

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79052; File No. SR-NYSEArca-2016-82)

October 5, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, to List and Trade Shares of the JPMorgan Diversified Event Driven ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On June 20, 2016, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the JPMorgan Diversified Event Driven ETF under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on July 7, 2016.<sup>3</sup> On August 18, 2016, the Exchange filed Amendment No. 1 to the proposed rule change,<sup>4</sup>

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 78218 (Jul. 1, 2016), 81 FR 44339 (“Notice”).

<sup>4</sup> In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange clarified: (a) certain aspects relating to the Fund’s investment strategy, including descriptions of (i) certain return factors that the Fund seeks to utilize to achieve its investment objective, (ii) the Fund’s total net long market exposure, (iii) the Fund’s use of derivative instruments and its market exposure to such instruments, and (iv) the Fund’s investments in mutual funds; (b) that the common stock into which convertible securities held by the Fund can be converted will be exchange-traded; (c) that the Fund may invest no more than 5% of its assets, in the aggregate, in over-the-counter (“OTC”) common stocks, preferred stocks, warrants, rights, and contingent value rights (“CVRs”) of U.S. and foreign corporations (including emerging market securities); (d) the redemption order submission cut-off time; (e) that no more than 10% of the net assets of the Fund will be invested in Depositary Receipts (as defined herein) that are not exchange-listed; and (f) the use of certain defined terms. Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2016-82/nysearca201682-1.pdf>. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

and, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> 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.<sup>6</sup> On September 1, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>7</sup> On September 2, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>8</sup> The Commission has received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>9</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto.

---

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 78610, 81 FR 57960 (Aug. 24, 2016). The Commission designated October 5, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>7</sup> In Amendment No. 2, which partially amended the proposed rule change, as modified by Amendment No. 1 thereto, the Exchange clarified (a) the Fund's holdings in mutual fund shares as the only non-exchange-traded investment company securities the Fund may hold, and (b) that Depositary Receipts (as defined herein) are included as equity securities subject to the 10% limitation on equity securities whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Amendment No. 2 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2016-82/nysearca201682-2.pdf>. Because Amendment No. 2 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

<sup>8</sup> In Amendment No. 3, which partially amended the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, the Exchange (a) made conforming changes to the Statutory Basis section of the filing to reflect the same changes made by Amendment No. 2 to the proposed rule change, and (b) clarified a reference to the term "advisor" to mean "Adviser." Amendment No. 3 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2016-82/nysearca201682-3.pdf>. Because Amendment No. 3 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment.

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

## II. Exchange's Description of the Proposal

The Exchange proposes to list and trade shares (“Shares”) of the JPMorgan Diversified Event Driven ETF (“Fund”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Fund is a series of J.P. Morgan Exchange-Traded Fund Trust (“Trust”), a Delaware statutory trust.<sup>10</sup> J.P. Morgan Investment Management Inc. (“Adviser”) will be the investment adviser to the Fund. The Adviser is a wholly-owned subsidiary of JPMorgan Asset Management Holdings Inc., which is a wholly-owned subsidiary of JPMorgan Chase & Co., a bank holding company. The Adviser will also provide administrative services for, and will oversee the other service providers of, the Fund. SEI Investments Distribution Co. will be the distributor of the Fund’s Shares.

The Fund will seek to provide long-term total return and will seek to achieve its investment objective by employing an event-driven investment strategy, primarily investing in companies that the Adviser believes will be impacted by pending or anticipated corporate or special situation events. In executing this investment strategy, the Fund will seek to capture the price difference between a security’s market price and the anticipated value post-event, based on the assumption that an event or catalyst will affect future pricing. It will do so based on its systematic investment process for securities selection. The Adviser believes it has identified (and will continue to identify) a set of sources of potential event-driven investment return that have a

---

<sup>10</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). The Exchange states that, on April 22, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (“Securities Act”) and the 1940 Act relating to the Fund (File Nos. 333-191837 and 811-22903) (“Registration Statement”). The Exchange also notes that an exemptive order (“Exemptive Order”) was issued on February 19, 2016 (IC Release No. 31990). The Exchange represents that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

low correlation to each other and traditional markets and have distinct risk and return profiles (“return factors”).

Under normal market conditions,<sup>11</sup> the Fund will seek to achieve its investment objective by employing its investment strategy to access certain return factors. For example, the return factors that the Adviser may utilize include, but are not limited to, the following:

(1) Merger arbitrage -- seeks to capitalize on price discrepancies and returns generated by a corporate transaction. The Fund may purchase the common stock of the company being acquired and may short the common stock of the acquirer in expectation of profiting from the price differential between the purchase price of the securities and the value received for the securities as a result of or in expectation of the consummation of the merger.

(2) Activism tracking -- invests in companies that are the target of activist investors.

(3) Share buybacks -- attempts to exploit the outperformance of a company engaged in a share buyback program.

(4) Parents and spinoffs -- attempts to capture positive performance of a parent company after the spinoff announcement; this typically leads to a revaluation of the company.

(5) Index arbitrage -- attempts to profit from the price changes of assets as they are added to or deleted from indices.

(6) Post-reorganization equities -- attempts to profit from the mispricing of companies as they emerge from bankruptcy.

---

<sup>11</sup> The term “under normal market conditions” includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund’s investments are made for temporary defensive purposes; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as cyber-attacks, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

Each return factor represents a potential source of investment return that results from, among other things, assuming a particular risk or taking advantage of a market opportunity. Each return factor represents a potential source of investment return, and the Adviser allocates assets to a subset of return factors based on current investment opportunities. Under normal market conditions, the Fund will seek to achieve its investment objective by employing the event-driven strategy to access certain return factors. The Adviser believes that, in general, the Fund's event-driven investment returns will be attributable to the individual contributions of the various return factors. By employing this return factor based approach, the Fund will seek to provide positive total returns over time while maintaining a relatively low correlation with traditional markets. The exposure to individual return factors may vary based on the market opportunity of the individual return factors. Additional return factors may be identified over time.

The Fund will invest its assets globally to gain exposure to equity securities (across market capitalizations) in developed markets. The Fund may use both long and short positions (achieved primarily through the use of derivative instruments as described below). The Fund generally will maintain a total net long market exposure, meaning that the Fund's aggregate exposure will be greater to instruments that the Adviser expects to outperform. However, the Fund may have net long or net short exposure to one or more industry sectors, individual markets, and/or currencies based on the return factors.

The Adviser will make use of derivatives (as described below), in implementing its strategies. Under normal market conditions, the Adviser currently expects that a significant portion of the Fund's exposure will be attained through the use of derivatives in addition to its exposure through direct investments. Derivatives will primarily be used as an efficient means of implementing a particular strategy in order to gain exposure to a desired return factor. For

example, the Fund may use a total return swap to establish both long and short positions in order to gain the desired exposure rather than physically purchasing and selling short each instrument. Derivatives may also be used to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments, and/or for risk management. As a result of the Fund's use of derivatives and to serve as collateral, the Fund may hold significant amounts of U.S. Treasury obligations, including Treasury bills, bonds and notes and other obligations issued or guaranteed by the U.S. Treasury, other short-term investments, including money market funds and foreign currencies, in which certain derivatives are denominated.

The amount that may be invested in any one instrument will vary and generally depend on the return factors employed by the Adviser at that time. However, with the exception of specified investment limitations for certain assets described below, there are no stated percentage limitations on the amount that can be invested in any one type of instrument, and the Adviser may, at times, focus on a smaller number of instruments. Moreover, the Fund will generally be unconstrained by any particular capitalization, style or sector and may invest in any developed region or country. The Fund may have both long and short exposure to these instruments. The Adviser will make use of quantitative models and information and data supplied by third parties to, among other things, help determine the portfolio's weightings among various investments and construct sets of transactions and investments.

The Fund will purchase a particular instrument when the Adviser believes that such instrument will allow the Fund to gain the desired exposure to a return factor. Conversely, the Fund will consider selling a particular instrument when it no longer provides the desired exposure to a return factor. In addition, investment decisions will take into account a return factor's contribution to the Fund's overall volatility.

In addition to its main return factors, the Fund may utilize return factors that use debt securities. The Fund may invest, either directly or through financial derivative instruments, debt securities that are subject to a downgrade from investment grade to non-investment grade (also known as high yield/junk bond) status. For example, the Fund may invest in the bonds that have been downgraded while hedging credit risk more broadly by using credit default swaps indices in order to attempt to keep the Fund's exposure market neutral.

A. Exchange's Description of the Fund's Principal Investments

Under normal market conditions, the Fund will invest principally (i.e., more than 50% of the Fund's assets) in the securities and financial instruments described below, which may be represented by derivatives, as discussed below.

The Fund may invest in exchange-listed and traded common stocks, preferred stocks,<sup>12</sup> warrants and rights<sup>13</sup> of U.S. and foreign corporations (including emerging market securities), and U.S. and non-U.S. real estate investment trusts ("REITs").<sup>14</sup> Exchange-listed and traded common stocks, preferred stocks, warrants and rights of U.S. corporations, and U.S. REITs will be traded on U.S. national securities exchanges.

The Fund may invest in exchange-listed and OTC "Depository Receipts"<sup>15</sup> as described below.

---

<sup>12</sup> Preferred stock is a class of stock that generally pays a dividend at a specified rate and has preference over common stock in the payment of dividends and in liquidation (U.S. and non-U.S., including emerging markets).

<sup>13</sup> Rights are securities, typically issued with preferred stock or bonds, that give the holder the right to buy a proportionate amount of common stock at a specified price (U.S. and non-U.S., including emerging markets).

<sup>14</sup> REITs are pooled investment vehicles which invest primarily in income-producing real estate or real estate related loans or interest.

<sup>15</sup> Depository Receipts include American Depository Receipts ("ADRs"), Global Depository Receipts ("GDRs") and European Depository Receipts ("EDRs"). ADRs are receipts

The Fund may invest in the following cash and cash equivalents: investments in money market funds (for which the Adviser and/or its affiliates serve as investment adviser or administrator), bank obligations,<sup>16</sup> commercial paper,<sup>17</sup> repurchase agreements, and short-term funding agreements.<sup>18</sup>

The Fund may invest in corporate debt.<sup>19</sup>

In addition to money market funds referenced above, the Fund may invest in shares of non-exchange-traded investment company securities, that is, mutual fund shares, including mutual fund shares for which the Adviser and/or its affiliates may serve as investment adviser or

---

typically issued by an American bank or trust company that evidence ownership of underlying securities issued by a foreign corporation. EDRs are receipts issued by a European bank or trust company evidencing ownership of securities issued by a foreign corporation. GDRs are receipts issued throughout the world that evidence a similar arrangement. ADRs, EDRs and GDRs may trade in foreign currencies that differ from the currency the underlying security for each ADR, EDR or GDR principally trades in. Generally, ADRs, in registered form, are designed for use in the U.S. securities markets. EDRs, in registered form, are used to access European markets. GDRs, in registered form, are tradable both in the United States and in Europe and are designed for use throughout the world. No more than 10% of the net assets of the Fund will be invested in Depository Receipts that are not exchange-listed.

<sup>16</sup> Bank obligations include the following: bankers' acceptances, certificates of deposit, and time deposits. Bankers' acceptances are bills of exchange or time drafts drawn on and accepted by a commercial bank. Maturities are generally six months or less. Certificates of deposit are negotiable certificates issued by a bank for a specified period of time and earning a specified return. Time deposits are non-negotiable receipts issued by a bank in exchange for the deposit of funds.

<sup>17</sup> Commercial paper consists of secured and unsecured short-term promissory notes issued by corporations and other entities. Maturities generally vary from a few days to nine months.

<sup>18</sup> Short-term funding agreements are agreements issued by banks and highly rated U.S. insurance companies such as Guaranteed Investment Contracts and Bank Investment Contracts.

<sup>19</sup> The Adviser expects that, under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least \$100,000,000 par amount outstanding in developed countries, or at least \$200,000,000 par amount outstanding in emerging market countries.



administrator, to the extent permitted by Section 12(d)(1)<sup>20</sup> of the 1940 Act and the rules thereunder.

In addition, the Fund may invest in exchange traded funds (“ETFs”),<sup>21</sup> purchase and sell futures contracts on indexes of securities, invest in swaps (credit default swaps (“CDSs”), CDS indices, and total return swaps on equity securities, equity indexes, fixed income securities, and fixed income futures), invest in forward and spot currency transactions<sup>22</sup> (such investments consist of non-deliverable forwards (“NDFs”), foreign forward currency contracts, and spot currency transactions), and invest in OTC and exchange-traded call and put options on equities, fixed income securities, and currencies or options on indexes of equities, fixed income securities, and currencies.

The Fund may invest in U.S. Government obligations, which may include direct obligations of the U.S. Treasury, including Treasury bills, notes and bonds, all of which are backed as to principal and interest payments by the full faith and credit of the United States, and separately traded principal and interest component parts of such obligations that are transferable

---

<sup>20</sup> 15 U.S.C. 80a-12(d)(1).

<sup>21</sup> The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X, or -3X) ETFs.

<sup>22</sup> The Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD \$1 billion as determined by the Bank for International Settlements (“BIS”) Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD \$1 billion. For a list of eligible BIS currencies, see [www.bis.org](http://www.bis.org).

through the Federal book-entry system known as Separate Trading of Registered Interest and Principal of Securities and Coupons Under Book Entry Safekeeping.

B. Exchange's Description of the Fund's Other Investments

While the Fund, under normal market conditions, will invest at least fifty percent (50%) of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in U.S. and non-U.S. convertible securities, which are bonds or preferred stock that can convert to common stock. The common stock into which convertible securities can be converted will be exchange-traded.

The Fund may invest in reverse repurchase agreements.

The Fund may invest in sovereign obligations, which are investments in debt obligations issued or guaranteed by a foreign sovereign government or its agencies, authorities, or political subdivisions.

The Fund may invest no more than 5% of its assets in equity and debt securities that are restricted securities (Rule 144A securities), in addition to Rule 144A securities deemed illiquid by the Adviser, as referenced below.

Under normal market conditions, the Fund may invest no more than 5% of its assets, in the aggregate, in OTC common stocks, preferred stocks, warrants, rights, and CVRs of U.S. and foreign corporations (including emerging market securities).

C. Exchange's Description of the Fund's Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, 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. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may invest in other investment companies to the extent permitted by Section 12(d)(1) of the 1940 Act and rules thereunder and/or any applicable exemption or exemptive order under the 1940 Act with respect to such investments.

The Fund may invest in securities denominated in U.S. dollars, major reserve currencies, and currencies of other countries in which the Fund may invest.

The Fund may invest in both investment grade and high yield debt securities.

The Fund intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code. Furthermore, the Fund may not concentrate investments in a particular industry or group of industries, as concentration is defined under the 1940 Act, the rules or regulations thereunder, or any exemption therefrom, as such statute, rules, or regulations may be amended or interpreted from time to time.<sup>23</sup>

The Fund is a diversified series of the Trust. The Fund intends to meet the diversification requirements of the 1940 Act.

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives may

---

<sup>23</sup> The Registration Statement states that, for purposes of the Fund's fundamental investment policy regarding industry concentration, "to concentrate" generally means to invest more than 25% of the Fund's total assets, taken at market value at the time of investment.

result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).<sup>24</sup>

D. Exchange's Description of the Fund's Use of Derivatives

The Fund proposes to seek certain exposures through transactions in the specific derivative instruments described above. The derivatives to be used are futures, swaps, NDFs, foreign forward currency contracts, and call and put options. Derivatives, which are instruments that have a value based on another instrument, exchange rate, or index, may also be used as substitutes for securities in which the Fund can invest. The Fund may use these derivative instruments to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments, and/or for risk management.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the

---

<sup>24</sup> The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>25</sup> Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-82 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>26</sup> to determine whether the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>27</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting 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."<sup>28</sup>

---

<sup>25</sup> To mitigate leveraging risk, the Adviser will segregate or " earmark " liquid assets or otherwise cover the transactions that may give rise to such risk.

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>27</sup> Id.

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

Under the proposal, the Exchange states that the Fund will invest in assets globally. In addition to certain U.S. securities, the Fund proposes to hold non-U.S. exchange listed and traded common stocks, preferred stocks, warrants, and rights. Further, the Fund proposes to hold non-U.S. REITs, Depositary Receipts, corporate bonds, sovereign obligations, and convertible securities. The Exchange, however, proposes no quantitative standards with respect to these non-U.S. securities in which the Fund, at the Adviser's discretion, may invest. The Commission has recently noted that appropriate quantitative standards help reduce the extent to which Managed Fund Shares holding non-U.S. components may be susceptible to manipulation.<sup>29</sup> For example, with respect to certain equity securities, the Commission noted that standards, such as minimum market value, trading volume, and diversification requirements, should reduce the risk that Managed Fund Shares holding non-U.S. component stocks are susceptible to manipulation.<sup>30</sup>

The Exchange also states that the Fund's investments may be represented by derivatives. Further, derivatives may be used "to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments, and/or for risk management." The Exchange does not propose to limit the amount of derivatives that the Fund may hold, and also does not provide any other information regarding the Fund's use of derivatives, including the use of OTC or non-centrally cleared derivatives. The Commission has previously noted that quantitative requirements, such as concentration limits on the use of listed derivatives and limits on OTC derivatives, help reduce the extent to which Managed Fund Shares holding derivative instruments may be susceptible to manipulation.<sup>31</sup>

---

<sup>29</sup> See Securities Exchange Act Release No. 78397 (Jul. 22, 2016), 81 FR 49320, at 49325 (Jul. 27, 2016).

<sup>30</sup> Id.

<sup>31</sup> Id.

Accordingly, the Commission solicits comment on whether the proposal is consistent with the Act. In particular, the Commission seeks comment on whether the Exchange's representations relating to non-U.S. component securities and derivatives held by the Fund are sufficient to prevent the susceptibility of the Fund's portfolio to manipulation and are thereby consistent with the requirements of Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>32</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal

---

<sup>32</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice<sup>33</sup> and in Amendment Nos. 1, 2, and 3 to the proposed rule change,<sup>34</sup> in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-82 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2016-82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE,

---

<sup>33</sup> See supra note 3.

<sup>34</sup> See supra notes 4, 7, and 8.



Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-82 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

Brent J. Fields

Secretary

---

<sup>35</sup> 17 CFR 200.30-3(a)(57).