

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70773; File No. SR-NYSEArca-2013-86)

October 30, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the Franklin Short Duration U.S. Government ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On August 27, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Franklin Short Duration U.S. Government ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on September 16, 2013.<sup>3</sup> On October 28, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the

---

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

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

<sup>3</sup> See Securities Exchange Act Release No. 70356 (Sept. 10, 2013), 78 FR 56970 (“Notice”).

<sup>4</sup> Amendment No. 1 amended the proposal to provide that the Fund will issue and redeem Shares on a continuous basis at net asset value in aggregations of 25,000 Shares (“Creation Units”), rather than 50,000 Shares. Because Amendment No. 1 does not materially affect the substance of the proposed rule change, it does not require notice and comment.

Exchange. The Shares will be offered by Franklin ETF Trust (“Trust”). The Trust will be registered with the Commission as an open-end management investment company.<sup>5</sup> Franklin Advisers, Inc. will serve as the investment manager to the Fund (“Manager”). Franklin Templeton Distributors, Inc. will be the principal underwriter and distributor of the Fund’s Shares. Franklin Templeton Services, LLC will serve as administrator for the Fund and The Bank of New York Mellon will serve as sub-administrator for the Fund. The Bank of New York Mellon will serve as the custodian and transfer agent for the Fund. The Exchange represents that the Manager is not a broker-dealer but is affiliated with a broker-dealer and has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the Fund’s portfolio.<sup>6</sup> The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and

---

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On February 7, 2013, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (“Securities Act”) and under the 1940 Act relating to the Fund (File Nos. 333-186504 and 811-22801) (“Registration Statement”). The Trust filed an application on June 8, 2012, and amendments to the application on October 26, 2012 and December 18, 2012, requesting an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14042) (“Exemptive Application”). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30350 (Jan. 15, 2013) (“Exemptive Order”). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Exemptive Application and the Exemptive Order. See Notice, supra note 3, 78 FR at 56971, n. 5.

<sup>6</sup> See id. The Exchange states that in the event (a) the Manager or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a firewall with respect to its relevant personnel or the broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. See id.

that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>7</sup> as provided by NYSE Arca Equities Rule 5.3.<sup>8</sup>

### Principal Investments

The Fund's investment goal is to provide a high level of current income, consistent with prudent investing, while seeking preservation of capital. The Fund will seek to achieve its investment goal by investing, under normal market conditions,<sup>9</sup> at least 80% of its net assets in securities issued or guaranteed by the U.S. government or its agencies or instrumentalities. The Fund currently targets an estimated average portfolio duration of three (3) years or less. The Manager calculates the duration of the portfolio by modeling the cash flows of all the individual holdings, including the impact of prepayment variability and coupon adjustments where applicable, to determine the duration of each holding and then aggregating based on the size of the position. In performing this duration calculation, the Manager utilizes third-party models as adjusted based on the Manager's market expectations with respect to interest rates, borrower-level factors affecting credit availability, and the condition of the housing market, as well as broader economic factors, among other things, consistent with industry practice.

The Fund generally will invest a substantial portion of its assets in mortgage-backed securities<sup>10</sup> issued or guaranteed by the U.S. government or its agencies or instrumentalities,

---

<sup>7</sup> 17 CFR 240.10A-3.

<sup>8</sup> See Notice, supra note 3, 78 FR at 56973.

<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 equity 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>10</sup> Mortgage-backed securities represent an interest in a pool of mortgage loans made by banks and other financial institutions to finance purchases of homes, commercial

including adjustable-rate mortgage securities, but the Fund also will invest in direct obligations of the U.S. government (such as Treasury bonds, bills, and notes) and in securities issued or guaranteed by the U.S. government or its agencies or instrumentalities, including government sponsored entities. All of the Fund's principal investments will be debt securities, including bonds, notes, and debentures.

The mortgage-backed securities in which the Fund will substantially invest are issued or guaranteed by the U.S. government or its agencies or instrumentalities, such as Ginnie Mae, or by U.S. government-sponsored entities, such as Fannie Mae and Freddie Mac. Most mortgage-backed securities are pass-through securities, which means that they provide investors with monthly payments consisting of a pro rata share of both regular interest and principal payments and unscheduled prepayments on the underlying mortgage loans. Because prepayment rates of individual mortgage pools vary widely, the average life of a particular pool cannot be predicted accurately. Adjustable-rate mortgage-backed securities include ARMS and other mortgage-backed securities with interest rates that adjust periodically to reflect prevailing market interest rates.

The Fund may invest in securities with various levels of credit support,<sup>11</sup> including, but not limited to, those issued or guaranteed by the Federal Home Loan Banks, Veterans

---

buildings, and other real estate. The individual mortgage loans are packaged or "pooled" together for sale to investors. As the underlying mortgage loans are paid off, investors receive principal and interest payments. These securities may be fixed-rate or adjustable-rate mortgage-backed securities ("ARMS"). Further, these securities can also be categorized as collateralized mortgage obligations ("CMOs") or real estate mortgage investment conduits ("REMICs") where they are divided into multiple classes with each class being entitled to a different share of the principal and interest payments received from the pool of underlying assets.

<sup>11</sup> Government agency or instrumentality securities have different levels of credit support. For example, Ginnie Mae securities carry a guarantee as to the timely repayment of principal and interest that is backed by the full faith and credit of the U.S.

Administration, Federal Housing Authority, Export-Import Bank of the United States, Overseas Private Investment Corporation, Commodity Credit Corporation, Small Business Administration, U.S. Agency for International Development, Tennessee Valley Authority, and Farm Credit System.

The Fund may invest in callable agency securities, which give the issuer (the U.S. government agency) the right to redeem the security prior to maturity. The Fund may also invest in U.S. government inflation-indexed securities.<sup>12</sup> Additionally, the Fund may invest in certain mortgage dollar rolls.<sup>13</sup> The Fund will invest only in covered mortgage dollar rolls, meaning that the Fund establishes a segregated account with liquid securities equal in value to the securities it will repurchase. The Fund intends to enter into mortgage dollar rolls only with high quality

---

government. However, the full faith and credit guarantee does not apply to the market prices and yields of the Ginnie Mae securities or to the net asset value (“NAV”), trading price, or performance of the Fund, which will vary with changes in interest rates and other market conditions. Fannie Mae and Freddie Mac pass-through mortgage certificates are backed by the credit of the respective instrumentality and are not guaranteed by the U.S. government. Other securities issued by government agencies or instrumentalities, including government sponsored entities, may only be backed by the credit worthiness of the issuing institution, not the U.S. Government, or the issuers may have the right to borrow from the U.S. Treasury to meet their obligations.

<sup>12</sup> Inflation-indexed securities are fixed-income securities that are structured to provide protection against inflation. The value of the security’s principal or the interest income paid on the security is adjusted to track changes in an official inflation measure. The U.S. Treasury uses the Consumer Price Index for Urban Consumers as the inflation measure for the inflation-indexed securities it issues.

<sup>13</sup> In a mortgage dollar roll, the Fund will sell (or buy) mortgage-backed securities for delivery on a specified date and simultaneously contract to repurchase (or sell) substantially similar (same type, coupon, and maturity) securities on a future date. During the period between a sale and repurchase, the Fund will forgo principal and interest paid on the mortgage-backed securities. The Fund will earn or lose money on a mortgage dollar roll from any difference between the sale price and the future purchase price. In a sale and repurchase, the Fund also earns money on the interest earned on the cash proceeds of the initial sale.

securities dealers and banks as determined by the Manager under board approved counterparty review procedures.

### Other Investments

When the Manager believes that market or economic conditions are unfavorable for investors, the Manager may invest up to 100% of the Fund's assets in a temporary defensive manner by holding all or a substantial portion of its assets in cash, cash equivalents, or other high quality short-term investments. Temporary defensive investments generally may include short-term U.S. government securities, high-grade commercial paper, bank obligations, repurchase agreements, money market fund shares (including shares of an affiliated money market fund), and other money market instruments. The Manager also may invest in these types of securities or hold cash while looking for suitable investment opportunities or to maintain liquidity.<sup>14</sup>

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager.<sup>15</sup> 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

---

<sup>14</sup> Circumstances under which the Fund may temporarily depart from its normal investment process include, but are not limited to, extreme volatility or trading halts in the equity 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>15</sup> In reaching liquidity decisions, the Manager may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may invest in other investment companies to the extent permitted by the 1940 Act, Commission rules thereunder, and exemptions thereto. Section 12(d)(1)(A) of the 1940 Act requires that, as determined immediately after a purchase is made, (i) not more than 5% of the value of the Fund's total assets will be invested in the securities of any one investment company, (ii) not more than 10% of the value of the Fund's total assets will be invested in securities of investment companies as a group, and (iii) not more than 3% of the outstanding voting stock of any one investment company will be owned by the Fund. Certain exceptions to these limitations may apply, and the Fund may also rely on any future applicable Commission rules or orders that provide exceptions to these limitations.

The Fund may invest up to 20% of its net assets in securities not issued or guaranteed by the U.S. government or its agencies or instrumentalities, including mortgage backed securities. These investments may include investment-grade debt securities.<sup>16</sup> The Fund will not invest in non-investment-grade debt securities. The Fund may also lend a portfolio of securities up to one-third of the value of its total assets (measured at the time of the most recent loan). In exchange, the Fund will receive cash collateral from a borrower at least equal to the value of the security loaned by the Fund. Cash collateral typically consists of any combination of cash, securities issued by the U.S. government or its agencies or instrumentalities, and irrevocable letters of credit. Securities will only be loaned to parties that meet creditworthiness standards

---

<sup>16</sup> Debt securities that are rated Baa or higher by Moody's or rated BBB or higher by S&P, or that are unrated securities deemed by the Manager to be of comparable quality, are considered to be "investment grade."

approved by the Fund's board. The Fund may also invest in multi-class pass-through securities; when-issued, delayed delivery, and to-be-announced transactions; callable securities; Franklin Templeton money market funds; repurchase agreements; U.S. Treasury rolls; unrated debt securities deemed by the Manager to be of comparable quality to investment-grade debt securities; variable rate securities; and zero coupon, deferred interest, and pay-in-kind bonds.

The Fund will not invest in equity securities other than possible investments in shares of other investment companies as noted above.

The Fund will be classified as a "diversified" investment company under the 1940 Act.

The Fund will not invest more than 25% of the Fund's net assets in securities of issuers in any one industry (other than securities issued or guaranteed by the U.S. government or any of its agencies or instrumentalities or securities of other investment companies, whether registered or excluded from registration under Section 3(c) of the 1940 Act).

Additionally, the Fund will not purchase the securities of any one issuer (other than the U.S. government or any of its agencies or instrumentalities or securities of other investment companies, whether registered or excluded from registration under Section 3(c) of the 1940 Act) if immediately after such an investment (i) more than 5% of the value of the Fund's total assets would be invested in that issuer or (ii) more than 10% of the outstanding voting securities of that issuer would be owned by the Fund, except that up to 25% of the value of the Fund's total assets may be invested without regard to these 5% and 10% limitations.

The Fund intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code.

Consistent with the Exemptive Order, to pursue its investment goal, the Fund may invest in interest rate, fixed income index, bond, and U.S. Treasury futures contracts. The use of these



derivative transactions may allow the Fund to obtain net long or short exposures to selected interest rates or durations. These derivatives may be used to hedge risks associated with the Fund's other portfolio investments. The Fund expects that no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. The Fund will not otherwise invest in options, futures contracts, or swap agreements. The Fund's investments will be consistent with its investment goal and will not be used to enhance leverage.

Additional information regarding the Trust, Fund, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share ("NAV"), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice or the Registration Statement, as applicable.<sup>17</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>18</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>19</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>20</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to

---

<sup>17</sup> See Notice and Registration Statement, supra notes 3 and 5, respectively.

<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 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).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>21</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line.<sup>22</sup> In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. Eastern time to 4:00 p.m. Eastern time).<sup>23</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>24</sup> The Fund will calculate the NAV

---

<sup>21</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>22</sup> See Notice, supra note 3, 78 FR at 56975.

<sup>23</sup> According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from the CTA or other data feeds. See id.

<sup>24</sup> See id. On a daily basis, the Manager will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's website: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The website information will be publicly available at no charge. See id.

each business day normally as of the close of regular trading on the New York Stock Exchange (normally, 4:00 p.m. Eastern time).<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> The intra-day, closing, and settlement prices of the portfolio securities and other Fund investments will also be readily available from the national securities exchanges trading those securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.<sup>28</sup> The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.<sup>29</sup>

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>30</sup> In addition, for in-kind creations, the basket composition file will be publicly disseminated daily prior to the opening of

---

<sup>25</sup> See id. at 56974.

<sup>26</sup> See id. at 56975.

<sup>27</sup> See id.

<sup>28</sup> See id.

<sup>29</sup> See id. at 56974-75.

<sup>30</sup> See id. at 56973.

the Exchange via the National Securities Clearing Corporation.<sup>31</sup> Further, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted.<sup>32</sup> The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>33</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>34</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.<sup>35</sup> The Exchange also states that the Manager is affiliated with a broker-dealer and has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.<sup>36</sup> The Exchange states

---

<sup>31</sup> See id. at 56975.

<sup>32</sup> See id.

<sup>33</sup> See id. See also NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. 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. See Notice, supra note 3, 78 FR at 56975.

<sup>34</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>35</sup> See Notice, supra note 3, 78 FR at 56976.

<sup>36</sup> See supra note 6 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser and 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

that, on its behalf, the Financial Industry Regulatory Authority (“FINRA”) will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (“ISG”) and that FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares from such markets and other entities.<sup>37</sup> In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>38</sup>

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities.<sup>39</sup> In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

---

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.

<sup>37</sup> See Notice, supra note 3, 78 FR at 56976.

<sup>38</sup> See id.

<sup>39</sup> See id. at 56975.

- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The trading surveillance procedures administered by FINRA on behalf of the Exchange 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.
- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (“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 procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) 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; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value 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.
- (5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>40</sup> as provided by NYSE Arca Equities Rule 5.3.

---

<sup>40</sup> 17 CFR 240.10A-3.

- (6) Under normal market conditions, at least 80% of the Fund's net assets will be invested in securities issued or guaranteed by the U.S. government or its agencies or instrumentalities.
- (7) The Fund will not invest in options, futures contracts, or swap agreements, other than investments in interest rate, fixed income index, bond, and U.S. Treasury futures contracts as permitted by the Exemptive Order.
- (8) No more than 20% of the value of the Fund's net assets will be invested in derivative instruments, and any such derivative investments will be consistent with the Fund's investment goal and will not be used to enhance leverage.
- (9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Manager; will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of then-current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.
- (10) The Fund may lend a portfolio of securities up to one-third of the value of its total assets (measured at the time of the most recent loan), and in exchange, the Fund will receive from the borrower or borrowers cash collateral at least equal to the value of the securities loaned by the Fund.
- (11) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act<sup>41</sup> 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,<sup>42</sup> that the proposed rule change (SR-NYSEArca-2013-86), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 17 CFR 200.30-3(a)(12).