SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78397; File No. SR-NYSEArca-2015-110)

July 22, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 to Adopt Generic Listing Standards for Managed Fund Shares

I. Introduction

On November 6, 2015, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 8.600 and to adopt generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the Federal Register on November 27, 2015.[3]

On November 23, 2015, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original proposal in its entirety.[4] On January 4, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On January 21, 2016,

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 76486 (Nov. 20, 2015), 80 FR 74169 ("Notice").

4 On January 21, 2016, the Exchange withdrew Amendment No. 1 to the proposed rule change.

5 15 U.S.C. 78s(b)(2).

6 See Securities Exchange Act Release No. 76819, 81 FR 987 (Jan. 8, 2016).

the Exchange filed Amendment No. 2 to the proposed rule change.[7] The proposed rule change, as modified by Amendment No. 2 thereto, was published for comment in the Federal Register on February 1, 2016.[8] On February 11, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.[9]

On February 12, 2016, the Exchange filed Amendment No. 4 to the proposed rule change.[10] On February 22, 2016, the Commission issued notice of Amendment No. 4 to the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act[11] to determine whether to approve or disapprove the proposed rule change, as modified by

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7 In Amendment No. 2 to the proposed rule change, the Exchange added provisions to the generic listing criteria relating to non-U.S. Component Stocks, convertible securities, and listed swaps, among other changes. Amendment No. 2, which amended and replaced the Notice in its entirety, is available on the Commission's website at: https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-3.pdf.

8 See Securities Exchange Act Release No. 76974 (Jan. 26, 2016), 81 FR 5149.

9 In Amendment No. 3 to the proposed rule change, the Exchange (a) revised the provisions relating to convertible securities, (b) clarified the limitations on non-exchange-traded American Depositary Receipts, (c) eliminated redundant provisions relating to limitations on leveraged and inverse-leveraged Derivative Securities Products, (d) revised the provision relating to limitations on listed derivatives, (e) clarified that, for purposes of the limitations relating to listed and over-the-counter derivatives, a portfolio's investment in listed and over-the-counter derivatives will be calculated as the total absolute notional value of these derivatives, and (f) provided additional information regarding the statutory basis of the proposal. Amendment No. 3, which amended and replaced the proposed rule change, as modified by Amendment No. 2 thereto, in its entirety, is available on the Commission's website at: https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-4.pdf.

10 In Amendment No. 4 to the proposed rule change, the Exchange (a) modified the generic listing rules to require compliance of the standards applicable to underlying equity securities, fixed income securities, and over-the-counter derivatives on an initial and continuing basis; and (b) clarified that the limitations on listed derivatives would apply to all listed derivatives, including listed swaps. Amendment No. 4, which amended and replaced the proposed rule change, as modified by Amendment No. 3 thereto, in its entirety, is available on the Commission's website at: https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-5.pdf.

11 15 U.S.C. 78s(b)(2)(B).

Amendment No. 4 thereto.[12] In the Order Instituting Proceedings, the Commission solicited comments to specified matters related to the proposal.[13] On May 20, 2016, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 4 thereto.[14]

On June 3, 2016, the Exchange filed Amendment No. 5 to the proposed rule change.[15] On June 7, 2016, the Exchange filed Amendment No. 6 to the proposed rule change.[16] The proposed

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12 See Securities Exchange Act Release No. 77203, 81 FR 9900 (Feb. 26, 2016) ("Order Instituting Proceedings"). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." See id., 81 FR at 9908.

13 See id., 81 FR at 9908-09.

14 See Securities Exchange Act Release No. 77872, 81 FR 33570 (May 26, 2016). The Commission designated July 22, 2016 as the date by which it should approve or disapprove the proposed rule change.

15 In Amendment No. 5 to the proposed rule change, the Exchange (a) modified the definition of "normal market conditions" to reflect "systems failures" as an example of an operational issue that causes dissemination of inaccurate market information; (b) clarified that, with respect to the scope of equity securities components in Commentary .01(a) to NYSE Arca Equities Rule 8.600, the securities described in NYSE Arca Equities Rule 5.2(j)(3), NYSE Arca Equities Rule 5.2(j)(6), and Section 2 of NYSE Arca Equities Rule 8 also include securities listed on a different national securities exchange pursuant to substantially equivalent listing rules; (c) with respect to the provisions applicable to fixed income securities components, modified the concentration limitations by excluding U.S. Department of Treasury securities and government-sponsored entity securities, and clarified that the special purpose vehicle ("SPV") that issues the fixed income security (e.g., an asset-backed or mortgage-backed security) would itself be required to satisfy the \$700 million and \$1 billion thresholds set forth in Commentary .01(b)(4) to NYSE Arca Equities Rule 8.600, and not the entity that controls, owns, or is affiliated with the SPV; (d) clarified that the limitations imposed on derivatives holdings will be calculated as the total absolute notional value of the derivatives; (e) added a concentration limitation with respect to listed derivatives by requiring the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets to not exceed 65% of

rule change, as modified by Amendment No. 6 thereto, was published for comment in the Federal Register on June 14, 2016.[17] On July 20, 2016, the Exchange filed Amendment No. 7 to the proposed rule change.[18] The Commission has received two comment letters on the

the weight of the portfolio (including notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset to not exceed 30% of the weight of the portfolio (including notional exposures); and (f) provided examples illustrating the application of certain of the generic listing standard requirements criteria of NYSE Arca Equities Rule 8.600. Amendment No. 5, which amended and replaced the proposed rule change, as modified by Amendment No. 4 thereto, in its entirety, is available on the Commission's website at: https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-6.pdf.

16 In Amendment No. 6 to the proposed rule change, the Exchange clarified that the limitations on derivatives as set forth in Commentaries .01(d), (e), and (f) to NYSE Arca Equities Rule 8.600 will be calculated as, and will be based on, the aggregate gross notional value of the derivatives. Amendment No. 6, which amended and replaced the proposed rule change, as modified by Amendment No. 5 thereto, in its entirety, is available on the Commission's website at: https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-7.pdf.

17 See Securities Exchange Act Release No. 78016 (Jun. 8, 2016), 81 FR 38759 ("Amendment No. 6 Notice").

18 In Amendment No. 7 to the proposed rule change, the Exchange added the following representations: (a) on a periodic basis and no less than annually, the Exchange will review issues of Managed Fund Shares listed pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600 for compliance with NYSE Arca Equities Rule 8.600, and will provide a report to the Regulatory Oversight Committee of the Exchange's Board of Directors regarding the Exchange's findings; (b) the Exchange will provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Commentary .01 to NYSE Arca Equities Rule 8.600: (1) trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares listed pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600 or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with NYSE Arca Equities Rule 8.600; (c) prior to listing pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600, an issuer will be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; and (d) if a series of Managed Fund

proposal.[19] This order grants approval of the proposed rule change, as modified by Amendment No. 7 thereto.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 8.600 and to adopt generic listing standards for Managed Fund Shares, which are securities issued by an open-end investment company. Unlike exchange-traded funds ("ETFs") whose performance is based on the performance of an underlying index of securities,[20] Managed Fund Shares generally use an active investment strategy to achieve their specific investment objectives.

According to the Exchange, all Managed Fund Shares listed and traded pursuant to NYSE Arca Equities Rule 8.600 (including trading pursuant to unlisted trading privileges) are

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Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). Because Amendment No. 7 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 7 is not subject to notice and comment. Amendment No. 7, which amended and replaced the proposed rule change, as modified by Amendment No. 6 thereto, in its entirety, is available on the Commission's website at: https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf.

19 See Letter from Kermit Kubitz to the Commission dated Jun. 30, 2016 (emphasizing the importance of the Exchange's monitoring program to determine continued compliance of series of Managed Fund Shares with the generic listing standards, supported by, for example, continued affirmation by issuers of Managed Fund Shares on a periodic basis that they are in compliance with the generic listing standards or if any deviations from the standards have occurred); and Letter from Rob Ivanoff to the Commission dated Nov. 22, 2015 (commenting that the format of the Exchange's proposed rule change was unclear and difficult to read, and suggesting a new format that would be easier to understand). All comments on the proposed rule change are available on the Commission's website at: https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110.shtml.

20 For example, Investment Company Units listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(3) are securities of index-based ETFs that seek to provide investment results that generally correspond to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange. In addition, NYSE Arca Equities Rule 8.600 currently requires that the Exchange submit a proposed rule change with the Commission to list and trade each new series of Managed Fund Shares on the Exchange.[21] The Exchange proposes to adopt "generic" listing standards that would allow the Exchange to approve the listing and trading of Managed Fund Shares that satisfy those generic listing standards pursuant to Rule 19b-4(e) under the Act.[22]

A. Generic Listing Standards for Managed Fund Shares

The Exchange proposes to amend Commentary .01 to NYSE Arca Equities Rule 8.600 and adopt generic listing standards that would permit the listing and trading (including trading pursuant to unlisted trading privileges) of Managed Fund Shares pursuant to Rule 19b-4(e) under the Act, which pertains to new derivative securities products.[23] These generic listing standards

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21 See Commentary .01 to NYSE Arca Equities Rule 8.600 (requiring the Exchange to file separate proposals under Section 19(b) of the Act before the listing and trading of shares of an issue of Managed Fund Shares).

22 See 17 CFR 240.19b-4(e). Rule 19b-4(e) under the Act permits self-regulatory organizations ("SROs") to list and trade new derivative securities products that comply with existing SRO trading rules, procedures, surveillance programs, and listing standards, without submitting a proposed rule change under Section 19(b). See also Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (S7-13-98) (adopting Rule 19b-4(e) under the Act).

23 Under Rule 19b-4(e), the term "new derivative securities product" means any type of option, warrant, hybrid securities product, or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. See 17 CFR 240.19b-4(e). Rule 19b-4(e)(1) under the Act provides that the listing and trading of a new derivative securities product by an SRO is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(c)(1). Under Rule 19b-4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a

are grouped according to underlying security or asset type. The Exchange also seeks to specify in Commentary .01 to NYSE Arca Equities Rule 8.600 that components of Managed Fund Shares listed pursuant to Rule 19b-4(e) under the Act must satisfy, on an initial and continued basis, certain specific criteria (as described below), and that the Exchange would continue to file separate proposed rule changes with the Commission before the listing and trading of Managed Fund Shares that do not satisfy the prescribed generic listing standards.[24]

1. Requirements Applicable to Equity Securities Components of the Portfolio

Commentary .01(a) to NYSE Arca Equities Rule 8.600 sets forth the standards for a Managed Fund Share portfolio holding equity securities, which are defined to be U.S. Component Stocks,[25] Non-U.S. Component Stocks,[26] Derivative Securities Products,[27] and

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proposed rule change, unless it is reasonably and fairly implied by an existing rule of the SRO.

24 For example, according to the Exchange, if the portfolio components of a series of Managed Fund Shares exceeded one of the applicable thresholds, the Exchange would file a separate proposed rule change before listing and trading the Managed Fund Shares. Similarly, if the portfolio components of a series of Managed Fund Shares included a security or asset that is not specified in the generic listing criteria, the Exchange would file a separate proposed rule change.

25 See Commentary .01(a) to NYSE Arca Equities Rule 8.600. The term "U.S. Component Stocks" is defined in NYSE Arca Equities Rule 5.2(j)(3) (defining U.S. Component Stock as an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act). See NYSE Arca Equities Rule 5.2(j)(3).

26 The term "Non-U.S. Component Stocks" is defined in NYSE Arca Equities Rule 5.2(j)(3) (defining Non-U.S. Component Stock as an equity security that is not registered under Sections 12(b) or 12(g) of the Act and that is issued by an entity that (a) is not organized, domiciled, or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives)). See id.

27 For the purposes of Commentary .01, the term "Derivative Securities Products" would mean Investment Company Units and securities described in Section 2 of NYSE Arca Equities Rule 8 (i.e., securities described in NYSE Arca Equities Rules 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.204, 8.300, 8.400, 8.500, 8.600, and 8.700).

Index-Linked Securities[28] listed on a national securities exchange.[29] For Derivative Securities Products and Index-Linked Securities, leveraged and inverse leveraged Derivative Securities Products or Index-Linked Securities can constitute no more than 25% of the equity weight of the portfolio. In addition, Commentary .01(a) provides that, to the extent that a portfolio includes convertible securities, the equity security into which any such security is converted would be required to meet the criteria of Commentary .01(a) after converting.

As set forth in Commentary .01(a)(1) to NYSE Arca Equities Rule 8.600,[30] the component stocks of the equity portion of a portfolio that are U.S. Component Stocks must meet the following criteria initially and on a continuing basis:[31]

(a) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each must have a minimum market value of at least $75 million;

(b) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each must have a minimum monthly trading volume of 250,000

[28] Index-Linked Securities are securities that qualify for Exchange listing and trading under NYSE Arca Equities Rule 5.2(j)(6).

[29] Commentary .01(a) clarifies that, with respect to the scope of securities included in the term "equity securities," the securities described in NYSE Arca Equities Rule 5.2(j)(3), NYSE Arca Equities Rule 5.2(j)(6), and Section 2 of NYSE Arca Equities Rule 8, as referenced above, include securities listed on a different national securities exchange pursuant to substantially equivalent listing rules.

[30] See Commentary .01(a)(1) to NYSE Arca Equities Rule 8.600.

[31] See Commentary .01(a)(1)(A)-(F) to NYSE Arca Equities Rule 8.600.

shares, or minimum notional volume traded per month of $25,000,000, averaged over the previous six months;

(c) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) must not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) must not exceed 65% of the equity weight of the portfolio;

(d) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(e) Except as provided in Commentary .01(a), equity securities in the portfolio must be U.S. Component Stocks listed on a national securities exchange and must be NMS Stocks as defined in Rule 600 of Regulation NMS;[32] and

(f) American Depositary Receipts ("ADRs") may be exchange-traded or non-exchange-traded; however, no more than 10% of the equity weight of the portfolio shall consist of non-exchange-traded ADRs.

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[32] See 17 CFR 240.600.

As set forth in Commentary .01(a)(2) to NYSE Arca Equities Rule 8.600,[33] the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks must meet the following criteria initially and on a continuing basis:[34]

(a) Non-U.S. Component Stocks each shall have a minimum market value of at least $100 million;

(b) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months;

(c) The most heavily weighted Non-U.S. Component Stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;

(d) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

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33 See Commentary .01(a)(2) to NYSE Arca Equities Rule 8.600.

34 See Commentary .01(a)(2)(A)-(E) to NYSE Arca Equities Rule 8.600.

(e) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

2. Requirements Applicable to Fixed Income Securities Components of the Portfolio

Commentary .01(b) to NYSE Arca Equities Rule 8.600[35] sets forth standards for a Managed Fund Share portfolio that holds fixed income securities, which are defined to be debt securities[36] that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. To the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted would be required to meet the criteria of Commentary .01(b) after converting.

The components of the fixed income portion of a portfolio must meet the following criteria initially and on a continuing basis:[37]

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35 See Commentary .01(b) to NYSE Arca Equities Rule 8.600.

36 According to the Exchange, debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. Debt securities also include variable and floating rate securities. See Order Instituting Proceedings, supra note 12, 81 FR at 9903 n.41.

37 See Commentary .01(b)(1)-(5) to NYSE Arca Equities Rule 8.600.

(a) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $100 million or more;

(b) No component fixed-income security (excluding Treasury Securities and GSE Securities) could represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) must not in the aggregate account for more than 65% of the fixed income weight of the portfolio;

(c) An underlying portfolio (excluding exempted securities) that includes fixed income securities must include a minimum of 13 non-affiliated issuers; provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in Commentary .01(a).

(d) Component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be: (i) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (ii) from issuers each of which has a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (iii) from issuers each of which has outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion;[38]

[38] The Exchange represents that, with respect to subparagraphs (ii) and (iii) of this provision in paragraph (d), the SPV that issues the fixed income security (e.g., an asset-backed or

(iv) exempted securities as defined in Section 3(a)(12) of the Act; or (v) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and

(e) Non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

3. Requirements Relating to Cash and Cash Equivalents Components of the Portfolio

Commentary .01(c) to NYSE Arca Equities Rule 8.600[39] sets forth standards for a Managed Fund Share portfolio holding cash and cash equivalents. Specifically, the portfolio may hold short-term instruments with maturities of less than 3 months and cash, and there would be no limitation to the percentage of the portfolio invested in such holdings. Short-term instruments include the following:[40]

(a) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities;

(b) Certificates of deposit issued against funds deposited in a bank or savings and loan association;

(c) Bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;

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mortgage-backed security) would itself be required to satisfy the $700 million and $1 billion criteria, respectively, and not the entity that controls, owns, or is affiliated with the SPV. See Amendment No. 5 to the proposed rule change, supra note 15.

39 See Commentary .01(c) to NYSE Arca Equities Rule 8.600.

40 See Commentary .01(c)(2)(i)-(vii) to NYSE Arca Equities Rule 8.600.

(d) Repurchase agreements and reverse repurchase agreements;

(e) Bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest;

(f) Commercial paper, which are short-term unsecured promissory notes; and

(g) Money market funds.

4. Requirements Applicable to Listed Derivatives Components of the Portfolio

Commentary .01(d) to NYSE Arca Equities Rule 8.600[41] sets forth standards for a Managed Fund Share portfolio that holds listed derivatives, including futures, options, and swaps on commodities, currencies, and financial instruments (e.g., stocks, fixed income securities, interest rates, and volatility) or a basket or index of any of the foregoing. There would be no limitation to the percentage of the portfolio invested in such holdings, but portfolio holdings would be subject to the following requirements:

(a) In the aggregate, at least 90% of the weight of holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement;[42] and

(b) The aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the

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41 See Commentary .01(d) to NYSE Arca Equities Rule 8.600.

42 Commentary .01(d)(1) specifies that, for purposes of calculating the percentage limitations, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.

portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

5. Requirements Applicable to Over-the-Counter ("OTC") Derivatives Components of the Portfolio

Commentary .01(e) to NYSE Arca Equities Rule 8.600[43] sets forth standards for a Managed Fund Share portfolio that holds OTC derivatives, including forwards, options, and swaps on commodities, currencies, and financial instruments (e.g., stocks, fixed income securities, interest rates, and volatility) or a basket or index of any of the foregoing. Commentary .01(e) requires that, on an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. The Exchange notes that, for purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

6. Requirements Applicable to Securities Underlying Derivatives Components

Commentary .01(f) to NYSE Arca Equities Rule 8.600[44] provides that, to the extent that listed or OTC derivatives are used to gain exposure to individual equities or fixed income securities, or to indexes of equities or fixed income securities, the aggregate gross notional value of this exposure must meet the applicable criteria set forth in Commentaries .01(a) and .01(b) to NYSE Arca Equities Rule 8.600, respectively.[45]

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43 See Commentary .01(e) to NYSE Arca Equities Rule 8.600.

44 See Commentary .01(f) to NYSE Arca Equities Rule 8.600.

45 The Exchange provides examples illustrating the application of certain of the generic listing standard requirements criteria of NYSE Arca Equities Rule 8.600. See Amendment No. 6 Notice, supra note 17, 81 FR at 38764-65 (describing several portfolio

B. Other Aspects of the Proposal

In addition to the generic listing standards applicable to Managed Fund Shares that satisfy those specific generic criteria, the Exchange also proposes to amend certain other aspects of NYSE Arca Equities Rule 8.600, which governs the listing and trading of all Managed Fund Shares.

1. Disclosed Portfolio

As part of the proposed rule change, the Exchange also proposes to amend NYSE Arca Equities Rule 8.600(c) to require that the website for all series of Managed Fund Shares, including Managed Fund Shares listed and traded on the Exchange pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600, disclose certain additional information regarding the Disclosed Portfolio. The required information includes the following, to the extent applicable: ticker symbol; CUSIP or other identifier; a description of the holding; with respect to holdings in derivatives, the identity of the security, commodity, index, or other asset upon which the derivative is based; the strike price for any options; the quantity of each security or other asset held as measured by select metrics (par value, notional value, number of shares, number of contracts, and number of units); maturity date; coupon rate; effective date; market value; and percentage weighting of the holding in the portfolio.[46]

2. Investment Objective

In addition, the Exchange proposes to amend NYSE Arca Equities Rule 8.600(d) to specify that all Managed Fund Shares must have a stated investment objective, which must be

scenarios and the method of calculating the holdings percentage limitations with respect to OTC derivatives and listed derivatives, among other securities).

46 See NYSE Arca Equities Rule 8.600(c)(2)(A)-(K).

adhered to under normal market conditions.[47] NYSE Arca Equities Rule 8.600(c)(5) would specify that the term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.[48]

3. Portfolio Indicative Value

The Exchange seeks to amend the continued listing requirement in NYSE Arca Equities Rule 8.600(d)(2)(A) by changing the requirement that a Portfolio Indicative Value for Managed Fund Shares be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange to a requirement that the Portfolio Indicative Value be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).[49]

C. Additional Representations of the Exchange Applicable to the Listing and Trading of Managed Fund Shares

In support of the proposed rule change, the Exchange represents that:

(1) The Managed Fund Shares will continue to conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to continue to properly monitor the trading of the Managed Fund Shares in all trading sessions and to deter and

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47 See NYSE Arca Equities Rule 8.600(d)(1)(C).

48 See NYSE Arca Equities Rule 8.600(c)(5).

49 See NYSE Arca Equities Rule 8.600(d)(2)(A).

detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Managed Fund Shares.

(3) Prior to the commencement of trading of a particular series of Managed Fund Shares, the Exchange will inform its Equity Trading Permit ("ETP") Holders in a Bulletin of the special characteristics and risks associated with trading the Managed Fund Shares, including procedures for purchases and redemptions of Managed Fund Shares, suitability requirements under NYSE Arca Equities Rule 9.2(a), the risks involved in trading the Managed Fund Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated, information regarding the Portfolio Indicative Value and the Disclosed Portfolio, prospectus delivery requirements, and other trading information. In addition, the Bulletin will disclose that the Managed Fund Shares are subject to various fees and expenses, as described in the applicable registration statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Finally, the Bulletin will disclose that the net asset value for the Managed Fund Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

(4) The issuer of a series of Managed Fund Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Managed Fund Shares, as provided under NYSE Arca Equities Rule 5.3.

(5) The Exchange, on a periodic basis and no less than annually, will review issues of Managed Fund Shares listed pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600 for compliance with NYSE Arca Equities Rule 8.600, and will provide a report to the Regulatory Oversight Committee of the Exchange's Board of Directors regarding the

Exchange's findings. In addition, the Exchange will provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Commentary .01 to NYSE Arca Equities Rule 8.600: (1) trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares listed pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600 or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with NYSE Arca Equities Rule 8.600.

(6) Prior to listing pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a series of Managed Fund Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to amend Commentary .01 to NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares and to amend certain other provisions in NYSE Arca Equities Rule 8.600 applicable to the listing and trading of all Managed Fund Shares on the Exchange is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[50] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 7 thereto, is consistent with Section 6(b)(5) of the Act,[51] 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 market and a national market system, and, in general, to protect investors and the public interest.

In support of its proposal, the Exchange states that its proposed requirements for Managed Fund Shares are based in large part on the generic listing criteria currently applicable to Investment Company Units.[52] As a general matter, the Commission believes that this is an appropriate approach with respect to underlying asset classes covered by the existing generic standards, because the mere addition of active management to an ETF portfolio that would qualify for generic listing as an index-based ETF should not affect the portfolio's susceptibility to manipulation or the availability of arbitrage between the ETF and its underlying portfolio. Below, the Commission addresses the proposed criteria for each of the asset classes encompassed within the generic listing standards.

Equity Holdings. With respect to the equity securities holdings of the underlying portfolio, the criteria closely track the existing standards for Investment Company Units with four relevant differences. First, while the generic listing criteria for Investment Company Units

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50 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).

51 15 U.S.C. 78f(b)(5).

52 See id. at 7-14. See also supra note 20.

do not permit the inclusion of any non-exchange-traded ADRs in the underlying index,[53] the generic criteria for Managed Fund Shares permit an ETF to hold up to 10% of the equity weight of the portfolio in non-exchange-traded ADRs. This provision, however, is consistent with standards that the Commission has approved for specific ETFs listed and traded as Managed Fund Shares.[54] Moreover, the Commission believes that the requirement that at least 90% of the equity portion of a portfolio consist of domestic equity securities (a category that includes ADRs) for which the Exchange may obtain transaction data should both deter manipulation of generically listed Managed Fund Shares and permit the Exchange to investigate any instances of manipulation.

Second, the generic listing standards differ slightly from the existing generic standards for Investment Company Units with respect to Non-U.S. Component Stocks. The standards provide that all Non-U.S. Component Stocks in a Portfolio must have a minimum market value of at least $100 million. By contrast, the generic listing criterion for Investment Company Units requires only 90% of the Non-U.S. Component Stocks (excluding Derivative Securities Products) included in an index to meet the same minimum market-value threshold.[55] Additionally, under the proposal, all Non-U.S. Component Stocks included in a portfolio must have a minimum global monthly trading volume of 250,000 shares, or minimum global notional

53 The Commission notes, however, that a portfolio of a series of Investment Company Units nevertheless may contain non-exchange-listed ADRs because the Investment Company Unit portfolio need not consist only of components of the index underlying the series of Investment Company Units.

54 See, e.g., Securities Exchange Act Release No. 72679 (July 28, 2014), 79 FR 44878 (Aug. 1, 2014) (SR-NYSEArca-2014-71); Securities Exchange Act Release No. 67277 (June 27, 2012), 77 FR 39554 (July 3, 2012) (SR-NYSEArca-2012-39).

55 See Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3)(a)(B)(1).

volume traded per month of $25,000,000, averaged over the previous six months.[56] By contrast, only 70% of the weight of an index (excluding Derivative Securities Products) underlying generically listed Investment Company Units must satisfy the same monthly volume thresholds.[57] The Commission believes that these provisions should reduce the extent to which Managed Fund Shares holding Non-U.S. Component Stocks may be susceptible to manipulation.

Third, while the Exchange's existing generic listing standards for index-based ETFs do not apply concentration limits to an index's exposure to specified exchange-traded products (called "Derivative Securities Products"), which have concentration limits or price transparency requirements within their own listing standards, proposed Commentary .01(a) to NYSE Arca Rule 8.600 would also deem portfolio concentration limits not to apply to holdings of specified exchange-traded notes (called "Index-Linked Securities"). The Commission believes that this change should not increase the susceptibility of Managed Fund Shares to manipulation because Index-Linked Securities, like Derivative Securities Products, have asset-exposure concentration limits and requirements promoting price transparency within their own listing standards, and both Derivative Securities Products and Index-Linked Securities are listed and traded on national securities exchanges (which are all members of ISG), publicly provide information about listed Derivative Securities Products and Index-Linked Securities, including price and other information relating to the underlying index or reference asset, as the case may be, and provide trading and price information and other quantitative date for investors and other market participants.

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56 The Commission approved a listing rule that contained these heightened market capitalization and trading volume requirements. See Securities Exchange Act Release No. 75023 (May 21, 2015), 80 FR 30519 (May 28, 2015) (SR-NYSEArca-2014-100).

57 See Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3)(a)(B)(2).

And fourth, under current generic listing standards, index-based ETFs cannot seek inverse returns greater than 300% of the performance of their reference index, and there is no limit on positive leverage versus an index. By contrast, the proposed standards would impose an absolute cap – 25% – on the amount of an ETF's portfolio that could be invested in leveraged or inverse-leveraged exchange-traded products. The Commission believes that a limitation on the overall use of leveraged exchange-traded products is consistent with Section 6(b)(5) of the Act because it will limit the extent to which the performance of a generically listed, actively managed ETF can be tied to a product whose performance over periods of longer than one day can differ significantly from its stated daily performance objective.[58]

Fixed Income Holdings. With respect to the fixed income securities components of a portfolio, the generic listing standards for Managed Fund Shares are based in large part on the existing generic listing standards of Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) applicable to components of fixed income securities indexes underlying Investment Company Units,[59] with three relevant differences. First, Commentary .01(b)(3) to NYSE Arca Equities Rule 8.600 does not require a minimum number of non-affiliated issuers for fixed income securities in the portfolio if at least 70% of the weight of the portfolio consists of equity securities as set forth in Commentary .01(a) to NYSE Arca Equities Rule 8.600. Second, Commentary .01(b)(5) to NYSE Arca Equities Rule 8.600 prohibits non-agency, non-GSE, and privately issued mortgage-related and other asset-backed securities components of a portfolio from constituting, in the aggregate, more than 20% of the weight of the fixed income portion of

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58 Cf. SEC Invester Alert, Leveraged and Inverse ETFs: Specialized Products with Extra Risks for Buy-and-Hold Investors, available at https://www.sec.gov/investor/pubs/leveragedetfs-alert.htm.

59 See Amendment No. 7, supra note 18, at 12-14.

the portfolio.[60] And third, the standards make explicit that convertible bonds both (a) have to meet the criteria for fixed-income holdings and (b) be convertible into equities that would meet the criteria for equity holdings.

The Commission believes that, taken together, the requirements for the fixed income portion of the portfolio are reasonably designed to ensure that a substantial portion of the portfolio consists of fixed income securities for which information is publicly available, and, when applied in conjunction with the other applicable listing requirements, will permit the listing and trading only of Managed Fund Shares that are sufficiently broad-based to minimize the potential for manipulation. The Commission also believes that these provisions should help to ensure that the fixed income securities portion of a portfolio consists of assets for which available intra-day values allow market participants to identify and capitalize upon arbitrage opportunities, which in turn should help keep the intra-day prices of generically listed Managed Fund Shares reasonably aligned with the intra-day values of their underlying assets.

Cash and Cash Equivalents. With respect to cash and cash equivalents to be held in a portfolio, the Commission believes that the proposed standards appropriately define the type of short-term instruments that would qualify as such holdings.

Derivatives Holdings. With respect to derivatives of any type included in the portfolio, Commentary .01(f) to NYSE Arca Equities Rule 8.600 provides that, to the extent they are used to gain exposure to individual equities or fixed income securities, or to indexes of equities or

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60 The Commission notes that it has approved listing and trading rules for specific ETFs listed as Managed Fund Shares that limit holdings of non-agency asset-backed securities to 20% of the value of the fund's portfolio. See, e.g., Securities Exchange Act Release No. 74297 (Feb. 18, 2015), 80 FR 9788 (Feb. 24, 2015) (SR-BATS-2014-056); Securities Exchange Act Release No. 75566 (July 30, 2015), 80 FR 46612 (Aug. 5, 2015) (SR-NYSEArca-2015-42).

fixed income securities, the total notional exposure to the underlying instruments – whether achieved through cash instruments or derivative instruments – must meet the numerical and other criteria set forth in Commentaries .01(a) and .01(b) to NYSE Arca Equities Rule 8.600, as applicable. The Commission believes that this provision should make the portfolios less susceptible to manipulation by preventing circumvention of the quantitative and other requirements applicable to equity and fixed income security components of a portfolio.

With respect to listed derivatives under Commentary .01(d) to NYSE Arca Equities Rule 8.600, the generic criterion allows a generically listed ETF to use listed derivatives to achieve 100% of its portfolio exposure, provided that, in the aggregate, at least 90% of the weight of the holdings in futures, exchange-traded options, and listed swaps consists of futures, options, and swaps for which (1) the Exchange may obtain information from other ISG members or affiliate members, or (2) the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement.[61] Additionally, the Exchange represents that it (or the Financial Industry Regulatory Authority, Inc. on its behalf) will communicate regarding and obtain trade information as needed for the underlying exchange-listed instruments whose principal market is either an ISG member or a market with which the Exchange has a comprehensive surveillance sharing agreement in place.[62] The Commission believes that these provisions should both deter

61 See Amendment No. 7, supra note 18, at 23-24. The Exchange also states that: (1) a fund's investments in derivatives, including listed derivatives, would be subject to limits on leverage imposed by the Investment Company Act of 1940 ("1940 Act"); (2) to limit the potential risk associated with a fund's use of derivatives, a fund will segregate or "earmark" assets determined to be liquid by a fund in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments; and (3) a fund's investments would be consistent with its investment objective and would not be used to enhance leverage. See id. at 24.

62 See id. at 27.

potential manipulation and permit the Exchange to investigate suspected manipulation of generically listed Managed Fund Shares that use listed derivatives. Moreover, the Commission believes that the price transparency of listed derivatives should enable market participants to identify and execute arbitrage strategies that will tend to equalize the market price of generically listed Managed Fund Shares with the value of the underlying portfolios. The Commission also notes that Commentary .01(d)(2) to NYSE Arca Equities Rule 8.600 imposes concentration limits on the use of listed derivatives. The Commission believes that this limitation should make Portfolios that contain listed derivatives less susceptible to manipulation.[63]

With respect to OTC derivatives, Commentary .01(e) to NYSE Arca Equities Rule 8.600 permits the portfolio to include OTC derivatives, but would limit the amount of these derivatives to 20% of the fund's assets in the portfolio, thereby ensuring that the preponderance of a fund's investments would not be in derivatives that are not listed and centrally cleared. The Commission believes that this limitation is sufficient to mitigate the risks associated with price manipulation because at least 80% of a Managed Fund Shares portfolio would consist of: cash and cash equivalents; listed derivatives, of which 90% by portfolio weight would be traded on a principal market that is a member of ISG; and equity securities or fixed income instruments subject to numerous restrictions designed to prevent manipulation and ensure pricing transparency. The Commission notes that, for purposes of calculating this 20% limitation on

63 Commentary .01(d)(2) to NYSE Arca Equities Rule 8.600 requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

OTC derivatives holdings, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.[64]

The Commission further notes that, in addition to the listing criteria described above for specific underlying asset classes, the Exchange has committed to conduct an ongoing compliance review of the ETFs that are generically listed as Managed Fund Shares. Specifically, the Exchange has represented that, no less than annually, it will review the Managed Fund Shares generically listed and traded on the Exchange under NYSE Arca Equities Rule 8.600 for compliance with that rule and will provide a report to its Regulatory Oversight Committee presenting the findings of its review. The Exchange has also committed to provide, on a quarterly basis, a report to the Commission staff that contains, for each ETF whose shares are generically listed and traded under Commentary .01 to NYSE Arca Equities Rule 8.600: (a) the symbol and date of listing; (b) the number of active authorized participants and a description of any failure by either a fund or an authorized participant to deliver promised baskets of shares, cash, or cash and instruments in connection with creation or redemption orders; and (c) a description of any failure by an ETF to comply with NYSE Arca Equities Rule 8.600.[65] The Commission believes that the quarterly report provided by the Exchange will assist the Commission in using public data to review the trading characteristics of ETFs listed under these generic standards.[66]

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64 See Commentary .01(e) to NYSE Arca Equities Rule 8.600.

65 See Amendment No. 7, supra note 18, at 19.

66 The Commission also notes that all Managed Fund Shares listed pursuant to NYSE Arca Equities Rule 8.600, including generically listed Managed Fund Shares, are included within the definition of "security" or "securities" as those terms are used in the Exchange Rules. See NYSE Arca Equities Rule 8.600(b). Accordingly, Managed Fund Shares are subject to the full set of rules and procedures that govern the trading of securities on the Exchange. See Amendment No. 7, supra note 18, at 5 and 26.

The Commission also notes that, prior to listing pursuant to Commentary .01 to NYSE Arca Equities Rule 8.600, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[67] If a series of Managed Fund Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).[68]

The Commission believes that the Managed Fund Shares generic listing criteria, taken together, should promote the listing only of Managed Fund Shares that are not susceptible to manipulation. Additionally, the generic listing standards as a whole should ensure that the underlying portfolios are composed predominantly of securities and instruments for which available intra-day values allow market participants to identify and capitalize upon arbitrage opportunities, which in turn should help keep the intra-day prices of generically listed Managed Fund Shares reasonably aligned with the intra-day values of their underlying assets.

For the reasons discussed above, the Commission finds that the generic listing standards for Managed Fund Shares are consistent with Section 6(b)(5) of the Act.[69]

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67 The Commission notes that another proposal relating to the generic listing and trading of Managed Fund Shares includes a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

68 See Amendment No. 7, supra note 18, at 19.

69 15 U.S.C. 78f(b)(5).

In addition, the Exchange amends certain requirements of NYSE Arca Equities Rule 8.600 that apply to all Managed Fund Shares (i.e., both fund shares listed generically under the proposed standards and fund shares listed pursuant to filings by the Exchange under Section 19(b)(1) of the Act and Rule 19b-4 thereunder). Specifically, the Exchange specifies the information that must be included in the Disclosed Portfolio disseminated by each actively managed ETF. Previously approved listing rules for specific ETFs listed as Managed Fund Shares have included identical disclosure requirements.[70] The mandatory disclosures include information that market participants can use to value an actively managed ETF's holdings intra-day, which should facilitate arbitrage opportunities that should help keep the intra-day prices of Managed Fund Shares reasonably aligned with the intra-day values of their underlying assets.

The Exchange also amends the continued listing requirement in NYSE Arca Equities Rule 8.600(d)(2)(A), which is applicable to all Managed Fund Shares, to require dissemination of the Portfolio Indicative Value at least every 15 seconds during the Core Trading Session, as defined in NYSE Arca Equities Rule 7.34. The Commission believes that this requirement is consistent with the intraday indicative value dissemination requirement for Investment Company Units,[71] as well as with the representations made in support of approved proposals to list and trade shares of other series of Managed Fund Shares.[72]

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70 See, e.g., Securities Exchange Act Release No. 72666 (July 3, 2014), 79 FR 44224 (July 30, 2014) (SR-NYSEArca-2013-122).

71 See, e.g., Commentary .01(c) and Commentary .02(c) to NYSE Arca Equities Rule 5.2(j)(3) (currently requiring the index-based ETF's intraday indicative value to be disseminated at least every 15 seconds only during the Core Trading Session of the Exchange).

72 See Amendment No. 7, supra note 18, at 20-21.

Finally, the Exchange adds as an initial listing criterion applicable to all Managed Fund Shares (including those that are generically listed) the requirement that Managed Fund Shares must have a stated investment objective, which shall be adhered to under "Normal Market Conditions," defined as circumstances including, but not limited to, the absence of: trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or systems failure; or force majeure type events, such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.[73] The Commission believes that this proposed change is consistent with previous Commission approvals of specific ETFs listed as Managed Fund Shares.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 7 thereto, is consistent with Section 6(b)(5) of the Act[74] and the rules and regulations thereunder applicable to a national securities exchange.

73 See NYSE Arca Equities Rule 8.600(c)(5). See also NYSE Arca Equities Rule 8.600(d)(1)(C).

74 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[75] that the proposed rule change (SR-NYSEArca-2015-110), as modified by Amendment No. 7 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Brent J. Fields
Secretary

[75] 15 U.S.C. 78s(b)(2).

[76] 17 CFR 200.30-3(a)(12).