

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71067; File No. SR-NYSEArca-2013-105)

December 12, 2013

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 Shares of the SPDR MFS Systematic Core Equity ETF, SPDR MFS Systematic Growth Equity ETF, and SPDR MFS Systematic Value Equity ETF Under NYSE Arca Equities Rule 8.600

I. Introduction

On October 10, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the SPDR MFS Systematic Core Equity ETF, SPDR MFS Systematic Growth Equity ETF, and SPDR MFS Systematic Value Equity ETF (each a “Fund” and, collectively, the “Funds”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on October 31, 2013.<sup>3</sup> On November 18, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup>

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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. 70754 (Oct. 25, 2013), 78 FR 65407 (“Notice”).

<sup>4</sup> In Amendment No. 1, the Exchange amended its proposal to provide additional details with respect to the net asset value (“NAV”) calculation of the Funds and the availability of price information for securities and other financial instruments held by the Funds. Specifically, in Amendment No. 1, the Exchange deleted the following sentence: “Portfolio securities traded in the over-the-counter market will be valued at the last reported sale price on the valuation date” and replaced it with the following language: “Common stocks and equity securities (including shares of ETPs) traded on a national securities exchange generally will be valued at the last reported sale price or the official closing price on that exchange where the stock is primarily traded on the day that the

The Commission received no comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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valuation is made. Securities of investment companies (other than exchange-traded funds registered under the 1940 Act), including affiliated funds, money market funds and closed-end funds, will be valued at NAV.” The Exchange also added the following language:

Un-sponsored ADRs, which are traded in the over-the-counter market, will be valued at the last reported sale price from the OTC Bulletin Board or OTC Link LLC on the valuation date... TBA transactions, Rule 144A securities, repurchase agreements and reverse repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments. Spot currency transactions will generally be valued at mid prices received from independent pricing service converted into U.S. dollars at current market rates on the date of valuation. Foreign currency forwards normally will be valued on the basis of quotes obtained from broker-dealers or third party pricing services.

Finally, with respect to the availability of price information for securities and other financial instruments held by the Funds, the Exchange added the following language:

Intra-day and closing price information regarding equity securities traded on a national securities exchange, including common stocks, preferred stocks, securities convertible into stocks, ETPs and REITs, will be available from the exchange on which such securities are traded. Intra-day and closing price information regarding un-sponsored ADRs will be available from major market data vendors such as Bloomberg and Reuters. Intra-day and closing price information regarding fixed income securities, including municipal bonds, mortgage-backed securities, treasuries, corporate bonds, and foreign bonds, will be available from major market data vendors. Price information regarding investment company securities, TBA transactions, Rule 144A securities, repurchase agreements, reverse repurchase agreements, and foreign currency spot prices will be available from major market data vendors. Price information regarding foreign currency forwards will be available from major market data vendors.

## II. 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.<sup>6</sup> The Shares will be offered by SSgA Active ETF Trust (the “Trust”), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.<sup>7</sup> SSgA Funds Management, Inc. (the “Adviser” or “SSgA FM”) will serve as the investment adviser to the Funds. Massachusetts Financial Services Company (the “Sub-Adviser” or “MFS”) will be the sub-adviser for the Funds.<sup>8</sup> State Street Global Markets, LLC (the “Distributor” or “Principal Underwriter”) will be the principal underwriter and distributor of the Funds’ Shares. State Street Bank and Trust Company (the “Administrator,” “Custodian” or “Transfer Agent”)

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<sup>5</sup> Additional information regarding the Funds; Shares; investment objective, strategies, methodology, and restrictions; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice. See Notice supra note 3 and Registration Statement infra note 7, respectively.

<sup>6</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>7</sup> The Trust is registered under the 1940 Act. On December 21, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Funds (File Nos. 333-173276 and 811- 22542) (“Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812-13487) (“Exemptive Order”).

<sup>8</sup> MFS is a subsidiary of Sun Life of Canada (U.S.) Financial Services Holdings, Inc., which in turn is an indirect majority owned subsidiary of Sun Life Financial Inc. (a diversified financial services organization).

will serve as administrator, custodian and transfer agent for the Funds.<sup>9</sup> According to the Exchange, the Adviser and Sub-Adviser are not registered as broker-dealers but are affiliated with one or more broker-dealers and have implemented a “fire wall” with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds’ portfolios.<sup>10</sup>

A. Principal Investments (under normal circumstances)<sup>11</sup>

1. SPDR MFS Systematic Core Equity ETF

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<sup>9</sup> The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., 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); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR-NYSEArca-2010-57) (order approving listing of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving listing of Cambria Global Tactical ETF).

<sup>10</sup> See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, they will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate 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>11</sup> The term “under normal circumstances” 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. In the absence of normal circumstances, a Fund may (either directly or through the corresponding Portfolio (as described below) temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with a Fund’s investment objective and is in the best interest of a Fund. For example, a Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.

The SPDR MFS Systematic Core Equity ETF's investment objective will be to seek capital appreciation. The Fund will invest substantially all of its assets in the SSgA MFS Systematic Core Equity Portfolio (the "Core Equity Portfolio"), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Core Equity Portfolio (as described below).<sup>12</sup>

The Adviser or Sub-Adviser, with respect to the Core Equity Portfolio, will invest at least 80% of such Portfolio's net assets (plus the amount of borrowings for investment purposes) in equity securities. Equity securities in which the Portfolio may invest include common stocks, preferred stocks, securities convertible into stocks, and real estate investment trusts ("REITs"). REITs pool investors' funds for investment primarily in income producing real estate or real estate loans or interests.

The Adviser or Sub-Adviser may invest in exchange-traded products ("ETPs").<sup>13</sup> ETPs include exchange-traded funds registered under the 1940 Act; exchange-traded commodity

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<sup>12</sup> According to the Registration Statement, the Funds are intended to be managed in a "master-feeder" structure, under which each Fund will invest substantially all of its assets in, respectively, the Core Equity Portfolio, and, as described further below, the SSgA MFS Systematic Growth Equity Portfolio or the SSgA MFS Systematic Value Equity Portfolio (each of which is also referred to herein as "Portfolio" and, collectively, the "Portfolios"). Each Portfolio is a "master fund, which is a separate mutual fund that has an identical investment objective to its respective Portfolio. As a result, each Fund (*i.e.*, a "feeder fund") has an indirect interest in all of the securities owned by the corresponding Portfolio. Because of this indirect interest, each Fund's investment returns should be the same as those of the corresponding Portfolio, adjusted for the expenses of a Fund. In extraordinary instances, each Fund reserves the right to make direct investments in securities. Each Fund may discontinue investing through the master-feeder arrangement and pursue its investment objectives directly if the Fund's Board of Trustees determines that doing so would be in the best interests of shareholders.

<sup>13</sup> For each of the Portfolios, ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule

trusts; and exchange-traded notes (“ETNs”).<sup>14</sup> The Adviser or Sub-Adviser may invest up to 20% of its total assets in one or more ETPs that are qualified publicly traded partnerships (“QPTPs”) and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.

## 2. SPDR MFS Systematic Growth Equity ETF

The SPDR MFS Systematic Growth Equity ETF’s investment objective will be to seek capital appreciation. The Fund will invest substantially all of its assets in the SSgA MFS Systematic Growth Equity Portfolio (the “Growth Equity Portfolio”), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Growth Equity Portfolio.

With respect to the Growth Equity Portfolio, the Adviser or Sub-Adviser will invest at least 80% of such Portfolio’s net assets (plus the amount of borrowings for investment purposes) in equity securities. Equity securities in which the Growth Equity Portfolio may invest include common stocks, preferred stocks, securities convertible into stocks, and REITs.

The Adviser or Sub-Adviser may invest in ETPs.<sup>15</sup> The Adviser or Sub-Adviser may invest up to 20% of the Fund’s total assets in one or more ETPs that are QPTPs and whose

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8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The ETPs all will be listed and traded in the U.S. on registered exchanges. While the Funds may invest in inverse ETPs, the Funds will not invest in leveraged or inverse leveraged ETPs (e.g., 2X or 3X).

<sup>14</sup> ETNs are debt obligations of investment banks which are traded on exchanges and the returns of which are linked to the performance of market indexes. In addition to trading ETNs on exchanges, investors may redeem ETNs directly with the issuer on a weekly basis, typically in a minimum amount of 50,000 units, or hold the ETNs until maturity.

<sup>15</sup> See note 13, supra.

principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.

3. SPDR MFS Systematic Value Equity ETF

The SPDR MFS Systematic Value Equity ETF's investment objective will be to seek capital appreciation. The Fund will invest substantially all of its assets in the SSgA MFS Systematic Value Equity Portfolio (the "Value Equity Portfolio"), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a result, the Fund will invest indirectly through the Value Equity Portfolio.

The Adviser or Sub-Adviser, with respect to the Value Equity Portfolio, will invest at least 80% of such Portfolio's net assets (plus the amount of borrowings for investment purposes) in equity securities. Equity securities in which the Value Equity Portfolio may invest include common stocks, preferred stocks, securities convertible into stocks, and REITs.

The Adviser or Sub-Adviser may invest in ETPs.<sup>16</sup> The Adviser or Sub-Adviser may invest up to 20% of the Fund's total assets in one or more ETPs that are QPTPs and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.

B. Other Investments (under normal circumstances)

The Adviser or Sub-Adviser, with respect to each Portfolio, may invest up to 20% of a Portfolio's net assets in other securities and financial instruments. A Fund may (indirectly through its investments in the respective Portfolio or, in extraordinary circumstances, directly) invest in these securities and financial instruments.

Each Portfolio may invest in bonds, including corporate bonds and collateralized loan

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<sup>16</sup> See note 13, supra.

obligations (“CLOs”). While the assets underlying CLOs are typically “senior loans,” the assets may also include (i) unsecured loans, (ii) other debt securities that are rated below investment grade, (iii) debt tranches of other CLOs and (iv) equity securities incidental to investments in senior loans. Each Portfolio may invest up to 10% of a Portfolio’s net assets in high yield debt securities.

The Portfolios may purchase U.S.-listed common stocks and U.S.-listed preferred securities of foreign corporations, as well as U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities. Each Portfolio may purchase investments in common stock of foreign corporations in the form of depositary receipts, including American Depositary Receipts (“ADRs”), Global Depositary Receipts (“GDRs”) and European Depositary Receipts (“EDRs”).<sup>17</sup>

Each Portfolio may invest in sovereign debt, which may be in the form of conventional securities or other types of debt instruments such as loans or loan participations. Each Portfolio may invest in U.S. Government obligations. U.S. Government obligations include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies or instrumentalities.

The Portfolios may invest in variable and floating rate securities. A variable rate security provides for the automatic establishment of a new interest rate on set dates. The Portfolios may also purchase floating rate securities. A floating rate security provides for the automatic adjustment of its interest rate whenever a specified interest rate changes. Interest rates on these securities are ordinarily tied to, and are a percentage of, a widely recognized interest rate, such as the yield on 90-day U.S. Treasury bills or the prime rate of a specified bank. Each Portfolio may

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<sup>17</sup> A Portfolio may invest in unsponsored ADRs. Not more than 10% of the net assets of a Fund will be invested in unsponsored ADRs.



also invest in Variable Rate Demand Obligations, which are short-term tax-exempt fixed income instruments whose yield is reset on a periodic basis.

The Portfolios may invest in inflation-protected public obligations, commonly known as “TIPS,” of the U.S. Treasury, as well as TIPS of major governments and emerging market countries, excluding the United States.

The Portfolios may each invest in U.S. agency mortgage pass-through securities primarily through the use of “to-be-announced” or “TBA transactions.” TBA transactions generally are conducted in accordance with widely-accepted guidelines which establish commonly observed terms and conditions for execution, settlement and delivery. In a TBA transaction, the buyer and seller decide on general trade parameters, such as agency, settlement date, par amount, and price.<sup>18</sup>

The Portfolios may invest up to 15% of net assets in asset-backed and commercial mortgaged-backed securities. Both asset-backed and commercial mortgage-backed securities represent interests in “pools” of assets in which payments of both interest and principal on the securities are made on a regular basis. The payments are, in effect, “passed through” to the holder of the securities (net of any fees paid to the issuer or guarantor of the securities).

Each Portfolio may invest in restricted securities. Restricted securities are securities that are not registered under the Securities Act, but which can be offered and sold to “qualified institutional buyers” under Rule 144A under the Securities Act.<sup>19</sup>

The Portfolios may conduct foreign currency transactions on a spot (*i.e.*, cash) or forward basis (*i.e.*, by entering into forward contracts to purchase or sell foreign currencies). At the

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<sup>18</sup> To minimize the risk of default by a counterparty, a Portfolio will enter into TBA transactions only with established counterparties (such as major broker-dealers) and the Adviser will monitor the creditworthiness of such counterparties.

<sup>19</sup> 15 U.S.C. 77a.

discretion of the Adviser, the Portfolios may enter into forward currency exchange contracts for hedging purposes to help reduce the risks and volatility caused by changes in foreign currency exchange rates, or to gain exposure to certain currencies.

Each Portfolio may invest a portion of its assets in Build America Bonds.<sup>20</sup>

Each Portfolio may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. Each Portfolio may also enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. In addition to repurchase agreements, each Portfolio may invest in short-term instruments, including money market instruments, (including money market funds advised by the Adviser), cash and cash equivalents, on an ongoing basis to provide liquidity or for other reasons.<sup>21</sup> Each Portfolio may also invest in commercial paper.

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<sup>20</sup> Build America Bonds offer an alternative form of financing to state and local governments whose primary means for accessing the capital markets has historically been through the issuance of tax-free municipal bonds. Issuance of Build America Bonds ceased on December 31, 2010. The Build America Bonds outstanding continue to be eligible for the federal interest rate subsidy, which continues for the life of the Build America Bonds; however, no bonds issued following expiration of the Build America Bond program are eligible for the federal tax subsidy.

<sup>21</sup> Money market instruments are generally short-term investments that may include but are not limited to: (i) shares of money market funds (including those advised by the Adviser); (ii) obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (“CDs”), bankers’ acceptances, fixed time deposits and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the date of purchase “Prime-1” by Moody’s Investor’s Service or “A-1” by Standard & Poor’s, or if unrated, of comparable quality as determined by the Adviser; (v) non-convertible corporate debt securities (e.g., bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days

Each Portfolio may invest in the securities of other investment companies, including affiliated funds, money market funds and closed-end funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. Each Fund will invest substantially all of its assets in the corresponding Portfolio.

C. Fund Investment Restrictions

Each Portfolio will be classified as “diversified.”<sup>22</sup> The Portfolios do not intend to concentrate their investments in any particular industry.<sup>23</sup> The Portfolios intend to qualify for and to elect treatment as a separate regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code.<sup>24</sup>

Each Portfolio may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance. The Portfolios will monitor their respective 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

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and that satisfy the rating requirements set forth in Rule 2a-7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by a Portfolio. Commercial paper consists of short-term, promissory notes issued by banks, corporations and other entities to finance short-term credit needs. Any of these instruments may be purchased on a current or a forward-settled basis.

<sup>22</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a-5(b)(1)).

<sup>23</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

<sup>24</sup> 26 U.S.C. 851 et seq.

assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Neither the Funds nor the Portfolios will invest in options contracts, futures contracts, or swap agreements.

With the exception of unsponsored ADRs, which will comprise no more than 10% of a Fund's net assets, all equity securities in which the Funds may invest will trade on markets that are members of the Intermarket Surveillance Group ("ISG") or that have entered into a comprehensive surveillance agreement with the Exchange.<sup>25</sup>

Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

### III. Discussion and Commission's 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 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 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.

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<sup>25</sup> See note 38, *infra*.

<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).

The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>28</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. 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 information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Portfolio Indicative Value ("PIV"), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session through one or more major market data vendors.<sup>29</sup>

Intra-day and closing price information regarding equity securities traded on a national securities exchange, including common stocks, preferred stocks, securities convertible into stocks, ETPs and REITs, will be available from the exchange on which such securities are traded. Intra-day and closing price information regarding unsponsored ADRs will be available from major market data vendors such as Bloomberg and Reuters.<sup>30</sup> Intra-day and closing price

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

<sup>29</sup> See Notice, supra note 3, 78 FR at 65413. According to the Exchange, several major market data vendors display and/or make widely available PIVs taken from CTA or other data feeds.

<sup>30</sup> See Amendment No. 1, supra note 4.

information regarding fixed income securities, including municipal bonds, mortgage-backed securities, treasuries, corporate bonds, and foreign bonds, will be available from major market data vendors.<sup>31</sup> Price information regarding investment company securities, TBA transactions, Rule 144A securities, repurchase agreements, reverse repurchase agreements, and foreign currency spot prices will be available from major market data vendors. Price information regarding foreign currency forwards will be available from major market data vendors.<sup>32</sup>

On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their website the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Funds' calculation of NAV at the end of the business day.<sup>33</sup> The NAV of each Fund will be calculated by the Custodian and determined at the close of the regular trading session on the New York Stock Exchange ("NYSE") (ordinarily 4:00 p.m. Eastern time on each day that such exchange is open, provided that fixed-income assets (and, accordingly, a Fund's NAV) may be valued as of the announced closing time for trading in fixed-income instruments on any day that the Securities Industry and Financial Markets Association (or applicable exchange or market on which a Portfolio's investments are traded) announces an early closing time. The website for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

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<sup>31</sup> See id.

<sup>32</sup> See id.

<sup>33</sup> Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Funds 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>34</sup> 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 a Fund may be halted.<sup>35</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser, as the Reporting Authority, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of each Fund's portfolio.<sup>36</sup> The Exchange states that the Adviser and Sub-Adviser, neither of which is registered as a broker-dealer, have implemented a "fire wall" with respect to affiliated broker-dealers regarding access to information concerning the composition and/or changes to the Funds' portfolios. Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an

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<sup>34</sup> These reasons may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing 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>35</sup> See NYSE Arca Equities Rule 8.600(d)(2)(D).

<sup>36</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Commission notes that the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange,<sup>37</sup> will communicate as needed regarding trading in the Shares and exchange-traded securities underlying the Shares with other markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).<sup>38</sup>

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

- (1) The Shares will conform to the initial and continuing listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (3) Except for up to 10% of unsponsored ADRs, all equity securities that the Funds will invest in will trade in markets that are members of the ISG or are parties to a CSSA with the Exchange.

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<sup>37</sup> The Exchange states that, while 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.

<sup>38</sup> For a list of the current members of ISG, see <http://www.isgportal.org>. The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.



- (4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) 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; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) 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 (f) trading information.
- (6) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Exchange Act,<sup>39</sup> as provided by NYSE Arca Equities Rule 5.3.<sup>40</sup>
- (7) Neither the Funds nor the Portfolios will invest in options contracts, futures contracts, or swap agreements.
- (8) Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

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<sup>39</sup> 17 CFR 240.10A-3.

<sup>40</sup> See Notice, supra note 3, 78 FR at 65414.

- (9) Each Portfolio may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser.
- (10) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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 No. SR-NYSEArca-2013-105 on the subject line.

##### Paper comments:

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

All submissions should refer to File No. SR-NYSEArca-2013-105. 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 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 such 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 No. SR-NYSEArca-2013-105 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

As discussed above,<sup>41</sup> through Amendment No. 1, the Exchange revises the proposed rule change by providing greater detail about how the Funds' NAVs are calculated and the availability of price information regarding the Funds' holdings. The Commission believes that Amendment No. 1 provides more support for the Exchange's contention that its proposed rule change consistent with the Section 6(b)(5) of the Act.<sup>42</sup> In particular, Amendment No. 1 provides: (1) greater clarity regarding the valuation of the Shares; and (2) information regarding the ability of market participants to independently value the Shares. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>43</sup> to approve the proposed

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<sup>41</sup> See note 4, *supra*.

<sup>42</sup> 15 U.S.C. 78s(b)(5).

<sup>43</sup> 15 U.S.C. 78s(b)(2).

rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>44</sup> that the proposed rule change (SR-NYSEArca-2013-105), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>44</sup> 15 U.S.C. 78s(b)(2).

<sup>45</sup> 17 CFR 200.30-3(a)(12).