

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73004; File No. SR-NYSEArca-2014-76)

September 5, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, 4, and 5, to List and Trade Shares of the Cambria Global Momentum ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On July 1, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Cambria Global Momentum ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The Exchange filed Amendment No. 1 to the proposal on July 14, 2014, and on July 15, 2014, the Exchange filed Amendment No. 2 to the proposal.<sup>3</sup> The proposed rule change, as modified by Amendments No. 1 and 2, was published for comment in the Federal Register on July 22, 2014.<sup>4</sup> On July 22, 2014, the Exchange filed Amendment No. 3 to the proposal;<sup>5</sup> on July 29, 2014, the Exchange filed Amendment No. 4 to the proposal;<sup>6</sup> and on September 4, 2014, the Exchange filed partial Amendment No. 5 to the proposal.<sup>7</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> Amendment No. 1 replaced and superseded the original filing in its entirety, and Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 72631 (July 16, 2014), 79 FR 42605 (“Notice”).

<sup>5</sup> Amendment No. 3 replaced and superseded Amendment No. 2 in its entirety. In Amendment No. 3, the Exchange modified inconsistent representations in the filing regarding leverage to clarify that the Fund’s investments will be consistent with the Fund’s investment objective and will not be used to achieve leveraged returns (i.e., 2X and 3X) of the Fund’s broad-based securities market index (as defined in Form N-1A).

<sup>6</sup> Amendment No. 4 replaced and superseded Amendment No. 3 in its entirety. In

The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1, 2, 3, 4 and 5.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to 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 Cambria ETF Trust (“Trust”), a Delaware statutory trust which is registered with the Commission as an open-end management investment company.<sup>8</sup> Cambria Investment Management, L.P. (“Adviser”) will serve as the investment adviser of the Fund. The Exchange states that the Adviser is not registered as a broker-dealer or affiliated with a broker-dealer.<sup>9</sup>

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Amendment No. 4, the Exchange modified Exhibit 1 to be consistent with the 19b-4, as amended by Amendment No. 3.

<sup>7</sup> Amendment No. 5 partially amended the filing, as amended by Amendment Nos. 1, 2, 3 and 4, to: (i) remove the Fund’s ability to invest in inverse Underlying Vehicles (as defined herein); (ii) clarify that the Fund will not invest in leveraged Underlying Vehicles; and (iii) clarify that the Fund’s investments will not be used to achieve inverse returns or leveraged returns. Because Amendment Nos. 3, 4 and 5 provide clarification to the proposed rule change and do not materially affect the substance of the proposed rule change or raise any unique or novel regulatory issues, Amendment Nos. 3, 4 and 5 do not require notice and comment.

<sup>8</sup> The Trust will be registered under the Investment Company Act of 1940 (“1940 Act”). The Exchange states that on March 4, 2014, the Trust filed an amendment to the Trust’s registration statement on Form N-1A under the Securities Act of 1933 (“1933 Act”) (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333- 180879 and 811-22704) (“Registration Statement”). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30340 (January 4, 2013) (“Exemptive Order”). The Exchange represents that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

<sup>9</sup> See NYSE Arca Equities Rule 8.600, Commentary .06. The Exchange represents that in the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or 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, such adviser or sub-adviser will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate

The Exchange has made the following representations and statements in describing the Fund and its principal investment policies, other investments, and investment restrictions.<sup>10</sup>

#### Principal Investment Policies

The Fund will seek to preserve and grow capital from investments in the U.S. and foreign equity, fixed income, commodity and currency markets, independent of market direction. The Fund will be considered a “fund of funds” that seeks to achieve its investment objective by primarily investing in other 1940 Act-registered exchange-traded funds (“ETFs”) and other exchange traded products (“ETPs”), including, but not limited to, exchange-traded notes (“ETNs”),<sup>11</sup> exchange traded currency trusts, and closed-end funds<sup>12</sup> (collectively, “Underlying Vehicles”)<sup>13</sup> that offer diversified exposure, including inverse exposure,<sup>14</sup> to global regions

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regarding access to information concerning the composition and/or changes to the portfolio, and such adviser or sub-adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

<sup>10</sup> The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice and Registration Statement, as applicable. See supra notes 4 and 8, respectively.

<sup>11</sup> ETFs are registered investment companies whose shares are exchange-traded and give investors a proportional interest in the pool of securities and other assets held by the ETF. ETPs are exchange-traded equity securities whose value derives from an underlying asset or portfolio of assets, which may correlate to a benchmark, such as a commodity, currency, interest rate or index. ETFs are one type of ETP. ETNs are unsecured and unsubordinated debt securities whose value derives, in part, from an underlying asset or benchmark and, in part, from the credit quality of the securities’ issuer.

<sup>12</sup> A closed-end fund is a pooled investment vehicle that is registered under the 1940 Act and whose shares are listed and traded on a U.S. national securities exchange.

<sup>13</sup> The Exchange states that for purposes of this filing, the term “Underlying Vehicles” includes 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

(including emerging markets), countries, styles (i.e., market capitalization, value, growth, etc.) and sectors. Under normal market conditions,<sup>15</sup> the Fund will invest at least 80% of its net assets in the securities of Underlying Vehicles.

The Fund will seek to preserve and grow capital by producing absolute returns with reduced volatility and manageable risk and drawdowns. The Fund will invest in Underlying Vehicles spanning all the major world asset classes including equities, bonds (including high yield bonds, which are commonly referred to as “junk bonds”), real estate, derivatives, commodities, and currencies. The Adviser will actively manage the Fund’s portfolio utilizing a quantitative strategy with risk management controls in an attempt to protect capital. Through Underlying Vehicles, the Fund may have exposure to companies in any industry and of any market capitalization. Under normal market conditions, the Fund expects to invest at least 40% of its net assets, including through investments in Underlying Vehicles, in securities of issuers located in at least three different countries (including the United States).

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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); Commodity Futures Trust Shares (as described in NYSE Arca Equities Rule 8.204); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. All Underlying Vehicles will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse (i.e., -1X) or leveraged (e.g., 2X, -2X, 3X or -3X) Underlying Vehicles.

<sup>14</sup> The Commission understands that, although the Fund will not invest in inverse Underlying Vehicles (i.e., Underlying Vehicles that seek to achieve returns equal to -1X an index or benchmark), the Fund may invest in Underlying Vehicles that may provide inverse exposure in certain circumstances, such as ETFs that pursue a long/short strategy.

<sup>15</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.

Through Underlying Vehicles, the Fund may invest in shares of real estate investment trusts (“REITs”), which are pooled investment vehicles that invest primarily in real estate or real estate-related loans and trade on a U.S. exchange.

#### Other Investments

While, under normal market conditions, the Fund will invest at least 80% of its net assets in Underlying Vehicles as described above, the Fund may invest its remaining 20% of net assets in other securities and financial instruments, other than Underlying Vehicles, including futures contracts, cash and cash equivalents, as described below.

The Fund may invest in exchange-traded common stocks. The Fund also may invest in foreign securities by purchasing “Depository Receipts,” including American Depository Receipts (“ADRs”), European Depository Receipts (“EDRs”), and Global Depository Receipts (“GDRs”), or other securities convertible into securities of issuers based in foreign countries. These securities may not necessarily be denominated in the same currency as the securities which they represent.<sup>16</sup>

With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group (“ISG”) or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net

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<sup>16</sup> Generally, ADRs, in registered form, are denominated in U.S. dollars and are designed for use in the U.S. securities markets, GDRs, in bearer form, are issued and designed for use outside the United States, and EDRs, in bearer form, may be denominated in other currencies and are designed for use in European securities markets. ADRs are receipts typically issued by a U.S. bank or trust company evidencing ownership of the underlying securities. EDRs are European receipts evidencing a similar arrangement. GDRs are receipts typically issued by non-United States banks and trust companies that evidence ownership of either foreign or domestic securities. ADRs may be sponsored or unsponsored, but unsponsored ADRs will not exceed 10% of the Fund’s net assets.

assets of the Fund in the aggregate invested in exchange-traded equity securities will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Fund may invest in debt and other fixed income securities, as described below. Debt and other fixed income securities include fixed and floating rate securities of any maturity. Fixed rate securities pay a specified rate of interest or dividends. Floating rate securities pay a rate that is adjusted periodically by reference to a specified index or market rate. Fixed and floating rate securities may be issued by federal, state, local, and foreign governments and related agencies, and by a wide range of private issuers. The Fund's investments in debt and other fixed income securities will be limited to those described below.

The Fund may invest in indexed bonds, which are a type of fixed income security whose principal value and/or interest rate is adjusted periodically according to a specified instrument, index, or other statistic (e.g., another security, inflation index, currency, or commodity).

The Fund may invest in securities issued or guaranteed by the U.S. Government, its agencies, instrumentalities, and political subdivisions;<sup>17</sup> securities issued by foreign governments, their authorities, agencies, instrumentalities, and political subdivisions; securities

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<sup>17</sup> U.S. Government securities include securities issued or guaranteed by the U.S. Government or its authorities, agencies, or instrumentalities. Foreign government securities include securities issued or guaranteed by foreign governments (including political subdivisions) or their authorities, agencies, or instrumentalities or by supra-national agencies. Different kinds of U.S. government securities and foreign government securities have different kinds of government support. For example, some U.S. government securities (e.g., U.S. Treasury bonds) are supported by the full faith and credit of the U.S. Other U.S. government securities are issued or guaranteed by federal agencies or government-chartered or -sponsored enterprises but are neither guaranteed nor insured by the U.S. government (e.g., debt securities issued by the Federal Home Loan Mortgage Corporation ("Freddie Mac"), Federal National Mortgage Association ("Fannie Mae"), and Federal Home Loan Banks ("FHLBs")). Similarly, some foreign government securities are supported by the full faith and credit of a foreign national government or political subdivision and some are not.

issued by supra-national agencies;<sup>18</sup> corporate debt securities; master demand notes;<sup>19</sup> Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers' acceptances; commercial paper;<sup>20</sup> and inflation-indexed securities. The Fund may invest also in zero coupon securities, which may be issued by a wide variety of corporate and governmental issuers.

The Fund may invest in fixed income securities of any credit quality, from investment grade securities to high yield securities. Investment grade securities are securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations ("Rating Organizations") rating that security, such as Standard & Poor's Ratings Services ("Standard & Poor's") or Moody's Investors Service, Inc. ("Moody's"), or rated in one of the four highest rating categories by one Rating Organization if it is the only Rating Organization rating that security, or unrated, if deemed to be of comparable quality<sup>21</sup> by the

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<sup>18</sup> Supra-national agencies are agencies whose member nations make capital contributions to support the agencies' activities. Examples include the International Bank for Reconstruction and Development (the World Bank), the Asian Development Bank, the European Coal and Steel Community, and the Inter-American Development Bank.

<sup>19</sup> The Fund may invest in master demand notes that are denominated in U.S. dollars. Master demand notes are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. The interest rate on a master demand note may fluctuate based upon changes in specified interest rates, be reset periodically according to a prescribed formula or be a set rate. Although there is no secondary market in master demand notes, if such notes have a demand future, the payee may demand payment of the principal amount of the note upon relatively short notice. Master demand notes are generally illiquid and therefore subject to a Fund's percentage limitations for investments in illiquid securities.

<sup>20</sup> Commercial paper consists of short-term promissory notes issued by corporations. Commercial paper may be traded in the secondary market after its issuance.

<sup>21</sup> In determining whether a security is of "comparable quality," the Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if

Adviser and traded publicly on the world market. The Fund, at the discretion of the Adviser, may retain a debt security that has been downgraded below the initial investment criteria.<sup>22</sup>

For securities that carry a rating assigned by a Rating Organization, the Adviser will use the highest rating assigned by the Rating Organization to determine a security's credit rating. Commercial paper must be rated at least "A-1" or equivalent by a Rating Organization. Corporate debt obligations must be rated at least "B-" or equivalent by a Rating Organization. For securities that are not rated by a Rating Organization, the Adviser's internal credit rating will apply and be subject to equivalent rating minimums.

The Fund may invest in futures contracts on indices, currencies, and commodities. The Fund will trade only futures contracts that are listed and traded on a U.S. board of trade. The Fund's investments in futures will be subject to the limits on leverage imposed by the 1940 Act. Section 18(f) of the 1940 Act and related Commission guidance limit the amount of leverage that an investment company, such as the Fund, can obtain.

The Fund may temporarily invest a portion of its assets in cash or cash equivalents pending other investments or to maintain liquid assets required in connection with some of the Fund's investments. Cash and cash equivalents include money market instruments, such as obligations issued or guaranteed by the U.S. Government, its agencies and/or instrumentalities (including government-sponsored enterprises), bankers' acceptances, bank certificates of deposit, repurchase agreements,<sup>23</sup> and investment companies that invest primarily in such instruments

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any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

<sup>22</sup> Securities rated lower than Baa by Moody's, or equivalently rated by S&P or Fitch, are sometimes referred to as "high yield securities" or "junk bonds."

<sup>23</sup> A repurchase agreement is an agreement under which securities are acquired by a Fund from a securities dealer or bank subject to resale at an agreed upon price on a later date. The Fund may enter into repurchase agreements with banks and broker-dealers.



(i.e., money market funds). The Fund may hold funds in bank deposits in U.S. or foreign currency, including during the completion of investment programs.

The Fund may invest in the securities of other investment companies to the extent permitted by law. The Fund may make significant investments in money market funds. In addition, the Trust intends to enter into agreements with unaffiliated ETFs that permit such unaffiliated ETFs to sell, and the Fund to purchase, the unaffiliated ETFs' shares in excess of the limits imposed by Sections 12(d)(1)(A) and (B) of the 1940 Act.

To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities (i.e., BBB or higher) and money market instruments (as described above). The Fund may be invested in these instruments for extended periods, depending on the Adviser's assessment of market conditions.

#### Investment Restrictions

The Fund may invest in the securities of other investment companies to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof.

The Fund will seek to qualify for treatment as a Regulated Investment Company ("RIC") under the Internal Revenue Code.

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<sup>24</sup> and master demand notes, consistent with Commission guidance. The Fund will

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<sup>24</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers willing 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).

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's investments will be consistent with the Fund's investment objective and will not be used to achieve inverse returns or leveraged returns (e.g., -1X, 2X, and 3X) of the Fund's broad-based securities market index (as defined in Form N-1A).<sup>25</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>26</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>27</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, 4, and 5, is consistent with Section 6(b)(5) of the Act,<sup>28</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open

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<sup>25</sup> The Fund's broad-based securities market 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> 15 U.S.C. 78f.

<sup>27</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

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 requirements of NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>29</sup> which sets forth Congress’s 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 Exchange’s proprietary quote and trade services and via the Consolidated Tape Association’s (“CTA”) high-speed line. In addition, the Intraday Indicative Value (“IIV”),<sup>30</sup> which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Exchange’s Core Trading Session (9:30 a.m., Eastern Time to 4:00 p.m., Eastern Time) by one or more major market data vendors.<sup>31</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 that will form the basis for the Fund’s calculation of net asset value (“NAV”)

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<sup>29</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>30</sup> According to the Exchange, the IIV is an approximate per Share value of the Fund’s portfolio holdings, which is disseminated every fifteen seconds throughout the trading day by one or more market data vendors. The IIV will be based on the current market value of the Fund’s “Disclosed Portfolio” as defined in Rule 8.600(c)(2). The IIV does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time. The IIV should not be viewed as a “real-time” update of the NAV of the Fund because the approximate value may not be calculated in the same manner as the NAV. The quotations for certain investments may not be updated during U.S. trading hours if such holdings do not trade in the U.S., except such quotations may be updated to reflect currency fluctuations.

<sup>31</sup> The Exchange states that several major market data vendors display or make widely available IIVs taken from the CTA or other data feeds.

at the end of the business day.<sup>32</sup> The NAV of Shares will be calculated each business day as of the close of regular trading on the New York Stock Exchange (“NYSE”), generally 4:00 p.m., Eastern Time, on each day that the NYSE is open.<sup>33</sup> A basket composition file, which includes

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<sup>32</sup> On a daily basis, the Fund will disclose on its 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); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; 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.

<sup>33</sup> The Fund will calculate its NAV per Share by taking the value of its total assets, subtracting any liabilities, and dividing that amount by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The Exchange represents that in calculating the NAV of the Fund’s Shares, investments will generally be valued using market valuations. Market valuations are generally valuations (i) obtained from an exchange, a pricing service or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of a value supplied by an exchange, a pricing service or a major market maker (or dealer), in each case as approved by the Trust’s Board of Trustees pursuant to the Trust’s valuation policies and procedures. Thus, to the extent that the Fund uses a pricing vendor approved for the Trust by the Board, whether the pricing vendor bases valuations upon dealer quotes, a proprietary analysis of the relevant market, matrix pricing, sensitivity analysis, a combination of the above, or any other means, the price provided by the pricing vendor may be considered a market valuation. Exchange-traded equity securities, including Underlying Vehicles, common stocks and sponsored Depositary Receipts, as well as futures contracts, will be valued at the official closing price on their principal exchange or board of trade, or, lacking any current reported sale at the time of valuation, at the mean of the most recent bid and asked quotations on their principal exchange or board of trade. Un-sponsored Depositary Receipts, fixed income securities (including bonds; U.S. Government obligations; corporate debt securities; securities issued by foreign governments and supra-national agencies; master-demand notes; Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers’ acceptances; commercial paper; inflation-indexed securities; zero coupon securities; and money market instruments) will be valued at the mean between the most recent bid and asked quotations. Repurchase agreements will be valued at cost. Fixed-income instruments maturing in 60 days or less will be valued at amortized cost, and those maturing in excess of 60 days will be valued at the midpoint of bid and asked quotations. Investments in non-exchange-traded investment companies (including money market funds) will be valued at their NAV. Any assets or liabilities denominated in currencies other than the

the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. 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. Intra-day price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms. Intra-day price information on such assets will also be available through free and subscription services that can be accessed by authorized participants and other investors. For example, pricing information for exchange-traded securities (including exchange-traded equity securities (such as common stocks and Underlying Vehicles), futures contracts, and sponsored Depositary Receipts, will be readily available from the websites of the exchanges or boards of trade trading such securities or futures contracts, automated quotation systems, published or other public sources, and subscription services such as Bloomberg or Reuters. Pricing information for unsponsored Depositary Receipts, non-exchange-traded investment company securities, fixed income securities (including bonds; U.S. Government obligations; corporate debt securities; securities issued by foreign governments and supra-national agencies; master-demand notes; Yankee dollar and Eurodollar bank certificates of deposit; time deposits; bankers'

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U.S. dollar will be converted into U.S. dollars at the current exchange rate on the date of valuation as quoted by one or more third parties. If a market quotation is not readily available or is deemed not to reflect an instrument's market value, the Fund will determine its fair value pursuant to policies and procedures approved by the Board. The Fund may use fair valuation to price securities that trade on a foreign exchange, if any, when a significant event has occurred after the foreign exchange closes but before the time at which the Fund's NAV is calculated.

acceptances; commercial paper; inflation-indexed securities; and zero coupon securities), repurchase agreements, and money market instruments will be available through brokers and dealers and/or subscription services, such as Markit, Bloomberg and Thompson Reuters. The Fund's website ([www.cambriafunds.com](http://www.cambriafunds.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded 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 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>34</sup> The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>35</sup> In addition, 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. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of the Fund

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<sup>34</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>35</sup> See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). 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. 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.

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>36</sup> The Commission further notes that 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, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>37</sup> 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 federal securities laws applicable to trading on the Exchange. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also represents that the Adviser is not a broker-dealer and is not affiliated with a broker-dealer.<sup>38</sup>

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

<sup>37</sup> 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.

<sup>38</sup> See supra note 9 and accompanying text. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

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 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) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, Underlying Vehicles, other exchange-traded equity securities, and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and Underlying Vehicles, other exchange-traded equity securities, and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Underlying Vehicles, other exchange-traded equity securities, and futures from markets and 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 ("TRACE").
- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the



Bulletin will discuss the following: (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 and the Disclosed Portfolio 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.

- (5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,<sup>39</sup> as provided by NYSE Arca Equities Rule 5.3.
- (6) Under normal market conditions, the Fund will invest at least 80% of its net assets in the securities of Underlying Vehicles. All Underlying Vehicles will be listed and traded in the U.S. on a national securities exchange.
- (7) The Fund will not invest in inverse (i.e., -1X) or leveraged (e.g., 2X, -2X, 3X or -3X) Underlying Vehicles.
- (8) Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities will consist of equity securities whose principal

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

market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

- (9) Unsponsored ADRs will not exceed 10% of the Fund's net assets.
- (10) The Fund will trade only futures contracts that are listed and traded on a U.S. board of trade. The Fund's investments in futures will be subject to the limits on leverage imposed by the 1940 Act.
- (11) 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 and master demand notes, consistent with Commission guidance. 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.
- (12) The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve inverse returns or leveraged returns (e.g., -1X, 2X, or 3X) of the Fund's broad-based securities market index (as defined in Form N-1A).
- (13) A minimum of 100,000 Shares for 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 Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, 4, and 5, is consistent with Section 6(b)(5) of the Act<sup>40</sup> and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change (SR-NYSEArca-2014-76), as modified by Amendment Nos. 1, 2, 3, 4, and 5, be, and it hereby is, approved.

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

Kevin M. O'Neill  
Deputy Secretary

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<sup>40</sup> 15 U.S.C. 78f(b)(5).

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 17 CFR 200.30-3(a)(12).