SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63915; File No. SR-NYSEArca-2010-121)

February 15, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of FactorShares Funds

I. Introduction

On December 22, 2010, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of FactorShares 2X: S&P500 Bull/TBond Bear, FactorShares 2X: TBond Bull/S&P500 Bear, FactorShares 2X: S&P500 Bull/USD Bear, FactorShares 2X: Oil Bull/S&P500 Bear, and FactorShares 2X: Gold Bull/S&P500 Bear (each a "Fund" and, collectively, "Funds") under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the Federal Register on January 10, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Funds under NYSE Arca Equities Rule 8.200, Commentary .02. Each of the Funds was formed on January 26, 2010 as a separate Delaware statutory trust, and each Fund will issue and offer common units of beneficial interest, which represent units of fractional beneficial undivided interest in and ownership of

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 63636 (January 3, 2011), 76 FR 1477 ("Notice").

such Fund.[4]

Factor Capital Management, LLC ("Managing Owner"), a Delaware limited liability company, will serve as the Managing Owner of each Fund. Interactive Brokers LLC, a Connecticut limited liability company, will serve as each Fund's clearing broker ("Commodity Broker"). The Commodity Broker is registered with the Commodity Futures Trading Commission ("CFTC") as a futures commission merchant and is a member of the National Futures Association in such capacity. Each Fund has appointed State Street Bank and Trust Company ("Administrator") as the Administrator, the Transfer Agent, and the Custodian of each Fund. In addition, each Fund has appointed Foreside Fund Services, LLC ("Distributor") as the Distributor to assist the Managing Owner and the Funds with certain functions and duties relating to distribution, compliance of sales and marketing materials, and certain regulatory compliance matters. The Distributor will not open or maintain customer accounts or handle orders for any of the Funds.

Underlying Indexes and Sub-Indexes

The Standard & Poor's Factor Index Series ("Indexes") are intended to reflect the daily spreads, or the differences, in the relative return, positive or negative, between the corresponding sub-indexes constructed from futures contracts ("Index Futures Contracts") of each Index. Each Index is comprised of a long sub-index ("Long Sub-Index") and a short sub-index ("Short Sub-Index") (individually, a "Sub-Index" and, collectively, "Sub-Indexes"). The Long Sub-Index is

[4] See Pre-Effective Amendment No. 3 to Form S-1, dated November 3, 2010, for each Fund (individually, a "Registration Statement," and, collectively, "Registration Statements") (File Nos. 333-164754, 333-164758, 333-164757, 333-164756 and 333-164755, respectively). All Funds, other than the FactorShares 2X: TBond Bull/S&P500 Bear, are also referred to herein as "Leveraged Funds," and FactorShares 2X: TBond Bull/S&P500 Bear is referred to herein as the "Leveraged Inverse Fund."

composed of the long front Index Futures Contract ("Long Index Futures Contract").[5] The Short Sub-Index is composed of the short front Index Futures Contract ("Short Index Futures Contract").[6] Each Index is calculated to reflect the corresponding relative return, or spread, which is the difference in the daily changes, positive or negative, between the value of the Long Sub-Index and the value of the Short Sub-Index, plus the return on a risk free component.

The objective of each Index is to track the daily price spreads, or difference between the Sub-Indexes, and in turn, the underlying Index Futures Contracts, to reflect the difference in the daily return between two market segments. Although each Index is calculated to reflect both an excess return and a total return, each Fund tracks an Index that is calculated to reflect a total return. Standard & Poor's Financial Services LLC ("Index Sponsor") is the Index Sponsor for the Indexes and is the calculation agent for the Indexes and Sub-Indexes.[7] The Long Sub-Index tracks the changes in the Long Index Futures Contract, and the Short Sub-Index tracks the changes in the Short Index Futures Contract.

Each Index is rebalanced daily as of the Index Calculation Time (as defined below) in order to continue to reflect the spread, or the difference in the daily return between two specific market segments. By rebalancing each Index on a daily basis as of the Index Calculation Time, each Index will then be comprised of equal notional amounts (i.e., +100% and -100%, respectively) of both of its Long Index Futures Contracts and Short Index Futures Contracts in accordance with its daily objectives. Daily rebalancing of each Index will lead to different results than would otherwise occur if an Index, and in turn, its corresponding Fund, were to be rebalanced less frequently or more frequently than daily.

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[5] The term "long front" refers to a long position in the near month contract.

[6] The term "short front" refers to a short position in the near month contract.

[7] The Exchange represents that the Index Sponsor is not affiliated with a broker-dealer.

Funds

The objective of each Fund will be to reflect the spread, or the difference, in daily return, on a leveraged basis, between two predetermined market segments. Each Fund will represent a relative value or "spread" strategy seeking to track the differences in daily returns between two futures-based Index components. By simultaneously buying and selling two benchmark Index Futures Contracts (or, as necessary, substantively equivalent combinations of Substitute Futures and Financial Instruments),[8] each Leveraged Fund and Leveraged Inverse Fund will target a daily return equivalent to approximately +200% and -200%, respectively, of the spread, or the difference, in daily return between a long futures contract and a short futures contract (before fees, expenses, and interest income). Thus, each Leveraged Fund will allow investors to potentially profit from the daily return of a Long Index Futures Contract in excess of the daily return of a Short Index Futures Contract. The Leveraged Inverse Fund will allow investors to potentially profit from the daily return of a Short Index Futures Contract in excess of the daily return of a Long Index Futures Contract.

Each Fund will hold a portfolio of Index Futures Contracts, each of which are traded on various futures markets in the United States. In the event a Fund reaches position limits imposed by the CFTC or a futures exchange with respect to an Index Futures Contract, the Managing Owner may, in its commercially reasonable judgment, cause the Fund to invest in Substitute Futures or Financial Instruments referencing the particular Index Futures Contract, or Financial Instruments not referencing the particular Index Futures Contract if such instruments tend to

[8] The term "Substitute Futures" refers to futures contracts other than the specific Index Futures Contracts that underlie the applicable Index that the Managing Owner expects will tend to exhibit trading prices or returns that generally correlate with an Index Futures Contract. The term "Financial Instruments" refers to forward agreements and swaps that the Managing Owner expects will tend to exhibit trading prices or returns that generally correlate with an Index Futures Contract.

exhibit trading prices or returns that correlate with the corresponding Index or any Index Futures Contract and will further the investment objective of the Fund.[9] A Fund may also invest in Substitute Futures or Financial Instruments if the market for a specific Index Futures Contract experiences emergencies (such as a natural disaster, terrorist attack, or an act of God) or disruptions (such as a trading halt or flash crash) that would prevent the Fund from obtaining the appropriate amount of investment exposure to the affected Index Futures Contract.[10]

Each Fund also will hold cash and United States Treasury securities and other high credit quality, short-term fixed-income securities ("Fixed Income Instruments") for deposit with its Commodity Broker as margin. No Fund will be "managed" by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial, and market considerations with a view to obtaining positive results under changing market conditions.

A Fund's underlying Index consists of two Sub-Indexes. A Long Sub-Index reflects a passive exposure to a certain near-month long Index Futures Contract. A Short Sub-Index reflects a passive exposure to a certain near-month short Index Futures Contract. Each Index is designed to reflect +100% of the spread, or the difference, in daily return, positive or negative, between the Long Sub-Index and the Short Sub-Index, plus the return on a risk free component.

Because each Fund will seek to achieve its daily investment objective by tracking its corresponding Index on a daily and leveraged basis, each Fund will seek to rebalance daily both its long and short positions around the net asset value ("NAV") calculation time. The purpose of

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9 The Exchange represents that, to the extent practicable, a Fund will invest in swaps cleared through the facilities of a centralized clearing house.

10 The Managing Owner will attempt to mitigate each Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Managing Owner will take various steps to limit counterparty credit risk, as described in the Registration Statements.

daily rebalancing is to reposition each Fund's investments in accordance with its daily investment objective.

Each Fund will have a leverage ratio of approximately 4:1 upon daily rebalancing, which increases the potential for trading profits and losses. The use of leverage increases the potential for both trading profits and losses, depending on the changes in market value of the Long Index Futures Contracts positions, the Short Index Futures Contracts positions (and/or Substitute Futures and Financial Instruments, as applicable), of each Fund. Holding futures positions with a notional amount in excess of each Fund's NAV constitutes a form of leverage. Because the notional value of each Fund's Index Futures Contracts (and/or Substitute Futures and Financial Instruments, as applicable) will rise or fall throughout each trading day and prior to rebalancing, the leverage ratio could be higher or lower than an approximately 4:1 leverage ratio between the notional value of a Fund's portfolio and a Fund's Equity (estimated NAV) immediately after rebalancing. As the ratio increases, an investor's losses may increase correspondingly.

Each Sub-Index, which is comprised of a certain Index Futures Contract, includes provisions for the replacement (also referred to as "rolling") of its Index Futures Contract as it approaches its expiration date. "Rolling" is a procedure which involves closing out the Index Futures Contract that will soon expire and establishing a position in a new Index Futures Contract with a later expiration date pursuant to the rules of each Sub-Index. In turn, each Fund will seek to roll its Index Futures Contracts in a manner consistent with its Sub-Index's provisions for the replacement of an Index Futures Contract that is approaching maturity.

Leveraged Funds

For a Leveraged Fund, a long position is established in the Long Index Futures Contract seeking to provide a leveraged exposure to the Long Sub-Index. A Leveraged Fund will purchase a sufficient number of Long Index Futures Contracts targeting a long notional exposure equivalent to approximately +200% of a Fund's estimated NAV, or Fund Equity. Additionally, a Leveraged Fund will establish a short position in the Short Index Futures Contracts seeking to provide a leveraged exposure to the Short Sub-Index. Accordingly, a Leveraged Fund will sell a sufficient number of Short Index Futures Contracts targeting a short notional exposure equivalent to approximately −200% of Fund Equity. Therefore, immediately after establishing each of these positions, the target gross notional exposure of a Leveraged Fund's aggregate Long Index Futures Contracts and Short Index Futures Contracts will equal approximately +400% (i.e., +200% long and +200% short) of Fund Equity.

Leveraged Inverse Fund

For the Leveraged Inverse Fund, a long position is established in the Short Index Futures Contract seeking to provide a leveraged exposure to the Short Sub-Index. The Leveraged Inverse Fund will purchase a sufficient number of Short Index Futures Contracts targeting a long notional exposure equivalent to approximately +200% of Fund Equity. Additionally, the Leveraged Inverse Fund will establish a short position in the Long Index Futures Contracts seeking to provide a leveraged exposure to the Long Sub-Index. Accordingly, the Leveraged Inverse Fund will sell a sufficient number of Long Index Futures Contracts targeting a short notional exposure equivalent to approximately -200% of Fund Equity. Therefore, immediately after establishing each of these positions, the target gross notional exposure of the Leveraged Inverse Fund's aggregate Long Index Futures Contracts and Short Index Futures Contracts will equal approximately +400% (i.e., +200% long and +200% short) of Fund Equity.

FactorShares 2X: S&P500 Bull/TBond Bear

The FactorShares 2X: S&P500 Bull/TBond Bear is designed for investors who believe the large-cap U.S. equity market segment will increase in value relative to the long-dated U.S. Treasury market segment. The objective of the FactorShares 2X: S&P500 Bull/TBond Bear will be to seek to track approximately +200% of the daily return of the S&P U.S. Equity Risk Premium Total Return Index. The Fund will seek to track the spread, or the difference in daily returns, between the U.S. equity and interest rate market segments by primarily establishing a leveraged long position in the E-mini Standard and Poor's 500 Stock Price Index™ Futures ("Equity Index Futures Contract") and a leveraged short position in the 30-Year U.S. Treasury Bond Futures ("Treasury Index Futures Contract").

FactorShares 2X: TBond Bull/S&P500 Bear

The FactorShares 2X: TBond Bull/S&P500 Bear is designed for investors who believe the long-dated U.S. Treasury market segment will increase in value relative to the large-cap U.S. equity market segment. The objective of the FactorShares 2X: TBond Bull/S&P500 Bear will be to seek to track approximately -200% of the daily return of the S&P U.S. Equity Risk Premium Total Return Index. The Fund will seek to track the spread, or the difference in daily returns, between the interest rate and U.S. equity market segments by primarily establishing a leveraged long position in the Treasury Index Futures Contract and a leveraged short position in the Equity Index Futures Contract.

FactorShares 2X: S&P500 Bull/USD Bear

The FactorShares 2X: S&P500 Bull/USD Bear is designed for investors who believe the large-cap U.S. equity market segment will increase in value relative to the general indication of the international value of the U.S. dollar. The objective of the FactorShares 2X: S&P500 Bull/USD Bear will be to seek to track approximately +200% of the daily return of the S&P 500 Non-U.S. Dollar Index. The Fund will seek to track the spread, or the difference in daily returns, between the U.S. equity and currency market segments by primarily establishing a leveraged long position in the Equity Index Futures Contract and a leveraged short position in the U.S. Dollar Index® Futures.

FactorShares 2X: Oil Bull/S&P500 Bear

The FactorShares 2X: Oil Bull/S&P500 Bear is designed for investors who believe that crude oil will increase in value relative to the large-cap U.S. equity market segment. The objective of the FactorShares 2X: Oil Bull/S&P500 Bear will be to seek to track approximately +200% of the daily return of the S&P Crude Oil-Equity Spread Total Return Index. The Fund will seek to track the spread, or the difference in daily returns, between the oil and U.S. equity market segments by primarily establishing a leveraged long position in the Oil Index Futures Contract[11] and a leveraged short position in the Equity Index Futures Contract.

FactorShares 2X: Gold Bull/S&P500 Bear

The FactorShares 2X: Gold Bull/S&P500 Bear is designed for investors who believe that gold will increase in value relative to the large-cap U.S. equity market segment. The objective of the FactorShares 2X: Gold Bull/S&P500 Bear will be to seek to track approximately +200% of the daily return of the S&P Gold-Equity Spread Total Return Index. The Fund will seek to track the spread, or the difference in daily returns, between the gold and U.S. equity market segments by primarily establishing a leveraged long position in the Gold Index Futures Contract[12] and a

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11 The Oil Index Futures Contract provides an exposure to the oil market segment with respect to light sweet crude oil. The Oil Index Futures Contract is a futures contract that provides and permits investors to invest in a substitute instrument in place of the underlying, speculate or hedge, as applicable, in the direction of the value of light sweet crude oil. The Oil Index Futures Contract serves as a proxy for light sweet crude oil because the performance of the Oil Index Futures Contract is dependent upon and reflects the changes in the price of light sweet crude oil.

12 The Gold Index Futures Contract provides an exposure to the precious metals market segment with respect to gold. The Gold Index Futures Contract is a futures contract that

leveraged short position in the Equity Index Futures Contract.

Additional information regarding the Funds and the Shares, the Indexes and Sub-Indexes, the Index Futures Contracts, investment strategies, risks, creation and redemption procedures, calculation and dissemination of NAV and NAV calculation times, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statements and in the Notice, as applicable.[13]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[14] and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary

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provides and permits investors to invest in a substitute instrument in place of the underlying, speculate or hedge, as applicable, in the direction of the value of gold. The Gold Index Futures Contract serves as a proxy for gold because the performance of the Gold Index Futures Contract is dependent upon and reflects the changes in the price of gold.

13 See Notice and Registration Statements, supra notes 3 and 4.

14 15 U.S.C. 78f.

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

16 15 U.S.C. 78f(b)(5).

.02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[17] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The Index Sponsor will publish the intra-day level of each Index and Sub-Index once every 15 seconds during the NYSE Arca Core Trading Session on the consolidated tape, Reuters, and/or Bloomberg, and the closing level of each Index and Sub-Indexes daily on its website. In addition, the Indicative Index Value ("IIV") per Share of each Fund will be calculated by applying the percentage price change of each Fund's holdings in futures contracts (and/or Substitute Futures and Financial Instruments, as applicable) to the last published NAV of each Fund and will be disseminated (in U.S. dollars) by one or more market data vendors every 15 seconds during the NYSE Arca Core Trading Session. Further, the Funds will provide website disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of Index Futures Contracts, Substitute Futures and Financial Instruments, characteristics of these Index Futures Contracts, Substitute Futures, and Financial Instruments, as applicable, and Fixed Income Instruments, and the amount of cash held in the portfolio of the Funds. The closing prices and settlement prices of Index Futures Contracts are available from the New York Mercantile Exchange ("NYMEX"), the Chicago Mercantile Exchange, Inc. ("CME"), the COMEX division of NYMEX ("COMEX"), and the Intercontinental Exchange

[17] 15 U.S.C. 78k-1(a)(1)(C)(iii).

Inc. ("ICE"), automated quotation systems, published or other public sources, and on-line information services such as Bloomberg or Reuters. The specific contract specifications for the Index Futures Contracts are also available on those websites, as well as on other financial informational sources. NYMEX, CME, COMEX, and ICE also provide delayed futures information on current and past trading sessions and market news free of charge on their websites. The NAV for each Fund will be calculated by the Administrator once a day as of the first to settle of the corresponding Index Futures Contracts, but in no event after 4:00 p.m. ET. The Exchange will disseminate on a daily basis via the Consolidated Tape Association information with respect to recent NAV, Shares outstanding, and the daily trading volume of the Shares. The website for the Funds and/or the Exchange will contain: (a) the current NAV per Share daily and the prior business day's NAV; (b) the reported closing price; (c) the Prospectus; and (d) other quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the website disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Managing Owner of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination to the IIV, the Indexes, the Sub-Indexes, or the value of the underlying futures contracts occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[18] Trading in the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. The Exchange represents that the Index Sponsor has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

The Exchange has represented that the Shares are deemed to be equity securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In addition, with respect to components traded on exchanges, not more than 10% of the weight of a Fund's portfolio in the aggregate will consist of components whose principal

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18 Trading may also 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 underlying Index Futures Contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) 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; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.[19]

(5) For the initial and continued listing of the Shares, the Shares must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A-3 under the Act.[20]

(6) A minimum of 100,000 Shares for each Fund will be outstanding as of the start of trading on the Exchange.

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[19] The Information Bulletin will further advise ETP Holders that FINRA has implemented increased customer margin requirements applicable to leveraged ETFs (which include the Shares) and options on leveraged ETFs, as described in FINRA Regulatory Notices 09-53 (August 2009) and 09-65 (November 2009).

[20] 17 CFR 240.10A-3.

This approval order is based on the Exchange's representations.[21]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[22] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR-NYSEArca-2010-121), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Cathy H. Ahn
Deputy Secretary

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

22 15 U.S.C. 78f(b)(5).

23 15 U.S.C. 78s(b)(2).

24 17 CFR 200.30-3(a)(12).