

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70993; File No. SR-NYSEArca-2013-101)

December 5, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade Shares of the WisdomTree Bloomberg U.S. Dollar Bullish Fund, WisdomTree Bloomberg U.S. Dollar Bearish Fund, and the WisdomTree Commodity Currency Bearish Fund under NYSE Arca Equities Rule 8.600

I. Introduction

On September 26, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of WisdomTree Bloomberg U.S. Dollar Bullish Fund, WisdomTree Bloomberg U.S. Dollar Bearish Fund, and the WisdomTree Commodity Currency Bearish Fund of the WisdomTree Trust. The proposed rule change was published for comment in the Federal Register on October 22, 2013.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the WisdomTree Bloomberg U.S. Dollar Bullish Fund (“DI Bull Fund”), WisdomTree Bloomberg U.S. Dollar Bearish Fund (“DI Bear Fund,” and together with the DI Bull Fund, collectively, “DI Funds”), and the WisdomTree Commodity Currency Bearish Fund (“CC Bear Fund”)<sup>4</sup> under NYSE Arca Equities Rule 8.600,

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<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. 70624 (October 8, 2013), 78 FR 62751 (“Notice”).

<sup>4</sup> The DI Funds and the CC Bear Fund are also individually referred to as “Fund” and collectively referred to as “Funds.”

which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the WisdomTree Trust (“Trust”), a Delaware statutory trust registered with the Commission as an investment company.<sup>5</sup>

WisdomTree Asset Management, Inc. will be the investment adviser (“Adviser”) to each of the Funds.<sup>6</sup> Mellon Capital Management will serve as sub-adviser for each of the Funds (“Sub-Adviser”).<sup>7</sup> The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust. Bloomberg Finance L.P. (“Index Sponsor”) is the sponsor of the Bloomberg US Dollar Total Return Index (“Bloomberg USD TR Index”) and the Bloomberg Inverse US Dollar Total Return Index (“Bloomberg Inverse USD TR Index,” each an “Index,” and together with the Bloomberg USD TR Index, collectively, “Indexes”).<sup>8</sup> According to the Exchange, the Adviser is not registered as

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<sup>5</sup> The Trust has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission on behalf of each of the Funds. See Post-Effective Amendment No. 216 (DI Bull Fund), No. 217 (DI Bear Fund), and No. 218 (CC Bear Fund) to the Registration Statement on Form N-1A for the Trust, each dated September 6, 2013 under the Securities Act of 1933 (“Securities Act”) and the Investment Company Act of 1940 (“1940 Act”) (File Nos. 333-132380 and 811-21864). In addition, the Exchange notes that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812- 13458). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Exchange represents that the Trust’s application for exemptive relief under the 1940 Act states that the Funds will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities and that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act.

<sup>6</sup> WisdomTree Investments, Inc. is the parent company of the Adviser.

<sup>7</sup> The Sub-Adviser will be responsible for day-to-day management of the Funds and, as such, will typically make all decisions with respect to portfolio holdings. The Adviser will have ongoing oversight responsibility.

<sup>8</sup> The Exchange states that information regarding the Indexes and other indexes provided by the Index Sponsor can be found at [www.bloombergindexes.com](http://www.bloombergindexes.com). The Exchange

a broker-dealer or affiliated with a broker-dealer. The Exchange further represents that the Sub-Adviser is not a broker-dealer, but is affiliated with one or more broker-dealers and has implemented a “fire wall” with respect to each such broker-dealer regarding access to information concerning the composition and changes to a Fund’s portfolio.<sup>9</sup>

#### DI Funds – Index Information

The DI Bull Fund will be an actively managed fund that seeks to provide total returns, before expenses, that exceed the performance of the Bloomberg USD TR Index. According to the Exchange, the Bloomberg USD TR Index is based on the Bloomberg US Dollar Index (BDXY), which tracks changes in the value of the U.S. Dollar against a basket of developed and emerging market currencies that are deemed to have the highest liquidity in the currency markets and to represent countries that make the largest contribution to trade flows with the United States.<sup>10</sup> The Exchange states that the Bloomberg USD TR Index additionally incorporates the

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further represents that the Index Sponsor is not a broker-dealer, but is affiliated with one or more broker-dealers and has implemented procedures designed to prevent the illicit use and dissemination of material, non-public information regarding the Indexes and has implemented a “fire wall” with regard to its affiliated broker-dealers regarding the Indexes.

<sup>9</sup> See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or 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, the Adviser will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to the applicable Fund’s portfolio, and it will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

<sup>10</sup> The Exchange states that data for the global currencies is derived, in part, from the Bank for International Settlements Triennial Central Bank Survey, December 2010 (“BIS Survey”). According to the Exchange, the global currencies included in the Indexes are limited to the top twenty currencies in terms of transaction volume, listed in the BIS Survey, under Table 3: “Currency distribution of global foreign exchange market turnover,” reflecting the percentage share of average daily turnover for the applicable month and year (“Table 3”). See <http://www.bis.org/publ/rpfx10t.htm>. Trade volume data for the currencies selected is derived from the Board of Governors of the Federal

impact of short-term interest rate differences inherent in achieving such exposure by incorporating the net interest rate differential between the short-term interest rates in the U.S. and in the countries of those leading currencies and the daily federal funds rate. The Exchange states that the Bloomberg USD TR Index is structured to potentially benefit from a general rise in the level of the U.S. Dollar relative to the basket of global currencies.

According to the Exchange, the Bloomberg US Dollar Index and, accordingly, the Bloomberg USD TR Index and the Bloomberg Inverse USD TR Index are constructed as follows. First, to be considered for the Index, currencies must rank high in terms of their countries' or regions' contribution to overall trade in the U.S. or have high standing in terms of rank in foreign exchange trading volume, although they must have influence in both categories. The basket of currencies composing the index will be selected and weighted using the U.S. trade

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Reserve System, Foreign Exchange Rates – H.10 Release. See <http://www.federalreserve.gov/Releases/H10/Summary/> (“Federal Reserve Release”). According to the Exchange, the global currencies selected for the Indexes are limited to the top twenty currencies by trade volume included in the most recent Federal Reserve Release.

According to the Exchange, the Index Sponsor selects for both Indexes the top ten currencies included in both the most recent BIS Survey and Federal Reserve Release, giving equal weighting to both liquidity and trade volume. The currencies selected are given weights in each Index based equally on relative trade volume and relative liquidity as compared with the other included currencies. The Indexes each exclude any currency that is tied directly to the U.S. Dollar (e.g., Hong Kong Dollar) and limit the percentage weighting of the Chinese Yuan Renminbi (“CNY”) to three percent of the total weight of each Index, because the CNY is heavily managed by the Chinese government. The Indexes also exclude any currency that would receive a weighting of less than two percent of the Indexes, based on the relative weighting formula described above.

The Exchange states that, as of December 31, 2012 (the date of the most recent rebalancing of the Indexes), the components of each index were the following: Euro (34.3%); Japanese Yen (16.2%); Canadian Dollar (12.0%); British Pound (9.9%); Mexican Peso (8.5%); Australian Dollar (5.5%); Swiss Franc (4.9%); Korean Won (3.6%); CNY (3.0%); and Singapore Dollar (2.2%).

volume reported by the Federal Reserve<sup>11</sup> as a proxy for contribution to trade flows and foreign exchange turnover as reported in the BIS Survey as a proxy for foreign exchange liquidity.<sup>12</sup> Countries and their respective currencies relative to the U.S. Dollar are ranked in terms of their contribution to overall U.S. trade and the percentage of overall transaction volume for their currencies. Exposure to individual currencies whose movement has been largely regulated by their government will be capped at three percent, and currencies with preliminary weights of less than two percent are removed. The final weights are then derived by distributing the weight to the remaining currencies in proportion to the preliminary weights. Currencies that are strictly tied to the U.S. Dollar will be excluded.

The Bloomberg USD TR Index's annual rebalance is done in December every year with a reference date of the third Friday of the month and a rebalance date after the close of the last U.S. trading date of the month. The Bloomberg US Dollar Index value is published real time under the ticker BBDXY on Bloomberg. The Bloomberg USD TR Index (BBDXT) value is generated once a day.

The DI Bear Fund will be an actively managed fund that seeks to provide total returns, before expenses, that exceed the performance of the Bloomberg Inverse USD TR Index. According to the Exchange, the Bloomberg Inverse USD TR Index is based on the Bloomberg US Dollar Index (as described above), which tracks changes in the value of the U.S. Dollar against a basket of developed and emerging market currencies that have the highest liquidity in the currency markets and the biggest trade flows with the U.S. The Exchange states that the Bloomberg Inverse USD TR Index additionally incorporates the impact of short-term interest

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<sup>11</sup> The Exchange notes that data used by the Index Sponsor to determine trading volumes in each currency will derive from the Federal Reserve Release. See id.

<sup>12</sup> The Exchange notes that transactional volume will be derived from the BIS Survey. See supra note 10.

rates in the global currencies and that the Bloomberg Inverse USD TR Index is structured to potentially rise as global currencies appreciate relative to the U.S. Dollar.

The Bloomberg Inverse USD TR Index's annual rebalance is done in December every year with a reference date of the third Friday of the month and a rebalance date after the close of the last U.S. trading date of the month. The Bloomberg Inverse USD TR Index (BBDXI) value is generated once a day.

According to the Exchange, the Indexes seek contrasting positions in the same currencies and the same weightings. The Bloomberg USD TR Index seeks to potentially benefit from a rise in the U.S. Dollar against a basket of currencies, while the Bloomberg Inverse USD TR Index seeks to potentially benefit from a fall in the U.S. Dollar against the same basket of currencies. The eligibility criteria for each of the Indexes and the method of weighting the Indexes are the same.

#### Investment Methodologies of the Funds

##### DI Bull Fund

Under normal circumstances,<sup>13</sup> the DI Bull Fund will invest at least 80% of its net assets in U.S.-issued and non-U.S.-issued money market securities,<sup>14</sup> other U.S. government and

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<sup>13</sup> The Exchange defines "under normal circumstances" to include, without limitation, the absence of extreme volatility or trading halts in the fixed-income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

<sup>14</sup> The Exchange defines the term "money market securities" to include: short-term, high quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; repurchase agreements backed by U.S. government and non-U.S. government securities; money market mutual funds; and deposit and other obligations of U.S. and non-U.S. banks and financial institutions. All money market securities acquired by a Fund will be rated

investment grade non-U.S. government securities (i.e., that are longer term than money market securities) and short-term investment grade corporate debt securities,<sup>15</sup> as well as positions in currency forward contracts,<sup>16</sup> listed currency options and listed currency futures,<sup>17</sup> currency swap

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investment grade, except that a Fund may invest in unrated money market securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to money market securities rated investment grade. The determination by the Adviser or the Sub-Adviser that an unrated security is of comparable quality to another security rated investment grade will be based on, among other factors, a comparison between the unrated security and securities issued by similarly situated companies to determine where in the spectrum of credit quality the unrated security would fall. The Adviser or Sub-Adviser would also perform an analysis of the unrated security and its issuer similar, to the extent possible, to that performed by a nationally recognized statistical rating organization (“NRSRO”) in rating similar securities and issuers. See Credit Analysis of Portfolio Securities, Commission No-Action Letter (May 8, 1990).

The Exchange states that the term “investment grade,” for purposes of money market securities only, is intended to mean securities rated A1 or A2 by one or more NRSROs. The exchange further states that the term “U.S.-issued money market securities” means money market securities issued or guaranteed by the U.S. government, repurchase agreements backed by the U.S. government securities, and U.S.-based money market mutual funds and deposits and other obligations of financial institutions organized or having their principal place of business in the U.S. According to the Exchange, the term “non-U.S.-issued money market securities” means money market securities issued or guaranteed by a non-U.S. government, repurchase agreements backed by non-U.S. government securities, non-U.S.-based money market mutual funds, and deposits and other obligations of financial institutions organized or having their principal place of business outside the U.S.

<sup>15</sup> According to the Adviser, “investment grade” means securities (other than money market securities) rated in the Baa/BBB categories or above by one or more NRSROs. If a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO. Rating categories may include sub-categories or gradations indicating relative standing.

<sup>16</sup> A currency forward contract is an agreement to buy or sell a specific currency on a future date at a price set at the time of the contract. Each of the Funds will invest only in currencies, and instruments that provide exposure to those currencies, that have significant foreign exchange turnover and are included in the BIS Survey. To the extent a Fund invests in currencies, each Fund will invest in currencies, and instruments that provide exposure to those currencies, explicitly listed on Table 3 in the BIS Survey.

<sup>17</sup> The Exchange represents that exchange-listed currency options in which each of the Funds may invest will be listed on exchanges in the U.S. or the United Kingdom. In addition, the exchange-listed futures contracts in which each of the Funds may invest will be listed on exchanges in the U.S., the United Kingdom, Hong Kong, or Singapore.

agreements,<sup>18</sup> and spot currencies. According to the Exchange, these investments are designed to provide a long exposure that is similar to price movements in the Bloomberg USD TR Index with the incorporation of relative interest rates in the United States and instruments in other representative countries.<sup>19</sup> The DI Bull Fund will seek this exposure through investments in

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According to the Exchange, each of the United Kingdom's primary financial markets regulator, the Financial Conduct Authority; Hong Kong's primary financial markets regulator, the Securities and Futures Commission; and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding ("MMOU"), which is a multi-party information sharing arrangement among financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

The Exchange represents that each of the exchange-listed currency options and exchange-listed futures contracts in which a Fund may invest will be listed on exchanges that are members of the Intermarket Surveillance Group or on an exchange with which the Exchange has entered into a comprehensive surveillance sharing agreement.

<sup>18</sup> A currency swap agreement is a foreign exchange agreement between two counterparties to exchange aspects (i.e., the principal and interest payments) of a loan in one currency for equivalent aspects of an equal in net present value loan in another currency. The Exchange represents that the market for currency swaps in which each of the Funds will invest is highly liquid.

<sup>19</sup> The Exchange states that, to the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. The Funds may also invest in money market securities that may serve as collateral for the futures contracts, currency options, forward contracts, and currency swap agreements.

The Exchange further states that the Adviser or Sub-Adviser will also attempt to mitigate each Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of the counterparty. The Adviser or Sub-Adviser will take various steps to limit counterparty credit risk that will be described in the Registration Statement. Each Fund will enter into forward contracts and swap agreements only with financial institutions that meet certain credit quality standards and monitoring policies. Each Fund may also use various techniques to minimize credit risk, including early termination or reset and payment, using different counterparties, and limiting the net amount due from any individual counterparty. The Funds generally will collateralize forward contracts and swap agreements with cash or certain securities. The collateral will generally be held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Fund. In the event that a counterparty defaults and a Fund is owed money in the forward contract or swap transaction, the applicable Fund will seek withdrawal of the collateral



money market securities combined with a similar size notional position in currency forwards and currency futures in the individual component currencies of the Bloomberg USD TR Index. The Exchange states that, if a sufficiently liquid futures contract on the Bloomberg USD TR Index or a related index is later developed, the Fund may invest in that futures contract as a substitute for, or as a complement to, futures contracts or forward contracts on the individual currencies in the Bloomberg USD TR Index. Although the Fund may invest in spot currencies, listed currency options, and currency swaps, investments in these instruments are expected to be limited, in each case to not more than 20% of Fund net assets. If, subsequent to an investment, the 80% requirement is no longer met, the DI Bull Fund's future investments will be made in a manner that will bring the Fund into compliance with this policy. The Fund's investments in forward contracts, listed options and listed futures contracts, and swap agreements will be backed by investments in U.S. issued money market securities, longer-term U.S. government securities, or other liquid assets (e.g., commercial paper) in an amount equal to the exposure of these contracts.

The Exchange notes that positioning for a stronger U.S. Dollar through a mixture of these securities and financial instruments is intended to provide a return reflective of the changes in the U.S. Dollar against the specified currencies, the U.S. cash rate, and the spread of U.S. interest rates against foreign interest rates.

The Fund may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency, and the Fund may enter into foreign currency exchange transactions. As

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from the segregated account and may incur certain costs exercising its right with respect to the collateral.

stated above, the Fund may also conduct its foreign currency exchange transactions on a spot (i.e., cash) basis at the spot rate prevailing in the foreign currency exchange market.

In order to reduce interest rate risk, the Fund will generally maintain a weighted average portfolio maturity with respect to money market securities of 180 days or less on average (not to exceed 18 months) and will not purchase any money market securities with a remaining maturity of more than 397 calendar days. The “average portfolio maturity” of the Fund will be the average of all current maturities of the individual securities in the Fund’s portfolio. The Fund’s actual portfolio duration may be longer or shorter depending on market conditions.

The Exchange represents that the Fund’s fixed-income investment portfolio will meet the listing criteria for index-based, fixed-income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.<sup>20</sup>

#### DI Bear Fund

Under normal circumstances,<sup>21</sup> the DI Bear Fund will invest at least 80% of its net assets in money market securities, other U.S. government and investment grade non-U.S. government

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<sup>20</sup> See NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 governing fixed-income based Investment Company Units. The requirements of Rule 5.2(j)(3), Commentary .02(a) include the following: (i) The index or portfolio must consist of Fixed Income Securities (as defined generally to include the Fund’s holdings in money market and other fixed-income securities) (Rule 5.2(j)(3), Commentary .02(a)(1)); (ii) components that in the aggregate account for at least 75% of the weight of the index or portfolio must each have a minimum original principal amount outstanding of \$100 million or more (Rule 5.2(j)(3), Commentary .02(a)(2)); (iii) a component may be a convertible security, however, once the convertible security converts to an underlying equity security, the component is removed from the index or portfolio (Rule 5.2(j)(3), Commentary .02(a)(3)); (iv) no component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities will not in the aggregate account for more than 65% of the weight of the index or portfolio (Rule 5.2(j)(3), Commentary .02(a)(4)); and (v) an underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers (Rule 5.2(j)(3), Commentary .02(a)(5)).

securities (i.e., securities that are longer term than money market securities) and short-term investment grade corporate debt securities<sup>22</sup> and positions in currency forward contracts,<sup>23</sup> listed currency options and currency futures,<sup>24</sup> currency swap agreements,<sup>25</sup> and spot currencies.

According to the Exchange, these investments are designed to provide a short exposure that is similar to price movements in the Bloomberg Inverse USD TR Index with the incorporation of relative interest rates in the United States and instruments in other representative countries.<sup>26</sup>

The DI Bear Fund will seek this exposure through investments in money market securities combined with a similar size notional position in currency forwards and currency futures in the individual component currencies of the Bloomberg Inverse USD TR Index. The Exchange states that, if a sufficiently liquid futures contract on the Bloomberg Inverse USD TR Index or a related index is later developed, the Fund may invest in that futures contract as a substitute for, or complement to, futures contracts or forward contracts on the individual component currencies of the Bloomberg Inverse USD TR Index. Although the Fund may invest in spot currencies, currency options, and currency swaps, investments in these instruments are expected to be limited, in each case to not more than 20% of Fund net assets. If, subsequent to an investment, the 80% requirement is no longer met, the DI Bear Fund's future investments will be made in a manner that will bring the Fund into compliance with this policy. The Fund's investments in forward contracts, listed options contracts, listed futures contracts, and swap agreements will be backed by investments in U.S. issued money market securities, longer-term U.S. government

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<sup>21</sup> See supra note 13.

<sup>22</sup> See supra note 15.

<sup>23</sup> See supra note 16.

<sup>24</sup> See supra note 17.

<sup>25</sup> See supra note 18.

<sup>26</sup> See supra note 19.

securities, or other liquid assets (e.g., commercial paper) in an amount equal to the exposure of these contracts.

The Exchange states that positioning for a weaker U.S. Dollar through a mixture of these securities and financial instruments is intended to provide a return reflective of the change in the basket of currencies relative to the U.S. Dollar, the rate of U.S.-issued money market securities, and the spread of foreign interest rates over the U.S. Dollar.

The Fund may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency, and the Fund may enter into foreign currency exchange transactions. As stated above, the Fund may also conduct its foreign currency exchange transactions on a spot (i.e., cash) basis at the spot rate prevailing in the foreign currency exchange market.

In order to reduce interest rate risk, the Fund will generally maintain a weighted average portfolio maturity with respect to money market securities of 180 days or less on average (not to exceed 18 months) and will not purchase any money market securities with a remaining maturity of more than 397 calendar days. The “average portfolio maturity” of the Fund will be the average of all current maturities of the individual securities in the Fund’s portfolio. The Fund’s actual portfolio duration may be longer or shorter depending on market conditions.

The Exchange notes that the Fund’s investment portfolio in fixed-income securities will meet the listing criteria for index-based, fixed-income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.<sup>27</sup>

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<sup>27</sup> See supra note 20.

### CC Bear Fund

According to the Exchange, the CC Bear Fund will be an actively-managed fund that seeks to provide total returns reflective of changes in the value of the U.S. Dollar relative to the currencies of selected commodity exporters and the difference between the relative short-term interest rates in the United States and comparable interest rates available for the investments in the currencies of those selected commodity exporters. The CC Bear Fund will seek to potentially benefit from appreciation in the U.S. Dollar relative to the selected commodity currencies.

According to the Exchange, the term “commodity currency” generally means the currency of a country whose economic success is commonly identified with the production and export of commodities (such as precious metals, oil, agricultural products, or other raw materials) and whose value is closely linked to the value of such commodities. The Exchange states that these countries currently include Australia, Brazil, Canada, Chile, Indonesia, Mexico, New Zealand, Norway, Russia, and South Africa.

According to the Exchange, under normal circumstances,<sup>28</sup> the CC Bear Fund will invest at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in investments that are tied economically to selected commodity producing countries available to U.S investors that make a significant contribution to the global export of commodities. Such investments may include a combination of positions in money market securities, other U.S. government and investment grade non-U.S. government securities (i.e., securities that are longer term than money market securities) and short-term investment grade corporate debt securities,<sup>29</sup> with investments in currency forwards,<sup>30</sup> listed currency options and listed currency futures,<sup>31</sup>

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<sup>28</sup> See supra note 13.

<sup>29</sup> See supra note 15.

<sup>30</sup> See supra note 16.

currency swaps,<sup>32</sup> and spot currencies to provide exposure to the change in value of the U.S. dollar relative to selected commodity currencies.<sup>33</sup> The CC Bear Fund will seek this exposure through investments in money market securities combined with a similar size notional position in currency forwards and currency futures in the individual selected currencies. Although the Fund may invest in spot currencies, listed currency options, and currency swaps, investments in these instruments are expected to be limited, in each case to not more than 20% of Fund net assets. If, subsequent to an investment, the 80% requirement is no longer met, the CC Bear Fund's future investments will be made in a manner that will bring the Fund into compliance with this policy.

The Fund's investments in forward contracts, listed options contracts, listed futures contracts, and currency swap agreements will be backed by investments in U.S. issued money market securities, longer-term U.S. government securities, or other liquid assets (e.g., commercial paper) in an amount equal to the exposure of these contracts.

In addition to seeking broad exposure to the movements in the U.S. Dollar relative to the commodity currencies, the Fund intends to seek exposure across currencies correlated to each of their key commodity groups: industrial metals; precious metals; energy; agriculture; and livestock. The CC Bear Fund generally will invest only in currencies that "float" relative to other currencies.<sup>34</sup> The Fund will invest only in currencies that it deems sufficiently liquid and accessible.

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<sup>31</sup> See supra note 17.

<sup>32</sup> See supra note 18.

<sup>33</sup> See supra note 19.

<sup>34</sup> The Exchange states that the value of a floating currency is largely determined by supply and demand and prevailing market rates. In contrast, the value of a "fixed" currency is generally set by a government or central bank at an official exchange rate. The Fund therefore, according to the Exchange, generally does not intend to invest in the currency of certain major commodity producers, such as China, Saudi Arabia, and the United Arab

The Fund may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency, and may enter into foreign currency exchange transactions. As stated above, the Fund may also conduct its foreign currency exchange transactions on a spot (i.e., cash) basis at the spot rate prevailing in the foreign currency exchange market.

The Exchange states that positioning for a stronger U.S. Dollar through a mixture of these securities and financial instruments is intended to provide a return reflective of the changes in the U.S. Dollar against the specified currencies, the U.S. cash rate, and the spread of foreign interest rates against U.S. interest rates.

In order to reduce interest rate risk, the Fund will generally maintain a weighted average portfolio maturity with respect to money market securities of 90 days or less. The “average portfolio maturity” of the Fund will be the average of all current maturities of the individual securities in the Fund’s portfolio. The Fund’s actual portfolio duration may be longer or shorter depending on market conditions.

The CC Bear Fund is actively-managed and is not tied to an index. The Exchange notes, however, that the Fund’s investment portfolio in fixed-income securities will meet the listing criteria for index-based, fixed-income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3).<sup>35</sup>

#### Other Investments

Each Fund reserves the right to invest in fixed-income securities and cash, without limitation, as determined by the Adviser or Sub-Adviser in response to adverse market,

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Emirates, since their respective currencies are fixed or otherwise closely linked to the U.S. Dollar.

<sup>35</sup> See supra note 20.

economic, political, or other conditions. Each Fund may also “hedge” or minimize its respective exposures to one or more foreign currencies in response to such conditions.

While each Fund, under normal circumstances, will invest at least 80% of its net assets in securities and other financial instruments as described above, each Fund may invest its remaining assets in other securities and financial instruments, as generally described below.

Each Fund may invest in the securities of other investment companies and exchange-traded products, including other exchange-traded funds registered under the 1940 Act (collectively, “ETPs”).<sup>36</sup>

Each Fund may hold up to an aggregate of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser in accordance with Commission guidance.<sup>37</sup> Each Fund will monitor its

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<sup>36</sup> According to the Exchange, when used herein, ETPs may include, without limitation, Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust-Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETPs in which the Funds may invest all will be listed and traded on U.S. registered exchanges. The Funds will invest in the securities of ETPs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act or any rule, regulation or order of the Commission or interpretation thereof. The Funds will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The ETPs in which the Funds may invest will primarily be indexed-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While the Funds may invest in inverse ETPs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X, or -3X) ETPs.

<sup>37</sup> Each Fund’s Sub-Adviser will be responsible for complying with the Fund’s restrictions on investing in illiquid securities. In doing that, the Sub-Adviser will make ongoing determinations about the liquidity of Rule 144A securities that the respective Fund may invest in. In reaching liquidity decisions, the Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers



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 a Fund's net assets are held in illiquid securities. According to the Exchange, 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.

Each of the Funds intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>38</sup> In addition, none of the Funds will concentrate 25% or more of the value of its respective total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government or its agencies and instrumentalities). Moreover, none of the Funds will invest in any non-U.S. equity securities. Each Fund's investments will be consistent with the Fund's respective investment objective and will not be used to enhance leverage.

Additional information regarding the individual Funds, investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, dissemination of values, including net asset value ("NAV"), and distributions, among other information, can be found in the Notice and Registration Statement, as applicable.<sup>39</sup>

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wishing to purchase or sell the security and the number of other potential purchasers and dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>38</sup> 26 U.S.C. 851.

<sup>39</sup> See Notice and Registration Statement, supra notes 3 and 5, respectively.

### 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>40</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>41</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>42</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares 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>43</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. A Portfolio Indicative Value, based upon the current value for the components of the Disclosed Portfolio, will be updated and disseminated by one or more major market data vendors at least

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<sup>40</sup> 15 U.S.C. 78f.

<sup>41</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>42</sup> 17 U.S.C. 78f(b)(5).

<sup>43</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

every 15 seconds during the Core Trading Session on the Exchange.<sup>44</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its website the identities and quantities of the portfolio of securities and other assets (“Disclosed Portfolio”) held by each Fund that will form the basis for each Fund’s calculation of NAV at the end of the business day. The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of money market securities and other assets held by the Fund and the characteristics of these assets. The NAV of each Fund will be calculated and determined at the close of regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) on each day that the Exchange is open. The Exchange states that, in calculating a Fund’s NAV per Share, the Fund’s investment will generally be valued using market valuations.<sup>45</sup> The Exchange represents that the intra-day executable price quotations on money market securities and other Fund fixed-income securities, currency

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<sup>44</sup> According to the Exchange, several major market data vendors display and make widely available Portfolio Indicative Values taken from the CTA or other data feeds. The Exchange notes that, during hours when the markets for money market securities in a Fund’s portfolio are closed, the Portfolio Indicative Value will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations.

<sup>45</sup> According to the Exchange, market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker or dealer, or (iii) based on amortized cost, for securities with remaining maturities of 60 days or less. The Exchange represents that International Data Corporation is expected to be the primary price source for each Fund’s assets. Each Fund may also rely, however, on other recognized third-party pricing sources, including without limitation, Bloomberg, WM Reuters, JP Morgan, Markit, and JJ Kenney, to provide prices for certain asset categories including, among others, currency swaps, currency forward contracts, spot currencies, and corporate securities, in each case as approved or ratified, from time to time, by the applicable Fund’s board of trustees. Exchange listed instruments will be valued, based on the end-of-day exchange prices of those instruments. In addition, fixed-income assets may be valued as of the announced closing time for trading in fixed-income instruments on any day that the Securities Industry and Financial Markets Association (or the applicable exchange or market on which the applicable Fund’s investments are traded) announces an early closing time.

forwards, currency options, currency futures, currency swaps, and foreign exchange are available from major broker-dealer firms. Price information for listed currency options, listed currency futures, and ETPs is available from the exchange on which they trade. Intra-day price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. 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.

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 Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,<sup>46</sup> and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule

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<sup>46</sup> These reasons may include: (1) the extent to which trading is not occurring in the securities or the financial instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

8.600(d)(2)(B)(ii), the Reporting Authority 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 Funds' portfolios. In addition, the Exchange states that the Sub-Adviser has implemented a "fire wall" with respect to its affiliated broker-dealers regarding access to information concerning the composition of or changes to each Fund's portfolio.<sup>47</sup> The Commission also notes that the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange 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

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<sup>47</sup> See supra note 9 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, the 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 the 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.

securities. In support of this proposal, the Exchange has made representations, including the following:

- (1) The Shares will be subject to Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and 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 further represents that FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, ETPs, futures contracts, and options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, ETPs, futures contracts, and options contracts from these markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETPs, futures contracts, and options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The ETPs, currency options, and currency futures held by the Funds all will be traded

on registered exchanges that are ISG members or with which the Exchange has in place a comprehensive surveillance sharing agreement.

- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.
- (5) For initial and continued listing, the Funds must be in compliance with Rule 10A-3 under the Act,<sup>48</sup> as provided by NYSE Arca Equities Rule 5.3.
- (6) None of the Funds will invest in non-U.S. equity securities.
- (7) Each Fund may hold up to an aggregate of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities

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<sup>48</sup> See 17 CFR 240.10A-3.

deemed illiquid by the Adviser or Sub-Adviser in accordance with Commission guidance.<sup>49</sup>

- (8) To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. The Adviser or Sub-Adviser will also attempt to mitigate each Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of the counterparty.<sup>50</sup>
- (9) Each of the exchange-listed currency options and exchange-listed futures contracts in which a Fund may invest will be listed on exchanges that are members of ISG or on an exchange with which the Exchange has entered into a comprehensive surveillance sharing agreement.
- (10) Although the Funds may invest in spot currencies, listed currency options, and currency swaps, investments in these instruments are expected to be limited, in each case to not more than 20% of a Fund's net assets. Each Fund's investments in forward contracts, listed options and listed futures contracts, and swap agreements will be backed by investments in U.S. issued money market securities, longer-term U.S. government securities, or other liquid assets (e.g., commercial paper) in an amount equal to the exposure of these contracts.
- (11) Each Fund's fixed-income investment portfolio will meet the listing criteria for index-based, fixed-income exchange-traded funds contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.

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<sup>49</sup> See supra note 37.

<sup>50</sup> See supra note 19.



- (12) Each Fund's investments will be consistent with that Fund's investment objective and will not be used to enhance leverage.
- (13) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval 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 Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>51</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>52</sup> that the

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<sup>51</sup> 15 U.S.C. 78f(b)(5).

<sup>52</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2013-101), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>53</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>53</sup> 17 CFR 200.30-3(a)(12).