

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71377; File No. SR-NYSEArca-2013-132)

January 23, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3 Thereto, to List and Trade Shares of Merk Hard Currency ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On November 22, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Merk Hard Currency ETF (“Fund”) of the Forum ETF Trust (“Trust”). The proposed rule change was published for comment in the Federal Register on December 11, 2013.³ On December 19, 2013, the Exchange (1) submitted but subsequently withdrew Amendment No. 1 to the proposed rule change, and (2) submitted Amendment No. 2 to the proposed rule change. On January 10, 2014, the Exchange submitted Amendment No. 3 to the proposed rule change.⁴ The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment Nos. 2 and 3 thereto.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70994 (Dec. 5, 2013), 78 FR 75423 (“Notice”).

⁴ In Amendment No. 2, the Exchange provided further information regarding where pricing information for certain Fund assets can be found and corrected certain cross references. In Amendment No. 3, the Exchange clarified: (1) that the Fund will not invest in any non-U.S. equity securities and that the Fund will not invest in American Depositary Receipts, European Depositary Receipts, Global Depositary Receipts (collectively referred to as “depository receipts”), New York Registered Shares, or American Depositary Shares and removed all references thereto; and (2) where pricing information for spot currency transactions can be found. Because Amendment Nos. 2 and 3 do not materially affect the substance of the proposed rule change or raise novel or unique issues, Amendment Nos. 2 and 3 did not require notice and comment.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by the Trust,⁵ a Delaware statutory trust that is registered with the Commission as an open-end management investment company. Forum Investment Advisors, LLC (“Investment Manager”) is the investment manager of the Fund. Merk Investments, LLC (“Investment Adviser”) is the investment adviser of the Fund.⁶ Foreside Fund Services LLC is the Fund’s principal underwriter and distributor of the Fund’s Shares. Atlantic Fund Administration, LLC, an affiliate of the Investment Manager, serves as the administrator for the Fund. The Bank of New York Mellon Corporation serves as custodian and transfer agent for the Fund. The Exchange represents that neither the Investment Manager nor the Investment Adviser is a broker-dealer or is affiliated with a broker-dealer.⁷

⁵ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On April 12, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (“Securities Act”) and under the 1940 Act relating to the Fund (File Nos. 333-180250 and 811-22679) (“Registration Statement”). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30549 (June 4, 2013) (File No. 812-13915-01) (“Exemptive Order”).

⁶ The Investment Adviser will be responsible for the day-to-day portfolio management of the Fund and, as such, will make all investment decisions for the Fund and is responsible for implementing the Fund’s investment strategy. The Investment Manager will develop the overall investment program for the Fund (which includes working with the Investment Adviser to define principal investment strategies) and will be responsible for overseeing and reporting to the Board of the Trust regarding the Investment Adviser.

⁷ See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event that (a) the Investment Manager or Investment Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new investment adviser is or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate, as the case may be, regarding access to information concerning the composition of, or changes to, the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including other permitted portfolio holdings and investment restrictions.⁸

Description of the Fund

The Fund's investment objective is to seek to profit from a rise in hard currencies relative to the U.S. dollar. The Fund will be actively managed and does not seek to replicate the performance of a specified index. Under normal market conditions,⁹ the Fund will invest at least 80% of the value of its net assets (plus borrowings for investment purposes) in a basket of hard currency-denominated investments composed of high-quality, short-term¹⁰ debt instruments, physical gold, and gold-related securities.¹¹

The term "hard currencies" is used to describe currencies of countries pursuing what the Investment Adviser believes to be "sound" monetary policy and gold.¹² Sound monetary policy

⁸ The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, supra notes 3 and 5, respectively.

⁹ The term "under normal market conditions" includes, but is not limited to, the absence of adverse market, economic, political or other conditions including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

¹⁰ According to the Exchange, the Fund will define "short-term" based upon an instrument's remaining maturity period, not the initial maturity period. For example, a twenty-year bond with three months remaining until maturity will be considered to be a short-term debt instrument.

¹¹ "Gold-related securities" are exchange-traded products ("ETPs") that invest directly in gold bullion. ETPs that hold gold, physically or indirectly, are not regulated under the 1940 Act and are not afforded the protections thereunder.

¹² Provided that the Investment Adviser deems the following currencies to be backed by

is defined by the Investment Adviser as a monetary policy providing an environment fostering long-term price stability. The Investment Adviser considers gold to be the only currency with intrinsic value and, as such, qualifies as a hard currency.

The term “high-quality” refers to debt instruments rated in the top three ratings by a U.S. nationally recognized ratings service, or that the Investment Adviser considers comparable in quality to debt instruments rated in the top three ratings.¹³

The Investment Adviser will determine currency allocations based on an analysis of monetary policies pursued by central banks and economic environments. The Investment Adviser will search for currencies that, in the Investment Adviser’s opinion, are backed by sound monetary policy or gold. Once this determination has been made, money market or other debt instruments will be selected to create a liquid portfolio of short duration and high credit quality.

The Fund will specifically seek the currency risk of select countries pursuing what the Investment Adviser believes are sound monetary policies. As long-term price stability is unlikely to be achieved by most currencies, if any, the Investment Adviser will focus on a

sound monetary policy, “hard currencies” include, without limitation: Argentine Peso (ARS); Australian Dollar (AUD); Brazilian Real (BRL); British Pound (GBP); Canadian Dollar (CAD); Chilean Peso (CLP); Chinese Renminbi (CNY); Colombian Peso (COP); Czech Koruna (CZK); Danish Krone (DKK); Euro (EUR); Hong Kong Dollar (HKD); Hungarian Forint (HUF); Iceland Krona (ISK); Indian Rupee (INR); Indonesian Rupiah (IDR); Israeli Shekel (ILS); Japanese Yen (JPY); Malaysian Ringgit (MYR); Mexican Peso (MXN); New Zealand Dollar (NZD); Norwegian Krone (NOK); Pakistani Rupee (PKR); Peruvian New Sol (PEN); Philippine Peso (PHP); Polish Zloty (PLN); Russian Ruble (RUB); Singapore Dollar (SGD); South African Rand (ZAR); South Korean Won (KRW); Swedish Krona (SEK); Swiss Franc (CHF); Taiwanese Dollar (TWD); Thai Baht (THB); Thai Baht Onshore (THO); Turkish Lira (TRY); U.S. Dollar (USD); and successor currencies of the aforementioned currencies, if any.

¹³ In determining which instruments are comparable in quality to instruments rated in the top three ratings, the Investment Adviser will evaluate the relative creditworthiness of issuers and the relative credit quality of debt issues. Consideration may be given to an issuer’s financial strength, capacity for timely payment and ability to withstand adverse financial developments, as well as any ratings assigned to other instruments issued by that issuer.

country's monetary policy that fosters such stability. The Investment Adviser will invest in a basket of hard currency-denominated investments that may include physical gold and gold-related securities to reduce the Fund's exposure to the risks of any one currency. The Investment Adviser may adapt the currency allocations as its analysis of monetary policies and economic environments evolves.

The Investment Adviser may sacrifice yield in return for high credit quality of debt securities. The Investment Adviser may limit or exclude currencies if, in the Investment Adviser's opinion, the potential for appreciation is not backed by sound monetary policy.

If the Investment Adviser deems a currency crisis likely, it is possible that the Fund will restrict its investments to a few currencies that meet the Investment Adviser's investment criteria for sound monetary policies and practices.

Principal Investments

As noted above, under normal market conditions,¹⁴ the Fund will invest at least 80% of the value of its net assets (plus borrowings for investment purposes) in hard currency-denominated investments composed of high-quality, short-term debt instruments,¹⁵ physical gold, and gold-related securities.

To try to reduce interest rate and credit risk to its portfolio, the Fund will seek to maintain a weighted average portfolio maturity of less than eighteen months, although the Fund may maintain a weighted average portfolio maturity of greater than eighteen months at any given time. In addition, the Fund will only buy money market or other short-term debt instruments that are rated in the top three ratings by U.S. nationally recognized ratings services or that the Investment Adviser considers comparable in quality to instruments rated in the top three

¹⁴ See supra note 9.

¹⁵ See supra note 10.

ratings.¹⁶

The high quality, short term debt instruments in which the Fund will primarily invest include: U.S. dollar- and non-U.S. dollar-denominated money market instruments and similar securities; debt obligations issued by the U.S. and foreign national, provincial, state or municipal governments or their political subdivisions or agencies, central banks, sovereign entities, supranational organizations or special purpose entities organized or backed by any of the foregoing entities (“Special Purpose Entities”); debt instruments issued by U.S. and foreign corporations;¹⁷ and debt obligations issued by entities that the Investment Adviser considers to be comparable to entities in the categories enumerated above.

Money market instruments in which the Fund may invest include short-term government securities, floating and variable-rate notes, certificates of deposit, time deposits, bankers’ acceptances, commercial paper, and other short-term liquid instruments.

Securities issued by the U.S. Government in which the Fund may invest include short-term U.S. Treasury obligations and short-term debt obligations. The Fund may also purchase certificates not issued by the U.S. Department of the Treasury, which evidence ownership of future interest, principal, or interest and principal payments on obligations issued by the U.S. Department of the Treasury. The Fund may invest in obligations issued or guaranteed by U.S.

¹⁶ See supra note 13.

¹⁷ The Fund will typically invest only in debt instruments that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally, a debt instrument must have \$100 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered sufficiently liquid at the time of investment. The Fund may invest up to 25% of its total assets in debt instrument having a lower par amount outstanding to the extent the Investment Advisor determines such an investment to be appropriate. In any such determination, the Investment Advisor will evaluate the relative creditworthiness of issuers and the relative credit quality of debt issues. Consideration may be given to an issuer’s financial strength, capacity for timely payment, and ability to withstand adverse financial developments.

Government agencies.¹⁸ The Fund may also invest in separated or divided U.S. government securities.¹⁹ Foreign government securities may include direct obligations, as well as obligations guaranteed by the foreign government and obligations issued by Special Purpose Entities.

The Fund may invest in U.S. and foreign corporate debt obligations. Corporate debt obligations include corporate bonds, debentures, notes, commercial paper, and other similar corporate debt instruments. In addition, the Fund also may invest in corporate debt securities registered and sold in the U.S. by foreign issuers (sometimes called Yankee bonds) and those sold outside the U.S. by foreign or U.S. issuers (sometimes called Eurobonds).

The Fund may invest in investment-grade debt securities and non-investment-grade debt securities. Investment-grade means rated in the top four long-term rating categories, or unrated and determined by the Investment Adviser to be of comparable quality. The Fund may invest up to 5% of its total assets in non-investment-grade debt securities, including defaulted securities, however the Fund does not expect to invest up to 5% in defaulted securities.

The Fund may invest in physical gold and gold-related securities. To the extent that the Fund invests in gold, it may do so by investing directly in physical gold or indirectly by investing through U.S.-listed ETPs²⁰ that invest in gold bullion.

¹⁸ Obligations issued or guaranteed by U.S. Government agencies include: (1) obligations issued or guaranteed by U.S. Government agencies and instrumentalities that are backed by the full faith and credit of the U.S. Government; and (2) securities that are guaranteed by agencies or instrumentalities of the U.S. Government but are not backed by the full faith and credit of the U.S. Government.

¹⁹ These instruments represent a single interest or principal payment on a U.S. government security that has been separated from all the other interest payments as well as the security itself. While the components of such instruments are drawn from U.S. government securities, separated or divided securities may be formed by non-governmental institutions.

²⁰ Such ETPs may include the following securities: Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200) and Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201). The Fund may invest in ETPs which are not registered

Other Investments

In addition to the principal investments in hard currency-denominated investments described above, the Fund may make certain other investments. In addition to the U.S.-listed ETPs that the Fund may use as an indirect investment in gold, the Fund may invest in other ETPs, including exchange-traded funds (“ETFs”)²¹ and exchange traded notes (“ETNs”).²²

The Fund may enter into repurchase agreements. If the Fund enters into a repurchase agreement, it will maintain possession of the purchased securities and any underlying collateral. The Fund may also enter into reverse repurchase agreements. A counterparty to a reverse repurchase agreement must be a primary dealer that reports to the Federal Reserve Bank of New York or one of the largest 100 commercial banks in the United States.

While the Fund is permitted to invest in exchange-listed common and preferred stock and warrants, the Exchange states that the Fund will not generally invest in such assets. The Fund will not invest in any non-U.S. equity securities.

The Fund may invest in convertible securities, which include debt securities, preferred stock, or other securities that may be converted into, or exchanged for, a given amount of common stock of the same or a different issuer during a specified period and at a specified price in the future.

The Fund may invest in variable amount master demand notes. All variable amount

under the 1940 Act. The Fund may invest in ETPs sponsored by the Investment Adviser or its affiliates.

²¹ For purposes of this proposed rule change, ETFs are securities that are registered pursuant to the 1940 Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rules 5.2(j)(3), 8.100, and 8.600.

²² For purposes of this proposed rule change, ETNs are securities that are registered pursuant to the Securities Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(6).

master demand notes acquired by the Fund will be payable within a prescribed notice period not to exceed seven days.

The Fund may hold cash in bank deposits in foreign currencies. The Fund may conduct foreign currency exchange transactions either on a spot (cash) basis at the spot rate prevailing in the foreign exchange market or by entering into a forward foreign currency contract. The Fund may enter into forward contracts in order to “lock in” the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.

For the purpose of hedging, efficient portfolio management, generating income, or enhancement of returns, the Fund may, from time to time, enter into forward currency contracts,²³ including currency forwards and cross currency forwards. The Fund may enter into forward currency contracts to hedge against risks arising from securities the Fund owns or anticipates purchasing, or the U.S. dollar value of interest and dividends paid on those securities.²⁴ The Fund may invest in a combination of forward currency contracts and U.S. dollar-denominated instruments in an attempt to obtain an investment result that is substantially the same as a direct investment in a foreign currency-denominated instrument. For hedging purposes, the Fund may invest in forward currency contracts to hedge either specific transactions (transaction hedging) or portfolio positions (position hedging).²⁵

²³ A forward currency contract is an obligation to purchase or sell a specific currency at a future date, which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract.

²⁴ To the extent the Fund retains various U.S. fixed-income instruments to settle derivative contracts, the Investment Adviser expects such instruments to generate income for the Fund. The value of such investments (to the extent used to cover the Fund’s net exposure under the forward foreign currency contracts and similar instruments) and forward contracts and other instruments that provide investment exposure to currencies will be counted for purposes of the Fund’s 80% policy.

²⁵ The Investment Adviser seeks to mitigate counterparty risk associated with forward currency contracts by employing multiple brokers to execute trades and by monitoring

In order to respond to adverse market, economic, political, or other conditions, the Fund may assume a temporary defensive position that is inconsistent with its principal investment strategies and invest, without limitation, in cash or cash equivalents (including commercial paper, certificates of deposit, banker's acceptances, and time deposits) which may be U.S. dollar-denominated.

Investment Restrictions

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 Investment Adviser consistent with Commission guidance²⁶ and master demand notes. 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.

The Fund may not purchase a security if, as a result, more than 25% of its total assets would be invested in securities of issuers conducting their principal business activities in the same industry. For purposes of this limitation, there is no limit on investments in U.S.

the creditworthiness of counterparties through analysis of credit ratings available through U.S. nationally recognized ratings services.

²⁶ In reaching liquidity decisions, the Investment Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

government securities and repurchase agreements covering U.S. government securities. With respect to foreign government securities, the Fund treats each foreign government or sovereign as its own industry.

Although the Fund intends to invest in a variety of securities and instruments, the Fund will be considered “non-diversified” for the purposes of the 1940 Act, which means that it may invest more of its assets in the securities of a smaller number of issuers than if it were a diversified fund.

The Fund will use leveraged investment techniques only when the Investment Adviser believes that leveraging and the returns available to the Fund from investing the cash will provide investors with a potentially higher return. Such leveraged investment techniques include borrowing, repurchase agreements, reverse repurchase agreements, and securities lending. The Fund will not invest in leveraged or inverse leveraged ETPs. Such investments will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund’s investment objective.

The Fund will not directly invest in options contracts, futures contracts, or swap agreements. The Fund intends, for each taxable year, to qualify for treatment as a “regulated investment company” under Subchapter M of the Internal Revenue Code of 1986, as amended.²⁷

III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act²⁸ and the rules and regulations thereunder applicable to a

²⁷ 26 U.S.C. 851.

²⁸ 15 U.S.C. 78f.

national securities exchange.²⁹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,³⁰ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,³¹ 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 and underlying U.S. exchange-traded equities, including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock, and warrants, will be available via the Consolidated Tape Association ("CTA") high-speed line. Quotation information from brokers and dealers or pricing services will be available for spot currency transactions, forwards, fixed income securities, other money market instruments, and repurchase and reverse repurchase agreements held by the Fund. Price information for the Fund's portfolio securities and other instruments is generally readily available through major market data vendors, automated quotation systems, published or other public sources and, for listed securities, the securities

²⁹ 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).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

exchange on which they are listed and traded. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg.³²

On each business day, before commencement of trading of Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (“Disclosed Portfolio”) held by the Fund and that will form the basis for the Fund’s calculation of NAV at the end of the business day.³³ In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), that will be based upon the current value for the components of the Disclosed Portfolio, will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.³⁴ The Fund will calculate its NAV as of the close of trading on the Exchange (normally 4:00 p.m., Eastern Time) on each weekday except on days when the

³² According to the Exchange, Reuters and Bloomberg provide at no charge on their websites delayed information regarding the spot price of gold, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. ICAP plc provides an electronic trading platform called EBS for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. The Exchange also states that there are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the daily London noon Fix is publicly available at no charge at www.thebulliondesk.com.

³³ On a daily basis, the Fund will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name or description of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of securities and financial instruments in the portfolio. The website information will be publicly available at no charge.

³⁴ According to the Exchange, several major market data vendors display or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

Exchange is closed.³⁵ 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. 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 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.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be

³⁵ According to the Exchange, the Fund will value securities for which market quotations are readily available at current market value, except for money market instruments with a maturity of sixty days or less, which may be valued at amortized cost. Securities for which market quotations are readily available, such as exchange-listed common stock and preferred stock and warrants, will be valued using the last reported sales price provided by independent pricing services as of the close of trading on the Exchange. In the absence of sales, such securities will be valued at the mean of the last bid and ask prices. Non-exchange-traded securities for which quotations are readily available will be valued at the mean between the current bid and ask prices. Debt securities, including master demand notes and convertible securities, may be valued at prices supplied by the Fund's pricing agents based on broker or dealer-supplied valuations or matrix pricing, a method of valuing securities by reference to the value of other securities with similar characteristics such as rating, interest rate, and maturity. Forward currency contracts will be valued at the mean of bid and ask prices for the time period interpolated from rates reported by an independent pricing service for proximate time periods. Spot currency transactions will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Repurchase agreements and reverse repurchase agreements will generally be valued at par. Gold will generally be valued at prices supplied by the Fund's pricing agents based on the spot price for an ounce of gold. Investments in open-end registered investment companies will be valued at their NAV, and investments in other ETPs will be valued using market prices.

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,³⁶ and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio. In addition, the Exchange states that neither the Investment Manager nor the Investment Adviser is a broker-dealer or is affiliated with a broker-dealer.³⁷ The Exchange represents that trading in the Shares will be subject to the

³⁶ These reasons may include: (1) the extent to which trading is not occurring in the securities or the financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. 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.

³⁷ See supra note 7 and accompanying text. The Exchange states that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Investment Manager, the Investment Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless the investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated

existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³⁸ The Exchange further 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 applicable federal securities laws. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

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

- (1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The Exchange represents that its surveillance 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
- (4) FINRA, on behalf of the Exchange, will communicate as needed regarding

an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

³⁸ The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, and any other exchange-traded products) with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, and any other exchange-traded products) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, and any other exchange-traded products) from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The ETPs (including ETFs and ETNs), common and preferred stock, and warrants in which the Fund may invest all will be listed and traded on an exchange which is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, 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.

- (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 unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its 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 Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value 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 Fund must be in compliance with Rule 10A-3 under the Act,³⁹ as provided by NYSE Arca Equities Rule 5.3.
- (7) 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 Investment Adviser consistent with Commission guidance, and master demand notes.
- (8) The Fund will only buy money market or other short-term debt instruments that are rated in the top three ratings by U.S. nationally recognized ratings services or that the Investment Adviser considers comparable in quality to instruments rated in the top three ratings. The Fund may only invest up to 5% of its total assets in non-investment-grade debt securities.

³⁹ See 17 CFR 240.10A-3.

- (9) If the Fund enters into a repurchase agreement, it will maintain possession of the purchased securities and any underlying collateral. A counterparty to a reverse repurchase agreement must be a primary dealer that reports to the Federal Reserve Bank of New York or one of the largest 100 commercial banks in the United States.
- (10) The Fund will not invest in: (a) any non-U.S. equity securities; (b) options contracts, futures contracts, or swap agreements; and (c) leveraged or inverse leveraged ETPs.
- (11) The Fund will typically invest only in debt instruments that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally a debt instrument must have \$100 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered sufficiently liquid at the time of investment. The Fund may invest up to 25% of its total assets in debt instruments having a lower par amount outstanding to the extent the Investment Advisor determines such an investment to be appropriate. In any such determination, the Investment Advisor will evaluate the relative creditworthiness of issuers and the relative credit quality of debt issues. Consideration may be given to an issuer's financial strength, capacity for timely payment, and ability to withstand adverse financial developments.
- (12) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth

above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁴⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴¹ that the proposed rule change (SR-NYSEArca-2013-132), as modified by Amendment Nos. 2 and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Elizabeth M. Murphy
Secretary

⁴⁰ 15 U.S.C. 78f(b)(5).

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² 17 CFR 200.30-3(a)(12).