

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77160; File No. SR-NYSEArca-2016-14)

February 17, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of WBI Tactical Rotation Shares under NYSE Arca Equities Rule 8.600

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 3, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

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

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

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

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the WBI Tactical Rotation Shares (the “Fund”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.<sup>4</sup> The Shares will be offered by the Absolute Shares Trust (the “Trust”),<sup>5</sup> a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>6</sup>

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

<sup>5</sup> The Trust is registered under the 1940 Act. On August 24, 2015, the Trust filed with the Commission a registration statement on Form N-1A, and on November 6, 2015 filed an amendment thereto, under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and the 1940 Act relating to the Fund (File Nos. 333- 192733 and 811-22917) (as amended, the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30543 (May 29, 2013) (File No. 812-13886) (“Exemptive Order”).

<sup>6</sup> The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. See Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010)

Millington Securities, Inc. (“Adviser”), a wholly-owned subsidiary of WBI Trading Company, Inc., will be the investment advisor to the Fund. WBI Investments, Inc. (“WBI” or the “Sub-Adviser”), an affiliate of WBI Trading Company, Inc., will act as Sub-Adviser to the Fund. U.S. Bancorp Fund Services, LLC will serve as “Administrator”, “Transfer Agent” and “Index Receipt Agent”. U.S. Bank, National Association will serve as the Fund’s “Custodian” and “Securities Lending Agent”. Foreside Fund Services, LLC will serve as the “Distributor” for the Fund on an agency basis.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, Commentary .06 further requires that personnel who make

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(SR-NYSEArca-2010-86) (order approving listing of Peritus High Yield ETF) ; 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR-NYSEArca-2011-11) (order approving listing of Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF).

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

decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is a registered broker-dealer and is affiliated with a broker-dealer. The Sub-Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. In such capacity, the Adviser and Sub-Adviser have implemented a firewall with respect to their relevant personnel and their respective broker-dealer affiliates regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, as applicable, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its personnel or such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

### Principal Investments

According to the Registration Statement, the Fund's investment objective is to seek long term capital appreciation while also seeking to protect principal during unfavorable market conditions.<sup>8</sup>

The Fund, under normal market conditions,<sup>9</sup> will seek to invest primarily (more than 50%

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<sup>8</sup> The Sub-Adviser's proprietary portfolio selection process used for the Fund attempts to identify investments that can provide consistent, attractive returns net of expenses with potentially less volatility and risk to capital than traditional approaches, whatever market conditions may be.

<sup>9</sup> The term "under normal market conditions" includes, but is not limited to, the absence of

of its total assets) in the securities included in its principal investment strategy as indicated in the following discussion. The Fund will invest directly in equity securities, debt instruments and “Financial Instruments” (as described below) or will invest in them indirectly by investing in the equity securities of other registered investment companies (including exchange traded funds (“ETFs”),<sup>10</sup> mutual funds, unit investment trusts, exchange-traded and over-the counter (“OTC”) closed-end funds (“CEFs”) and exchange-traded and OTC business development companies), equity securities of exchange-traded pooled vehicles not required to be registered under the 1940 Act and issuing equity securities (“ETPVs”),<sup>11</sup> exchange-traded notes (“ETNs”),<sup>12</sup> equity-linked notes (“ELNs”)<sup>13</sup> and index-linked exchangeable notes (“ILENs”).<sup>14</sup> (Collectively, ETFs, ETPVs, ETNs, ELNs and ILENs are referred to as “exchange traded products” or “ETPs”.

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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> For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100; and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

<sup>11</sup> For purposes of this filing, the “exchange-traded pooled vehicles” or “ETPVs” consist of 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); and Commodity Futures Trust Shares (as described in NYSE Arca Equities Rule 8.204).

<sup>12</sup> ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)).

<sup>13</sup> Equity Linked Notes are described in NYSE Arca Equities Rule 5.2(j)(2).

<sup>14</sup> Index-Linked Exchangeable Notes are described in NYSE Arca Equities Rule 5.2(j)(4).

Collectively, ETFs, mutual funds, unit investment trusts, CEFs and business development companies are referred to as “Registered Funds”.) The foregoing investments, which are further detailed below, will be selected on the basis of the Sub-Adviser’s proprietary global asset rotation investment model and selection process as described herein and in the Fund’s Registration Statement.

The Fund may invest in exchange-traded and OTC U.S. and foreign equity securities (other than non-exchange-traded investment company securities), which are the following: common stocks, preferred stocks, rights, warrants, convertibles, master limited partnerships (exchange-traded businesses organized as partnerships (“MLPs”)), Depository Receipts (“DRs”, as described below),<sup>15</sup> and exchange-traded real estate investment trusts (“REITs”).

As part of the Fund’s principal investment strategy, up to 20% of the Fund’s net assets

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<sup>15</sup> For purposes of this filing, DRs means the following: American Depositary Receipts (“ADRs”), American Depositary Shares (“ADSs”), European Depositary Receipts (“EDRs”), Global Depositary Receipts (“GDRs”) and International Depositary Receipts (“IDRs”). DRs are receipts typically issued in connection with a U.S. or foreign bank or trust company which evidence ownership of underlying securities issued by a non-U.S. company. ADRs are depository receipts for foreign securities denominated in U.S. dollars and traded on U.S. securities markets. These securities may not necessarily be denominated in the same currency as the securities for which they may be exchanged. These are certificates evidencing ownership of shares of a foreign-based issuer held in trust by a bank or similar financial institutions. Designed for use in U.S. securities markets, ADRs are alternatives to the purchase of the underlying securities in their national market and currencies. ADRs may be purchased through “sponsored” or “unsponsored” facilities. ADSs are U.S. dollar-denominated equity shares of a foreign-based company available for purchase on an American stock exchange. ADSs are issued by depository banks in the United States under an agreement with the foreign issuer, and the entire issuance is called an ADR and the individual shares are referred to as ADSs. EDRs, GDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer, however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world. ADRs, GDRs, EDRs, and IDRs will not necessarily be denominated in the same currency as their underlying securities. Not more than 10% of the Fund’s assets will be invested in non-exchange-listed ADRs.

may be invested in exchange-traded or OTC “Financial Instruments”. For purposes of this filing, “Financial Instruments” are the following: foreign exchange forward contracts; futures on equity securities, debt securities, equity indices, fixed income indices, commodity indices, currencies, commodities, and interest rates; exchange-traded and OTC options on equity indices, currencies, and equity and debt securities; exchange-traded and OTC options on futures contracts; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps on fixed income and equity securities, inflation swaps and credit default swaps; and options on such swaps (“swaptions”).<sup>16</sup> Financial Instruments will be utilized in connection with option strategies used by the Fund, including writing (selling) covered calls, buying puts, using combinations of calls and puts, and using combinations of calls and combinations of puts. The Fund may also use options on indices and on futures, such as by writing a call on a futures contract.<sup>17</sup> The Fund may enter cap, floor and collar agreements as a part of its option strategies.<sup>18</sup>

As part of its principal investment strategy, the Fund may invest in the following types of debt securities (“Debt Instruments”): corporate debt securities;<sup>19</sup> corporate debt securities that are

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<sup>16</sup> Options on swaps are traded OTC. In the future, in the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

<sup>17</sup> The Fund may directly write call options on stocks and stock indices if the calls are “covered” throughout the life of the option. The Fund may also write and purchase put options (“puts”).

<sup>18</sup> In a typical cap or floor agreement, one party agrees to make payments only under specified circumstances, usually in return for payment of a fee by the other party. For example, the buyer of an interest rate cap obtains the right to receive payments to the extent that a specified interest rate exceeds an agreed-upon level. The seller of an interest rate floor is obligated to make payments to the extent that a specified interest rate falls below an agreed-upon level. An interest rate collar combines elements of buying a cap and selling a floor.

<sup>19</sup> Such corporate debt securities also includes debt securities sold pursuant to Rule 144A under the Securities Act.

convertible into common stock or interests; U.S. Government securities;<sup>20</sup> debt securities of foreign issuers; sovereign debt securities; repurchase agreements; municipal securities; sovereign debt obligations; obligations of international agencies or supranational agencies; sovereign, quasi-sovereign, supranational or local authority debt obligations issued by non-U.S. governments; Treasury Inflation-Protected Securities (“TIPs”); and zero coupon bonds. Debt Instruments may be of all maturities, from less than one year to more than thirty years (if available). Debt Instruments may be fixed, variable or floating rate securities.

The Fund may invest in and hold cash or “Cash Equivalents”<sup>21</sup> as part of the normal operation of its principal investment strategy. As a result, an investment in cash or Cash Equivalents may periodically represent a material percentage of the Fund’s assets.

For investments in Registered Funds, the Fund may invest in excess of the limits contained in the 1940 Act.<sup>22</sup>

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The Adviser expects that, under normal market conditions, the Fund generally will seek to invest at least 75% of its corporate debt securities in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries.

<sup>20</sup> The Fund may invest in U.S. Government obligations and other quasi government related obligations. Such obligations include Treasury bills, certificates of indebtedness, notes and bonds, and issues of such entities as the Government National Mortgage Association (“GNMA”), Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Farm Credit Banks, Federal Housing Administration, Federal National Mortgage Association (“FNMA”), Federal Home Loan Mortgage Corporation (“FHLMC”), and the Student Loan Marketing Association.

<sup>21</sup> “Cash Equivalents” means: high-quality short-term debt securities; money market instruments, certificates of deposit issued by commercial banks as well as savings banks or savings and loan associations; bankers’ acceptances; time deposits; and commercial paper and short-term notes rated at the time of purchase “A-2” or higher by Standard & Poor’s, “Prime-1” by Moody’s Investors Services Inc., or similarly rated by another nationally recognized statistical rating organization, or, if unrated, will be determined by the Sub-Adviser to be of comparable quality, as well as U.S. Government obligations.

### Non-Principal Investment Strategies

While the Fund, under normal market conditions, will seek to invest primarily (at least 50% of its total assets) in the securities described above, the Fund may invest as part of its non-principal investment strategy (less than 50% of the Fund's assets) in the types of investments discussed below.

The Fund may invest in short positions in equity securities.

The Fund may invest in agency and non-agency residential mortgage-backed securities ("RMBS"); agency and non-agency commercial mortgage-backed securities ("CMBS"); and agency and non-agency asset-backed securities ("ABS").

### Investment Restrictions

The Fund may invest up to 40% of its net assets in Debt Instruments rated below investment grade (also known as "junk bonds").

The Fund will not invest more than 50% of its net assets in securities of issuers in emerging markets, which could consist of DRs, dollar-denominated foreign securities or non-U.S. dollar denominated foreign securities.

Investments in non-agency mortgage and asset backed securities will be limited to 20% of the Fund's total assets in the aggregate.

The Fund may invest up to 30% of its total assets in securities denominated in non-U.S. Dollars, but this limitation will not apply to securities of non-U.S. issuers that are denominated in

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<sup>22</sup> The Commission has granted exemptive relief to the Trust under Section 12(d)(1)(J) of the 1940 Act permitting the Fund to operate as a "fund of funds" and invest in other investment companies without complying with the limitations set forth in Section 12(d)(1) of the 1940 Act, subject to certain terms and limitations that are contained in the Exemptive Order.

U.S. Dollars. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>23</sup>

The Fund will be non-diversified under the 1940 Act.<sup>24</sup>

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code.<sup>25</sup>

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<sup>23</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 31835 (September 22, 2015), discussions at footnotes 92 & 93; Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

<sup>24</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).<sup>26</sup>

#### Net Asset Value ("NAV")

The NAV per Share of the Fund will be computed by dividing the value of the net assets of the Fund (i.e., the Fund's total assets less total liabilities) by the total number of outstanding Shares of the Fund, rounded to the nearest cent.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services.

Exchange-traded equity securities (including common stocks, ETPs, CEFs, convertibles, REITs, warrants, MLPs, DRs and preferred securities) will be valued at the official closing price or the last trading price on the exchange or market on which the security is primarily traded at the time of valuation. If no sales or closing prices are reported during the day, exchange-traded equity securities will generally be valued at the mean of the last available bid and ask quotation on the exchange or market on which the security is primarily traded, or using other market information obtained from quotation reporting systems, established market makers, or pricing

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<sup>25</sup> 26 U.S.C. 851.

<sup>26</sup> The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

services. Investment company securities that are not exchange-traded will be valued at NAV. Equity securities traded OTC will be valued at the last sale price in the OTC market. If a non-exchange traded security does not trade on a particular day, then the mean between the last quoted closing bid and asked price will be used. In the event that such market quotations are not readily available, then the security will be fair valued in accordance with the Trust's procedures.

U.S. and non-U.S. debt securities with a maturity of greater than 60 days at the time of acquisition, as well as non-exchange traded Financial Instruments, will be valued at prices that reflect broker/dealer supplied valuations or are obtained from independent pricing services. Short-term securities with remaining maturities of 60 days or less will be valued at amortized cost, provided such amount approximates market value. Cash Equivalents will be valued based on information provided by third party pricing services.

Financial Instruments for which market quotes are readily available will be valued at market value or on the basis of quotes obtained from a quotation reporting system, established market makers and pricing services. Local closing prices will be used for all instrument valuation purposes. Futures and options on futures will be valued at the closing price on the day of valuation. Non-exchange traded Financial Instruments, including forwards, swaps, and certain options, will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the closing of the principal market for those assets. Caps and floors will be valued using the exchange closing prices on the applicable options.

Generally, trading in foreign securities markets is substantially completed each day at various times prior to the close of the New York Stock Exchange ("NYSE") (generally 4:00 p.m. Eastern time ("E.T.") (the "NYSE Close")). The values of foreign securities are determined as of the close of such foreign markets or the close of the NYSE, if earlier. If a foreign security's

value has materially changed after the close of the security's primary exchange or principal market but before the NYSE Close, the security will be valued at fair value based on procedures established and approved by the Trust's Board of Trustees (the "Board"). Foreign securities that do not trade when the NYSE is open will also be valued at fair value.

All investments quoted in foreign currency will be valued in U.S. dollars on the basis of the foreign currency exchange rates prevailing at the close of U.S. business at 4:00 p.m. E.T. As a result, the NAV of the Fund's Shares may be affected by changes in the value of currencies in relation to the U.S. dollar.

When market quotations are not readily available, are deemed unreliable or do not reflect material events occurring between the close of local markets and the time of valuation, investments will be valued using fair value pricing as determined in good faith by the Sub-Adviser under procedures established by and under the general supervision and responsibility of the Board. Investments that may be valued using fair value pricing include, but are not limited to: (1) illiquid assets; (2) securities of an issuer that becomes bankrupt or enters into a restructuring; (3) securities whose trading has been halted or suspended; and (4) foreign securities traded on exchanges that close before the Fund's NAV is calculated.

#### Indicative Intra-Day Value

An independent third party calculator, initially the Exchange, will calculate the Indicative Intra-Day Value ("IIV") (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)) for the Fund during the Exchange's Core Trading Session (as defined in NYSE Arca Equities Rule 7.34) by dividing the "Estimated Fund Value" as of the time of the calculation by the total number of outstanding Shares of the Fund. "Estimated Fund Value" is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of

accrued interest owed to the Fund and the estimated value of assets held in the Fund's portfolio minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Trust's website. The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

The Fund will provide the independent third party calculator with information to calculate the IIV, but the Fund will not be involved in the actual calculation of the IIV and is not responsible for the calculation or dissemination of the IIV. The IIV should not be viewed as a "real-time" update of NAV because the IIV may not be calculated in the same manner as the NAV, which will be computed once per day.

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

For the purposes of determining the IIV, the third party market data provider's valuation of Financial Instruments is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific Financial Instruments:

- Foreign exchange forward contracts may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.

- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps and cross-currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- Credit default swaps (such as, CDX/CDS) may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options and swaptions may be valued intraday through option valuation models (e.g., Black-Scholes) or using exchange-traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.
- Currency spot and forward rates from major market data vendors will generally be determined as of the NYSE Close.

Disclosures about Financial Instruments in the Disclosed Portfolio

The Fund's disclosure of Financial Instrument positions in the Disclosed Portfolio will

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

#### Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of Financial Instruments. Market makers and participants should be able to value Financial Instruments as long as the positions are disclosed with relevant information. The Adviser and the Sub-Adviser believe that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser and the Sub-Adviser do not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of Financial Instruments. Because Financial Instruments generally are not eligible for in-kind transfer, they will typically be substituted with a "cash in lieu" amount when the Fund processes purchases or redemptions of creation units in-kind.

## Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in aggregations of a specified number of Shares (each a “Creation Unit”). Creation Unit sizes will be 50,000 Shares per Creation Unit. The Creation Unit size may be changed. The Fund will issue and redeem Shares only in Creation Units at the NAV next determined after receipt of order on a continuous basis on a “Business Day”. A Business Day will be, generally, any day on which the Exchange is open for business. The NAV of the Fund will be determined once each Business Day, normally as of the close of trading on the NYSE (normally, 4:00 p.m. E.T.). An order to purchase or redeem Creation Units will be deemed to be received on the Business Day on which the order is placed through the Distributor at the Shares’ NAV next determined after receipt of an order in proper form.

The Fund will issue and redeem Creation Units to or through an “Authorized Participant”, which is either a “Participating Party” (i.e., a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (“NSCC”), or a participant of the Depository Trust Company (“DTC”), and, in each case, must have entered an agreement with the Distributor with respect to the creation and redemption of Creation Units).

The consideration for purchase of Creation Units of the Fund generally will consist of an in-kind deposit of a designated portfolio of securities – the “Deposit Securities” – for each Creation Unit constituting a substantial replication, or representation, of the securities included in the Fund’s portfolio as selected by the Sub-Adviser (“Fund Securities”) and an amount of cash – the “Cash Component” – computed as described below. Together, the Deposit Securities and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component is an

amount equal to the difference between the NAV of the Shares (per Creation Unit) and an amount equal to the market value of the Deposit Securities (the “Deposit Amount”). If the Cash Component is a positive number (i.e., the NAV per Creation Unit exceeds the Deposit Amount), the Authorized Participant will deliver the Cash Component. If the Cash Component is a negative number (i.e., the NAV per Creation Unit is less than the Deposit Amount), the Authorized Participant will receive the Cash Component. The Cash Component serves to compensate the Trust or the Authorized Participant, as applicable, for any differences between the NAV per Creation Unit and the Deposit Securities. Authorized Participants will be required to pay the Custodian a fixed transaction fee in connection with creation and redemption of Shares.

In addition, the Trust reserves the right to permit or require the substitution of an amount of cash (that is a “cash in lieu” amount) to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or that may not be eligible for transfer or for other similar reasons. The Trust also reserves the right to permit or require a “cash in lieu” amount where the delivery of Deposit Securities by the Authorized Participant (as described below) would be restricted under the securities laws or where delivery of Deposit Securities to the Authorized Participant would result in the disposition of Deposit Securities by the Authorized Participant becoming restricted under the securities laws, and in certain other situations.

The Custodian through the (“NSCC”), will make available on each Business Day, prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. This Fund Deposit

will be applicable, subject to any adjustments, to orders to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

In addition to the list of names and number of securities constituting the current Deposit Securities of a Fund Deposit, the Custodian, through the NSCC, also will make available on each Business Day the estimated Cash Component, effective through and including the previous Business Day, per outstanding Creation Unit of the Fund.

The process to redeem Creation Units is essentially the reverse of the process by which Creation Units are created, as described above. To redeem Shares directly from the Fund, an investor must be an Authorized Participant or must redeem through an Authorized Participant. The Trust redeems Creation Units on a continuous basis on any Business Day through the Distributor at the Shares' NAV next determined after receipt of an order in proper form.

Generally, Creation Units of the Fund will be redeemed in-kind, at NAV per Share next computed, plus a transaction fee as described below. The Custodian, through the NSCC, makes available prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) on each Business Day, the identity of the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as described below) on that day. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units. The redemption proceeds for a Creation Unit consists of Fund Securities — as announced on the Business Day the request for redemption is received in proper form — plus or minus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a redemption request in proper form, and the value of the Fund Securities (“Cash Redemption Amount”), less a

redemption transaction fee.

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

The Trust may in its discretion at any time, or from time to time, exercise its option to redeem Shares by providing the redemption proceeds in cash, and the redeeming Authorized Participant will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash that the Trust may permit, in its sole discretion. In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a transaction fee).<sup>27</sup> The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities that differs from the exact composition of the Fund Securities, or cash in lieu of some securities added to the Cash Redemption Amount, but in no event will the total value of the securities delivered and the cash transmitted differ from the NAV.

#### Availability of Information

The Fund's website ([www.wbishares.com](http://www.wbishares.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be

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<sup>27</sup> The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior Business Day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>28</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund 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>29</sup>

In addition, a basket composition file, which will include the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are 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

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<sup>28</sup> The Bid/Ask Price of Shares of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>29</sup> Under accounting procedures to be followed by the Fund, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

from the Commission's website at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last sale information for the Shares, and U.S. exchange-traded common stocks, preferred stocks, rights, warrants, convertibles, MLPs, DRs, REITs, CEFs, ETFs, ETPs and ETNs will be available via the Consolidated Tape Association ("CTA") high-speed line. Intra-day price information for foreign exchange-traded common stocks, preferred stocks, rights, warrants, convertibles, MLPs, DRs and REITs, will be available from the applicable foreign exchange and from major market data vendors. Price information for OTC common stocks, OTC CEFs, and OTC Financial Instruments will be available from major market data vendors. Intra-day and closing price information for exchange-traded Financial Instruments will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Intra-day price information for Cash Equivalents will be available from major market data vendors.

Intra-day and closing price information from brokers and dealers or independent pricing services will be available for Debt Instruments. 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 Core Trading Session.<sup>30</sup> The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

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<sup>30</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>31</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the Financial Instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. 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.

The Shares will conform to the initial and continued listing criteria under NYSE Arca

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<sup>31</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>32</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the 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 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.

### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>33</sup>

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

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<sup>32</sup> 17 CFR 240.10A-3.

<sup>33</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

FINRA, on behalf of the Exchange, and regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) with other markets or other entities that are members of the Intermarket Surveillance Group (“ISG”)<sup>34</sup>, and FINRA and regulatory staff of the Exchange may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>35</sup> FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-

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<sup>34</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>35</sup> Certain of the exchange-traded equity securities in which the Fund may invest may trade in markets that are not members of ISG.

traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (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 and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

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

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>36</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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 Advisor is a broker-dealer and has represented that it has implemented a firewall with respect to relevant personnel regarding access to information concerning the composition and/or changes to the portfolio. 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. FINRA, on behalf of the Exchange, and regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) with other markets or other entities that are members

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<sup>36</sup> 15 U.S.C. 78f(b)(5).

of the ISG, and FINRA, on behalf of the Exchange, and regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

The Fund's disclosure of Financial Instrument positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Price information for the debt and equity securities held by the Fund will be available through major market data vendors and on the applicable securities exchanges on which such securities are listed and traded. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting

market transparency. Moreover, the Portfolio Indicative 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. 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 that will form the basis for the Fund's 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 Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that 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. Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that holds equities and fixed income securities, which may be represented by certain Financial Instruments as discussed above, which will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

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

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-14 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2016-14. 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 Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2016-14 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

Robert W. Errett  
Deputy Secretary

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<sup>37</sup> 17 CFR 200.30-3(a)(12).