

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77549; File No. SR-NYSEArca-2016-14)

April 7, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade of Shares of the WBI Tactical Rotation Shares under NYSE Arca Equities Rule 8.600

I. Introduction

On February 3, 2016, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the WBI Tactical Rotation Shares (“Fund”) under NYSE Arca Equities Rule 8.600. The Commission published notice of the proposed rule change in the Federal Register on February 23, 2016.<sup>3</sup> The Commission received no comments on the proposed rule change. On March 28, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comment on Amendment No. 1

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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. 77160 (February 17, 2016), 81 FR 9029.

<sup>4</sup> In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) clarified a reference to debt securities is to “Debt Instruments,” as described in the filing; (2) represented that, under normal market conditions, the Fund will invest at least 75% of its corporate debt securities that have at least \$1,000,000 par amount outstanding in developed countries or at least \$200,000,000 in emerging markets countries; (3) stated that the Fund’s assets invested in Debt Instruments would meet certain criteria for index-based fixed-income ETFs contained in Exchange Rule 5.2(j)(3), Commentary .02; (4) stated where price information could be found for non-exchange listed ADRs, RMBS, CMBS, ABS, and municipal securities; (5) clarified that all statements and representations made in the filing regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange; (6) stated that the issuer has represented to the Exchange that it will advise

to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. The Exchange's Description of the Proposal<sup>5</sup>

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Absolute Shares Trust ("Trust"), 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> Millington Securities, Inc. ("Adviser"), a wholly-owned subsidiary of WBI Trading Company, Inc., will be the investment advisor to the Fund, and WBI Investments, Inc. ("Sub-Adviser"), an affiliate of WBI Trading Company, Inc., will act as Sub-

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the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements, and if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m); and (7) made other clarifying and technical amendments. Amendment No. 1 is available at: <http://www.sec.gov/comments/sr-nysearca-2016-14/nysearca201614-1.pdf>.

<sup>5</sup> The Commission notes that additional information regarding the Fund, the Trust (as defined below), and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in Amendment No. 1 and the Registration Statement, as applicable. See Amendment No. 1, *supra* note 4, and Registration Statement, *infra* note 6.

<sup>6</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").

Adviser to the Fund.<sup>7</sup> U.S. Bancorp Fund Services, LLC will serve as the 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.

A. The Fund's Principal Investments

According to the Exchange, 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% of its total assets) in the principal investments discussed in this section. The Fund will invest directly in equity securities, debt instruments and "Financial Instruments" (as described below)

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<sup>7</sup> 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.

<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 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.

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,” and collectively, ETFs, mutual funds, unit investment trusts, CEFs, and business development companies are referred to as “Registered Funds”).

The Fund may invest in the following exchange-traded and OTC U.S. and foreign equity securities (other than non-exchange-traded investment company securities): common stocks, preferred stocks, rights, warrants, convertibles, master limited partnerships (exchange-traded

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<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).

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 may be invested in exchange-traded or OTC “Financial Instruments,” which are the following: foreign exchange forward contracts; futures on equity securities, debt securities (i.e., “Debt Securities” defined below), 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 put options (“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.

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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”). 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. ADRs may be purchased through “sponsored” or “unsponsored” facilities. Not more than 10% of the Fund’s assets will be invested in non-exchange-listed ADRs.

<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 puts.

As part of its principal investment strategy, the Fund may invest in the following types of debt securities (“Debt Instruments”): corporate debt securities;<sup>18</sup> corporate debt securities that are convertible into common stock or interests; U.S. Government securities;<sup>19</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; 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.<sup>20</sup>

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<sup>18</sup> Such corporate debt securities also include debt securities sold pursuant to Rule 144A under the Securities Act. Under normal market conditions, the Fund will 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>19</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, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Farm Credit Banks, Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association.

<sup>20</sup> The Fund’s assets invested in Debt Instruments will meet certain criteria for index-based, fixed-income ETFs contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. 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) that will be met include the following: (i) the index or portfolio must consist of “Fixed Income Securities” as defined in 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 each must have a minimum original principal amount outstanding of \$100 million or more; (iii) a component may be a convertible security, but once the convertible security converts to an underlying equity security, the component is removed from the index or portfolio; (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 do not in the aggregate account for more than 65% of the weight of the index or portfolio; (v) an underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-

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.

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

**B. The Fund’s Other Investments**

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 short positions in equity securities and 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”).

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affiliated issuers; and (vi) component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

<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.

<sup>22</sup> The Exchange states that 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.

C. The Fund's Investment Restrictions

The Fund may invest up to 40% of its net assets in Debt Instruments rated below investment grade.

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 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>

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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,



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

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>25</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>26</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,<sup>27</sup> which requires, among other things, that the Exchange's rules be designed to

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2015), discussions at footnotes 92 and 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).

<sup>25</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.

<sup>26</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>27</sup> 15 U.S.C. 78f(b)(5).

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 a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>28</sup> which sets forth the finding of Congress 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.

According to the Exchange, 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, non-exchange listed ADRs, RMBS, CMBS, ABS, 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. Price information for municipal securities is available from the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access system.

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<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

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>29</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>30</sup>

The NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day. 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 New York Stock Exchange via the National Securities Clearing Corporation. 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. 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.

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<sup>29</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.

<sup>30</sup> 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. The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV 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.<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.<sup>32</sup> Trading in the Shares also 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. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Adviser is a registered broker-dealer and is affiliated with a broker-dealer, and 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.<sup>33</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of the

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<sup>31</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>32</sup> These may include: (1) the extent to which trading is not occurring in the securities or the financial instruments constituting 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.

<sup>33</sup> See supra note 7. The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

Fund must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>34</sup>

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (“ETP Holders”) in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. 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.<sup>35</sup>

The Exchange represents that it 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. In support of this proposal, the Exchange has also made the following representations:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) Trading in the Shares will be subject to the existing trading surveillances, administered by regulatory staff of the Exchange, or FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and

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

<sup>35</sup> The Exchange states that 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.

applicable federal securities laws, and 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.

- (4) The Exchange has represented that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>36</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).
- (5) FINRA, on behalf of the Exchange, and regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded

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<sup>36</sup> The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSgA Active Trust, available at: <http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf>. In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of the Fund’s compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

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>37</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. 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. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

- (6) Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. The Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in creation units (and that Shares are not

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<sup>37</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.

individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

- (7) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>38</sup> as provided by NYSE Arca Equities Rule 5.3.
- (8) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.
- (9) While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.
- (10) 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.
- (11) Under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least \$100,000,000 par amount

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<sup>38</sup> 17 CFR 240.10A-3.



outstanding in developed countries or at least \$200,000,000 par amount  
outstanding in emerging market countries.

- (12) The Fund may not invest more than 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 U.S. Dollars.
- (13) The Fund may not invest more than 40% of its net assets in Debt Instruments rated below investment grade (also known as “junk bonds”).
- (14) 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.
- (15) Investments in non-agency mortgage and asset backed securities will be limited to 20% of the Fund’s total assets in the aggregate.
- (16) The Fund may not invest more than 50% of the Fund’s principal investments in the securities of issuers in emerging markets.
- (17) 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, in accordance with Commission staff guidance.
- (18) 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).

This approval order is based on all of the Exchange's representations, including those set forth above and in the Amendment No. 1. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

#### IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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 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].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of Amendment No. 1 in the Federal Register. The additional information in Amendment No. 1, among other things, helped the Commission to evaluate the Shares' susceptibility to manipulation and the Exchange's ability to investigate possible manipulative activity. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.<sup>39</sup>

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<sup>39</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2016-14), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

Robert W. Errett  
Deputy Secretary

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<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).