

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68351; File No. SR-NYSEArca-2012-131)

December 4, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the Horizons S&P 500 Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF, and Horizons S&P Energy Select Sector Covered Call ETF under NYSE Arca Equities Rule 5.2(j)(3)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 21, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 (“Shares”) of the Horizons S&P 500 Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF, and Horizons S&P Energy Select Sector Covered Call ETF under NYSE Arca Equities Rule 5.2(j)(3). The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Horizons S&P 500® Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF, and Horizons S&P Energy Select Sector Covered Call ETF (each, a “Fund” and collectively, “Funds”) under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“Units”).³

The Shares will be offered by Exchange Traded Concepts Trust II (“Trust”), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.⁴ The investment adviser to the Funds is Exchange Traded Concepts, LLC (“Adviser”).⁵ The sub-adviser to the Funds is Horizons ETFs Management

³ An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

⁴ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On September 10, 2012, the Trust filed with the Commission an amendment to its Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333-180871 and 811-22700) (“Registration Statement”). The description of the operation of the Trust and the Funds 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. 29065 (Dec. 1, 2009) (File No. 812-13638) (“Exemptive Order”).

⁵ The Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the portfolio holdings of the Funds. The Sub-Adviser (as defined herein) is affiliated with a

(USA) LLC (“Sub-Adviser”).⁶ Foreside Fund Services, LLC (“Distributor”) is the principal underwriter and distributor of the Funds’ Shares. Citi Fund Services Ohio, Inc.

(“Administrator”) will serve as administrator for the Funds; Citibank, NA (“Custodian”) will serve as custodian for the Funds; and Citi Fund Services Ohio, Inc. (“Transfer Agent”) will serve as transfer agent for the Funds.

As described below, each Fund will seek investment results that, before fees and expenses, generally correspond to the performance of a specified index (each, an “Underlying Index”) provided by S&P Dow Jones Indices LLC (“Index Provider”).⁷ Each Underlying Index

broker-dealer and has implemented a fire wall with respect to its broker dealer affiliate regarding access to information concerning the portfolio holdings of the Funds. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Funds, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolios.

⁶ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser, 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.

⁷ Each of the Underlying Indices is provided by the Index Provider, which is unaffiliated with the Funds, the Adviser, or the Sub-Adviser. The Index Provider maintains, calculates, and publishes information regarding each of the Underlying Indices. The Index Provider is not a broker-dealer and is not affiliated with a broker-dealer and has

is comprised of all the equity securities in one of the S&P 500 Index, S&P Financial Select Sector Index, or S&P Energy Select Sector Index (each, a “Reference Index”) and short (written) call options on each of the option eligible securities in the relevant Reference Index that meet, among others, stock and option price criteria of the Underlying Index methodology.⁸

The Exchange is submitting this proposed rule change because the Underlying Indices for the Funds do not meet all of the “generic” listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Units based upon an index of US Component Stocks.⁹ Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3)¹⁰ sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. The Underlying Indices consist of the constituent securities of the S&P 500, S&P Financial Select Sector, and S&P Energy Select Sector Indices. The Underlying Indices meet all requirements of NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(a)(A) thereto, except that the Underlying Indices include call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS. As described below, each Underlying Index is comprised solely of S&P 500 companies and includes an exposure to call options on the option eligible securities

implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Indices.

⁸ The Underlying Index methodology is available at www.standardandpoors.com/indices. As of October 26, 2012, such criteria include, among others, that no call options will be written if the equity security price is less than \$10, and no call options will be written at prices below \$0.15. The Index Provider may amend the methodology from time to time. In such case, the methodology would be updated accordingly on the website.

⁹ NYSE Arca Equities Rule 5.2(j)(3) provides that the term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

¹⁰ Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in part, that the components of an index of US Component Stocks, upon the initial listing of a series of Units pursuant to Rule 19b-4(e) under the Exchange Act shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act.

of companies in the respective Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology. All securities in the Reference Indices are listed and traded on a U.S. national securities exchange. The options on the option eligible securities of companies in the Reference Indices are traded on a U.S. national options exchange. Notwithstanding that the Underlying Indices do not meet all of the generic listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), the Exchange believes that the Underlying Indices are sufficiently broad-based to deter potential manipulation in that the Reference Indices stocks are among the most actively traded, highly capitalized stocks traded in the U.S. The market value of the call options will not represent more than 10% of the total weight of any of the Underlying Indices.

Horizons S&P 500 Covered Call ETF

According to the Registration Statement, the Horizons S&P 500 Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund's Underlying Index, which is the S&P 500 Stock Covered Call Index. The Fund seeks correlation of 0.95 or better between its performance and the performance of its Underlying Index. A figure of 1.00 would represent perfect correlation. As described below, the Underlying Index is comprised of all the equity securities¹¹ in the Fund's Reference Index, which is the S&P 500 Index, and short (written) call options on each of the option eligible securities in the Reference Index that meet, among others, the stock and option price criteria of

¹¹ According to the Reference Index methodology, "equity securities" includes all U.S. common equities listed on the Exchange, the New York Stock Exchange, NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Select Market, and the NASDAQ Capital Market. Business development companies and real estate investment trusts ("REITs") are eligible for inclusion as equity securities, with the exception of mortgage REITs. Corporate actions will be handled in the same manner as the index.

the Underlying Index methodology.¹²

According to the Registration Statement, the Fund will invest at least 80% of its total assets in securities that comprise its Underlying Index.

According to the Registration Statement, the Reference Index for the Fund is a float-adjusted market capitalization weighted index containing equity securities of 500 industrial, information technology, utility, and financial companies amongst other Global Industry Classification Standard (“GICS®”) sectors, regarded as generally representative of the U.S. stock market. A float-adjusted market capitalization weighted index weights each index component according to its market capitalization, using the number of shares that are readily available for purchase on the open market.

According to the Registration Statement, the Underlying Index for the Fund measures the performance of a hypothetical portfolio that employs a covered call strategy. It consists of long positions in companies in the Reference Index and out-of-the-money call options¹³ that are written (sold) systematically on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.

According to the Registration Statement, the Fund will be an index fund that employs a “passive management” investment strategy in seeking to achieve its objective. According to the Registration Statement, the Adviser’s strategy will consist of holding an equity portfolio indexed to the Reference Index and writing (selling) covered call options on these equity securities, which options will be indexed to the Underlying Index, generally one standard deviation “out-of-

¹² See note 8, *supra*.

¹³ An “out-of-the-money” call option is one in which the exercise (or “strike”) price of the option is above the market price of the security.

the-money.”¹⁴ Options are written systematically “out-of-the-money” in accordance with the index methodology based on the prevailing individual level of volatility for each of the equity securities. The Underlying Index provides a benchmark measure of the total return of this hypothetical portfolio.

According to the Registration Statement, because a covered call strategy generates income in the form of premiums on the written options, the Underlying Index is generally expected to provide higher total returns with lower volatility than the Reference Index in most market environments, with the exception of when the equity market is rallying rapidly. The options in the Underlying Index will be traded on national securities exchanges. As of August 31, 2012, the Reference Index and Underlying Index included common stocks of 500 companies, 499 of which are option eligible, with a market capitalization range of between approximately \$1 billion and \$622 billion. As of that date, the Underlying Index also included short (written) call options on 434 option eligible securities of the Reference Index, representing 0.6% of the total weight¹⁵ of the Underlying Index.

According to the Registration Statement, the Fund will generally use a replication methodology, meaning it will invest in all of the securities comprising the Underlying Index in proportion to the weightings in the Underlying Index. However, the Fund may from time-to-

¹⁴ A covered call strategy is generally considered to be an investment strategy in which an investor buys a security, and sells a call option that corresponds to the security. In return for a premium, the Fund will give the purchaser of the option written by the Fund either the right to buy the security from the Fund at an exercise price or the right to receive a cash payment equal to the difference between the value of the security and the exercise (or “strike”) price, if the value is above the exercise price on or before the expiration date of the option. In addition, the covered call options hedge against a decline in the price of the securities on which they are written to the extent of the premium the Fund receives. A covered call strategy is generally used in a neutral-to-bullish market environment, where a slow and steady rise in market prices is anticipated.

¹⁵ This calculation is based on the absolute value of the short call option position which has a negative mark-to-market value.

time utilize a sampling methodology under various circumstances where it may not be possible or practicable to purchase all of the equity securities and write (sell) all of the call options comprising the Underlying Index.

According to the Registration Statement, the Fund will concentrate its investments (i.e., hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be non-diversified under the 1940 Act and, therefore, may invest a greater percentage of its assets in a particular issue in comparison to a “diversified” fund.¹⁶ Moreover, according to the Registration Statement, in pursuing its objective, the Fund may hold the securities of a single issuer in an amount exceeding 10% of the outstanding voting securities of the issuer, subject to restrictions imposed by the Internal Revenue Code of 1986, as amended (“Code”).

Horizons S&P Financial Select Sector Covered Call ETF

According to the Registration Statement, the Horizons S&P Financial Select Sector Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund’s Underlying Index, which is the S&P 500 Financial Select Sector Stock Covered Call Index. The Fund seeks correlation of 0.95 or better between its performance and the performance of its Underlying Index. A figure of 1.00 would represent perfect correlation. As described below, the Underlying Index is comprised of all the equity securities¹⁷ in the Fund’s Reference Index, which is the S&P Financial Select Sector Index, and short (written) call options on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index

¹⁶ The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a-5).

¹⁷ See note 11, supra.

methodology.¹⁸

According to the Registration Statement, the Fund will invest at least 80% of its total assets in the securities that comprise its Underlying Index. According to the Registration Statement, the Reference Index for the Fund is a rules-based, modified market capitalization weighted index that is designed to track the movements of public companies that are components of the S&P 500 Index and are classified in the GICS® sector, Financials. A modified market capitalization weighted index first weights each index component according to its market capitalization, using the number of shares that are readily available for purchase on the open market, then imposes limits on the weight of individual index components and redistributes any excess weight across the remaining index components. A wide array of diversified financial service firms are featured in this sector with business lines ranging from investment management to commercial and investment banking.

According to the Registration Statement, the Underlying Index for the Fund measures the performance of a hypothetical portfolio that employs a covered call strategy. It consists of long positions in companies in the Reference Index and out-of-the-money call options¹⁹ that are written (sold) systematically on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.

According to the Registration Statement, the Fund will be an index fund that employs a “passive management” investment strategy in seeking to achieve its objective. According to the Registration Statement, the Adviser’s strategy will consist of holding an equity portfolio indexed to the Reference Index and writing (selling) covered call options on these equity securities

¹⁸ See note 8, supra.

¹⁹ See note 13, supra.

indexed to the Underlying Index, which options will be generally one standard deviation “out-of-the-money.”²⁰ Options are written systematically “out-of-the-money” in accordance with the index methodology based on the prevailing individual level of volatility for each of the equity securities. The Underlying Index provides a benchmark measure of the total return of this hypothetical portfolio.

According to the Registration Statement, because a covered call strategy generates income in the form of premiums on the written options, the Underlying Index is generally expected to provide higher total returns with lower volatility than the Reference Index in most market environments, with the exception of when the equity market is rallying rapidly. The options in the Underlying Index will be traded on national securities exchanges. As of August 31, 2012, the Reference Index and Underlying Index included common stocks of 81 companies, of which all 81 are option eligible, with a market capitalization range of between approximately \$2 billion and \$181 billion. As of that date, the Underlying Index also included short (written) call options on 65 option eligible securities of the Reference Index, representing 0.7% of the total weight²¹ of the Underlying Index.

According to the Registration Statement, the Fund will generally use a replication methodology, meaning it will invest in all of the securities comprising the Underlying Index in proportion to the weightings in the Underlying Index. However, the Fund may from time-to-time utilize a sampling methodology under various circumstances where it may not be possible or practicable to purchase all of the equity securities and write (sell) all of the call options comprising the Underlying Index.

According to the Registration Statement, the Fund will concentrate its investments (i.e.,

²⁰ See note 14, supra.

²¹ See note 15, supra.

hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be non-diversified under the 1940 Act and, therefore, may invest a greater percentage of its assets in a particular issue in comparison to a “diversified” fund.²² Moreover, according to the Registration Statement, in pursuing its objective, the Fund may hold the securities of a single issuer in an amount exceeding 10% of the outstanding voting securities of the issuer, subject to restrictions imposed by the Code.

Horizons S&P Energy Select Sector Covered Call ETF

According to the Registration Statement, the Horizons S&P Energy Select Sector Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund’s Underlying Index, which is the S&P 500 Energy Select Sector Stock Covered Call Index. The Fund seeks correlation of 0.95 or better between its performance and the performance of its Underlying Index. A figure of 1.00 would represent perfect correlation. As described below, the Underlying Index is comprised of all the equity securities²³ in the Fund’s Reference Index, which is the S&P Energy Select Sector Index, and short (written) call options on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.²⁴

According to the Registration Statement, the Fund will invest at least 80% of its total assets in the securities that comprise its Underlying Index.

According to the Registration Statement, the Reference Index for the Fund is a rules-

²² See note 16, *supra*.

²³ See note 11, *supra*.

²⁴ See note 8, *supra*.

based, modified market capitalization weighted index that is designed to track the movements of public companies that are components of the S&P 500 Index and are classified in the GICS® sector, Energy. A modified market capitalization weighted index first weights each index component according to its market capitalization, using the number of shares that are readily available for purchase on the open market, then imposes limits on the weight of individual index components and redistributes any excess weight across the remaining index components. Energy companies in this sector primarily develop and produce crude oil and natural gas, and provide drilling and other energy-related services.

According to the Registration Statement, the Underlying Index for the Fund measures the performance of a hypothetical portfolio that employs a covered call strategy. It consists of long positions in companies in the Reference Index and out-of-the-money call options²⁵ that are written (sold) systematically on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.

According to the Registration Statement, the Fund will be an index fund that employs a “passive management” investment strategy in seeking to achieve its objective. According to the Registration Statement, the Adviser’s strategy will consist of holding an equity portfolio indexed to the Reference Index and writing (selling) covered call options on these equity securities, which options will be indexed to the Underlying Index, generally one standard deviation “out-of-the-money.”²⁶ Options are written systematically “out-of-the-money” in accordance with the index methodology based on the prevailing individual level of volatility for each of the equity securities. The Underlying Index provides a benchmark measure of the total return of this

²⁵ See note 13, supra.

²⁶ See note 14, supra.

hypothetical portfolio.

According to the Registration Statement, because a covered call strategy generates income in the form of premiums on the written options, the Underlying Index is generally expected to provide higher total returns with lower volatility than the Reference Index in most market environments, with the exception of when the equity market is rallying rapidly. The options in the Underlying Index will be traded on national securities exchanges. As of August 31, 2012, the Reference Index and Underlying Index included common stocks of 45 companies, of which all 45 are option eligible, with a market capitalization range of between approximately \$1 billion and \$276 billion. As of that date, the Underlying Index also included short (written) call options on 42 option eligible securities of the Reference Index, representing 0.6% of the total weight²⁷ of the Underlying Index.

According to the Registration Statement, the Fund generally will use a replication methodology, meaning it will invest in all of the securities comprising the Underlying Index in proportion to the weightings in the Underlying Index. However, the Fund may from time to time utilize a sampling methodology under various circumstances where it may not be possible or practicable to purchase all of the equity securities and write (sell) all of the call options comprising the Underlying Index.

According to the Registration Statement, the Fund will concentrate its investments (i.e., hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be non-diversified under the 1940 Act and, therefore, may invest a greater percentage of its assets in

²⁷ See note 15, supra.

a particular issue in comparison to a “diversified” fund.²⁸ Moreover, according to the Registration Statement, in pursuing its objective, the Fund may hold the securities of a single issuer in an amount exceeding 10% of the outstanding voting securities of the issuer, subject to restrictions imposed by the Code.

Investment Guidelines

According to the Registration Statement, each Fund will write (sell) call options on the option eligible securities of companies in its Reference Index to the same extent as such short call options are included in its Underlying Index.

According to the Registration Statement, the Funds will utilize options in accordance with Rule 4.5 of the Commodity Exchange Act (“CEA”). The Trust, on behalf of the Funds, has filed a notice of eligibility for exclusion from the definition of the term “commodity pool operator” in accordance with Rule 4.5 so that the Funds are not subject to registration or regulation as a commodity pool operator under the CEA.

Other Investments

According to the Registration Statement, each Fund may invest in short-term instruments, including money market instruments, on an ongoing basis to provide liquidity for cash equitization, funding, or under abnormal market conditions. Money market instruments are generally short-term investments that may include but are not limited to: (i) shares of money market funds; (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit, bankers’ acceptances, fixed time deposits, and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the

²⁸ See note 16, supra.

date of purchase “Prime-1” by Moody’s or “A-1” by S&P, or if unrated, of comparable quality as determined by the Sub-Adviser; (v) non-convertible corporate debt securities (e.g., bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a-7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Sub-Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by a Fund. Any of these instruments may be purchased on a current or a forward-settled basis.

Each Fund may invest in the securities of other investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A Securities.²⁹ The Funds will monitor their portfolio liquidity on an ongoing basis to determine whether, in the 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 a Fund’s net assets are held in illiquid securities and other illiquid assets.

²⁹ 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. 8901 (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 exchange traded fund (“ETF”). 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 Securities Act of 1933).

Each Fund will seek to qualify for treatment as a regulated investment company (“RIC”) under the Code.³⁰

The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Exchange Act,³¹ as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund 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 net asset value (“NAV”) per Share will be calculated daily and will be made available to all market participants at the same time.

Creations and Redemptions

Each Fund will offer and issue Shares on a continuous basis at their NAV only in aggregations of a specified number of Shares (each, a “Creation Unit”). A Creation Unit of each Fund will consist of at least 50,000 Shares. A Creation Unit of a Fund will be issued and redeemed for securities in which the Fund invests, cash, or both securities and cash.

The consideration for purchase of a Creation Unit of a Fund will generally consist of the in-kind deposit of a designated portfolio of securities (“Deposit Securities”) per each Creation Unit, constituting a substantial replication, or a portfolio sampling representation, of the securities included in the relevant Fund’s Underlying Index, together with the deposit of a specified cash payment (“Cash Component”). Notwithstanding the foregoing, the Trust reserves the right to permit or require the substitution of a “cash in lieu” amount (“Deposit Cash”) to be added to the Cash Component to replace any Deposit Security.

Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the “Fund Deposit,” which represents the initial investment amount for the Creation

³⁰ 26 U.S.C. 851.

³¹ 17 CFR 240.10A-3.

Unit of the relevant 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 or Deposit Cash, as applicable.

Each Fund, 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 (“E.T.”)), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the relevant Fund.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by a Fund through the Transfer Agent and only on a business day. Except upon liquidation of a Fund, the Trust will not redeem Shares in amounts less than Creation Units. With respect to each Fund, the Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., E.T.) on each business day, the list of the names and share quantities of each Fund’s portfolio securities (“Fund Securities”) and any possible Cash Component, that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day.

Although the Trust will not ordinarily permit partial or full cash purchases of Creation Units of the Funds, when partial or full cash purchases of Creation Units are available or specified for a Fund, they will be effected in essentially the same manner as in-kind purchases thereof. In the case of a partial or full cash purchase, the authorized participant must pay the cash equivalent of the Deposit Securities it would otherwise be required to provide through an

in-kind purchase, plus the same Cash Component required to be paid by an in-kind purchaser.

The consideration for redemption of a Creation Unit of a Fund will generally consist of Deposit Securities together with a Cash Component. Notwithstanding the foregoing, the Trust reserves the right to permit or require the substitution Deposit Cash to be added to the Cash Component to replace any Deposit Security.

All orders to purchase or redeem Shares directly from a Fund must be placed for one or more Creation Units by 4:00 p.m., E.T. in the manner set forth in the relevant participant agreement and/or applicable order form. The order shall be deemed to be received on the business day on which the order is placed provided that, among other things, the order is placed in proper form prior to the applicable cut-off time.

Although the Trust will not ordinarily permit partial or full cash redemptions of Creation Units of the Funds, when partial or full cash redemptions of Creation Units are available or specified for a Fund, they will be effected in essentially the same manner as in-kind redemptions thereof. In the case of partial or full cash redemption, the authorized participant will receive the cash equivalent of the Fund Securities it would otherwise receive through an in-kind redemption, plus the same Cash Amount to be paid to an in-kind redeemer.

Availability of Information

The Adviser's website (www.exchangetradedconcepts.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Adviser's website will include additional quantitative information updated on a daily basis, including, for each 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 (“Bid/Ask Price”),³² 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, each Fund will disclose on www.exchangetradedconcepts.com the portfolio of securities and financial instruments that will form the basis for the Fund’s calculation of NAV at the end of the business day.³³

On a daily basis, each Fund will disclose on www.exchangetradedconcepts.com for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of securities and financial instruments, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the securities and financial instruments in the portfolio. The website information will be publicly available at no charge. In addition, price information for the investments held by each Fund will be available through major market data vendors and/or the securities exchange on which they are listed and traded.

In addition, a basket composition file for each Fund, which includes the security names and share quantities required to be delivered in exchange for that Fund’s Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of

³² The Bid/Ask Price of each Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

³³ Under accounting procedures followed by each Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, each 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 New York Stock Exchange (“NYSE”) via NSCC. The basket will represent one Creation Unit of the relevant Fund.

In addition, an indicative optimized portfolio value (“IOPV”) for the Shares will be widely disseminated at least every 15 seconds during the Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.) by one or more major market data vendors.³⁴ The IOPV should not be viewed as a “real-time” update of the NAV per Share of the Funds because the IOPV may not be calculated in the same manner as the NAV, which is computed once a day, generally at the end of the business day.

In addition, the value of each Underlying Index will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors. Information regarding the Reference Index and Underlying Index components will be available at www.standardandpoors.com/indices. Additional Information regarding the Underlying and Reference Indices’ components and their percentage weights will be available from the Index Provider and major market data vendors. Information for each of the Underlying Indices will be available in the same form and through the same methods as the Index Provider’s published indices.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Funds’ Shareholder Reports, and the Trust’s 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. Information regarding market

³⁴ Currently, it is the Exchange’s understanding that several major market data vendors widely disseminate IOPVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

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 will be available via the CTA high-speed line and, for the securities held by the Funds, will be available from the exchange on which they are listed. The intra-day, closing, and settlement prices of the portfolio securities will also be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

The Exchange represents that the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares. In addition, the Exchange represents that the Funds and the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Underlying Indices, IOPV, and NAV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and Information Bulletin to Equity Trading Permit Holders ("ETP Holders") (each as described in more detail herein), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.³⁵

Each Fund's NAV will be determined as of the close of trading (normally 4:00 p.m., E.T.) on each day the NYSE is open for business. NAV per Share for the Funds will be

³⁵ See, e.g., Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of Units).

computed by dividing the value of the net assets of a Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent.³⁶

Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of each Fund will be calculated by the Administrator and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each day that such exchange is open.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

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 a Fund.³⁷ If the IOPV or the relevant Underlying Index value is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IOPV or Underlying Index value occurs. If the interruption to the dissemination of the applicable IOPV or Underlying Index value persists past the trading day in which it occurred, the Corporation will halt trading. Trading in Shares of a Fund will be halted if the circuit breaker parameters in

³⁶ When determining NAV, the value of each Fund's portfolio securities will be based on market prices of the securities or, if a security's market price is not readily available or does not otherwise accurately reflect the fair value of the security, the security will be valued by another method that the Board of Trustees believes will better reflect fair value in accordance with the Trust's valuation policies and procedures. For more information regarding the valuation of Fund investments in calculating the Funds' NAV, see the Registration Statement.

³⁷ See NYSE Arca Equities Rule 7.12, Commentary .04.

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 relevant Fund's portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares of such Fund on the Exchange until such time as the NAV is available to all market participants.

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 4:00 a.m. to 8:00 p.m., E.T. 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.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Investment Company Units) to monitor trading in the Shares. 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 applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. 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.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁸ The equity securities and options in which the Funds will invest and which comprise the Underlying Indices will trade in markets that are ISG members.

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 ETP 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 ETP 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 IOPV will not be calculated or publicly disseminated; (4) how information regarding the IOPV is disseminated; (5) the requirement that ETP Holders

³⁸ For a list of the current members of ISG, see www.isgportal.org.

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 Funds are 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 Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)³⁹ 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 5.2(j)(3). 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. The Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the portfolio holdings of the Funds. The Sub-Adviser is affiliated with a broker-dealer dealer and has implemented a fire wall with respect to its broker dealer affiliate regarding

³⁹ 15 U.S.C. 78f(b)(5).

access to information concerning the portfolio holdings of the Funds. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Funds, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolios. The Index Provider is not a broker-dealer and is not affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Indices. All securities in the Reference Indices are listed and traded on a U.S. national securities exchange. The options on the option eligible securities of companies in the Reference Indices are traded on a U.S. national options exchange. The Reference Indices' stocks are among the most actively traded, highly capitalized stocks traded in the U.S. The market value of the call options will not represent more than 10% of the total weight of each Underlying Index.

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 will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, for each Fund, the IOPV and the Underlying Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. If the IOPV or the Underlying Index value of a Fund is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the applicable IOPV or Underlying Index value occurs. If

the interruption to the dissemination of the applicable IOPV or Underlying Index value persists past the trading day in which it occurred, the Corporation will halt trading. In addition, if the Exchange becomes aware that the NAV of a Fund is not being disseminated to all market participants at the same time, it will halt trading in the relevant Shares on the Exchange until such time as the NAV is available to all market participants. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their website the securities and other financial instruments in each Fund's portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day. 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, and quotation and last-sale information will be available via the CTA high-speed line. The website for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, 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. Trading in Shares of the Funds 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. In addition, the equity securities and options in which the Funds will invest and which comprise the Underlying Indices will trade in markets that are ISG members. Additional Information regarding the Underlying and Reference Indices' components and their percentage weights will be available from the Index Provider and major market data vendors. In addition, quotation and last sale information for the components of the Underlying and Reference Indices will be available from the exchanges on which they trade.

The intra-day, closing, and settlement prices of the portfolio securities will also be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, Underlying Indices value, 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 additional types of Units 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 each Fund's holdings, the IOPV, relevant Underlying Index value, 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 purposes of the Act.

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 within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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. Please include File Number SR-NYSEArca-2012-131 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR- NYSEArca-2012-131. 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, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2012-131 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.⁴⁰

Kevin M. O'Neill
Deputy Secretary

⁴⁰ 17 CFR 200.30-3(a)(12).