase agreements); banker's acceptances<sup>15</sup> and certificates of deposit<sup>16</sup> of domestic branches of banks, commercial paper<sup>17</sup>, and

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<sup>13</sup> With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group ("ISG") or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (except for non-exchange-traded investment company securities) will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. See note 30, *infra*.

<sup>14</sup> The criteria in note 13 above also will apply to exchange-traded convertible preferred stocks and exchange-traded stocks into which convertible bonds may be converted.

<sup>15</sup> Banker's acceptances are time drafts drawn on and "accepted" by a bank. When a bank "accepts" such a time draft, it assumes liability for its payment. When the Fund acquires a banker's acceptance, the bank that "accepted" the time draft is liable for payment of interest and principal when due. The banker's acceptance carries the full faith and credit of such bank.

<sup>16</sup> A certificate of deposit is an unsecured, interest bearing debt obligation of a bank.

<sup>17</sup> Commercial paper is an unsecured, short-term debt obligation of a bank,

master notes.<sup>18</sup>

In order to maintain sufficient liquidity, to implement investment strategies or for temporary defensive purposes, the Fund may invest a significant portion of its assets in shares of one or more money market funds. Generally, money market mutual funds are registered investment companies that seek to earn income consistent with the preservation of capital and maintenance of liquidity by investing primarily in high quality money market instruments.

The Fund may invest in the securities of other non-exchange-traded investment company securities in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.<sup>19</sup>

The Fund may write U.S. exchange-traded call and put options on securities, ETFs or security indexes to seek income or may purchase or write U.S. exchange-traded put or call options for hedging purposes.

The Fund may purchase securities on a when-issued basis or for settlement at a future date (forward commitment) if the Fund holds sufficient liquid assets to meet the purchase price.

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corporation, or other borrower. Commercial paper maturity generally ranges from two to 270 days and is usually sold on a discounted basis rather than as an interest-bearing instrument. The Fund will invest directly in commercial paper only if it is rated in one of the top two rating categories by Moody's, S&P or Fitch or, if not rated, is of equivalent quality in the Adviser's opinion. Commercial paper may include master notes of the same quality. Master notes are unsecured obligations which are redeemable upon demand of the holder and which permit the investment of fluctuating amounts at varying rates of interest.

<sup>18</sup> Master notes may be acquired by the Fund through the master note program of the Fund's custodian bank.

<sup>19</sup> 15 U.S.C. 80a-12(d)(1)(E),(F) and (G).

Additionally, the Trust, on behalf of the Fund, has claimed an exclusion from the definition of the term “commodity pool operator” pursuant to Rule 4.5 under the Commodity Exchange Act, as amended (the “CEA”). Therefore, the Fund is not subject to regulation or registration as a commodity pool operator under the CEA.

#### Investment Restrictions

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. 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 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.<sup>20</sup>

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<sup>20</sup> The Commission has stated that 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

The Fund will seek to qualify for treatment as a regulated investment company under the Internal Revenue Code of 1986.<sup>21</sup>

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in "Creation Units" on a continuous basis through the Distributor, at their net asset value ("NAV") next determined after receipt, on any business day, for an order received in proper form. All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of Shares (50,000 Shares per Creation Unit). The Creation Unit size is subject to change. Cash creations will be the default mechanism for creation of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for creation of Shares, upon approval of the Distributor. In such case, the consideration for purchase of a Creation Unit of the Fund generally will consist of an in-kind deposit of "Deposit Securities" for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and a "Cash Component" computed as described below. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit", which represents the minimum initial and subsequent

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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).

<sup>21</sup> 26 U.S.C. 851.

investment amount for a Creation Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (i.e., the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount. If the Cash Component is a negative number (i.e., the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component will be such negative amount, and the creator will be entitled to receive cash from the Fund in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

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

The identity and number of Shares of the Deposit Securities required for the Fund Deposit for the Fund will change as rebalancing adjustments and corporate action events occur from time to time. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash - i.e., a “cash in lieu” amount - to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient

quantity for delivery, that may not be eligible for transfer or that may not be eligible for trading by an “Authorized Participant” (as described below) or the investor for which it is acting.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through NSCC, also will make available on each business day the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

#### Procedures for Creation of Creation Units

To be eligible to place orders to create a Creation Unit of the Fund, an entity must be (i) a “Participating Party”, i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of NSCC (the “Clearing Process”) or a clearing agency that is registered with the Commission, or (ii) a Depository Trust Company (“DTC”) Participant and, in each case, must have executed an agreement with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units (“Participant Agreement”). A Participating Party and DTC Participant are collectively referred to as an “Authorized Participant”.

All orders to create Creation Units must be received by the Distributor no later than the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time), in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

#### Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined

after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. Cash redemptions will be the default mechanism for redemptions of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for redemption of Shares, upon approval of the Distributor. In such case, the redemption proceeds for a Creation Unit generally consist of Deposit Securities, as announced by the Administrator on the business day of the request for redemption received in proper form, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Deposit Securities (the "Cash Redemption Amount"), less a redemption transaction fee. In the event that the Deposit Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

With respect to the Fund, the Administrator, through NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Deposit Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

If it is not possible to effect deliveries of the Deposit Securities, the Trust may in its discretion exercise its option to redeem such shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion,

permit.<sup>22</sup> In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, to offset the Trust's brokerage and other transaction costs associated with the disposition of Deposit Securities).

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the Exchange is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the Exchange is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable; or (4) in such other circumstance as is permitted by the Commission.

#### Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each day that the Exchange is open. Any assets or liabilities denominated in currencies other than the U.S.

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<sup>22</sup> The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The pricing and valuation of portfolio securities will be determined in good faith in accordance with procedures approved by, and under the direction of, the Trust's Board of Trustees ("Board"). In determining the value of the Fund's assets, equity securities will be generally valued at market using quotations from the primary market in which they are traded. Debt securities (other than short-term investments) will be valued on the basis of broker quotes or valuations provided by a pricing service, which in determining value will utilize information regarding recent sales, market transactions in comparable securities, quotations from dealers, and various relationships between securities. Other assets, such as accrued interest, accrued dividends and cash also will be included in determining the NAV. The Fund normally will use third party pricing services to obtain portfolio security prices.

Municipal Bonds, money market instruments, convertible bonds, taxable municipal bonds, and VRDNs will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market.

Exchange-traded equity securities, including common stocks, ETFs, preferred stocks, convertible preferred stocks and warrants, will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. If market prices are unavailable or the Fund believes

that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Trust's Board.

Equity securities traded in the OTC market, including common stocks, preferred stocks, and warrants, will be valued at the last reported sale price on the valuation date. OTC traded convertible preferred stocks will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Securities of non-exchange-traded investment company securities registered under the 1940 Act, including money market funds, will be valued at NAV.

Option contracts will be valued at their most recent sale price on the applicable exchange. If no such sales are reported, these contracts will be valued at their most recent bid price.

To the extent the assets of the Fund are invested in other open-end investment companies that are registered under the 1940 Act, the Fund's NAV will be calculated based upon the NAVs reported by such registered open-end investment companies.

Securities and assets for which market quotations are not readily available or which cannot be accurately valued using the Fund's normal pricing procedures will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. Fair value pricing may be used, for example, in situations where (i) portfolio securities, such as securities with small capitalizations, are so thinly traded that there have been no transactions for that security over an extended period of time; (ii) an event occurs after the close of the exchange on which a portfolio

security is principally traded that is likely to change the value of the portfolio security prior to the Fund's NAV calculation; (iii) the exchange on which the portfolio security is principally traded closes early; or (iv) trading of the particular portfolio security is halted during the day and does not resume prior to the Fund's NAV calculation. The Board will monitor and evaluate the Fund's use of fair value pricing, and periodically reviews the results of any fair valuation under the Trust's policies.

#### Availability of Information

The Fund's website ([www.cumberetfs.com](http://www.cumberetfs.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>23</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's website will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>24</sup>

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<sup>23</sup> The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>24</sup> Under accounting procedures followed by the Fund, trades made on the prior

The Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of Shares of the Fund will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each business day. Authorized Participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise the Fund's basket on a given day.

The approximate value of the Fund's investments on a per-Share basis, the Indicative Intra-Day Value ("IIV"), will be disseminated every 15 seconds during the Exchange Core Trading Session. The IIV should not be viewed as a "real-time" update of

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business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

NAV because the IIV will be calculated by an independent third party and may not be calculated in the exact same manner as NAV, which will be computed daily.

The IIV for the Fund will be calculated by dividing the “Estimated Fund Value” as of the time of the calculation by the total number of outstanding Shares. “Estimated Fund Value” is the sum of the estimated amount of cash held in the Fund’s portfolio, the estimated amount of accrued interest owing to the Fund and the estimated value of the securities held in the Fund’s portfolio, minus the estimated amount of the Fund’s liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund’s website. In determining the estimated value for each of the component securities, the IIV will use last sale, market prices or other methods that would be considered appropriate for pricing securities held by registered investment companies.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Fund’s shareholder reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust’s SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission’s website at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the Consolidated Tape Association

(“CTA”) high-speed line, and from the national securities exchange on which they are listed. Price information regarding non-U.S. exchange-traded equity securities held by the Fund will be available from the exchanges trading such assets.

Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds, taxable municipal bonds, convertible bonds, OTC traded convertible preferred stocks, corporate debt obligations, VRDNs, and cash equivalents. Price information for investment company securities (other than ETFs) will be available from the applicable investment company’s website and from market data vendors. Intraday and closing price information for OTC equity securities will be available from major market data vendors. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Quotation and last sale information for exchange-traded options will be available via the Options Price Reporting Authority and from the applicable U.S. options exchange. In addition, the IIV, (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.<sup>25</sup> The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

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<sup>25</sup> Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>26</sup> 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. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

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<sup>26</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will 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 Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>27</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio<sup>28</sup> as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of

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<sup>27</sup> 17 CFR 240.10A-3.

<sup>28</sup> The term "Disclosed Portfolio" is defined in NYSE Arca Equities Rule 8.600(c)(2).

Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>29</sup>

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.<sup>30</sup>

FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options and certain exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the

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<sup>29</sup> 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.

<sup>30</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Municipal Securities Rulemaking Board (“MSRB”) relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) 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 (6) trading information.

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

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>31</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options and certain exchange-traded equity securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income

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<sup>31</sup> 15 U.S.C. 78f(b)(5).

securities held by the Fund reported to TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Fund may not purchase or hold illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid assets. The Adviser and Sub-Adviser are not registered as broker-dealers but the Adviser is affiliated with one or more broker-dealers and has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the CTA high-speed line, and from the national securities exchange on which they are listed. The Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective

date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Moreover, 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. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. 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. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-93 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2015-93. 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 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](http://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-2015-93 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

Robert W. Errett  
Deputy Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).