

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87223; File No. SR-NYSEArca-2019-55)

October 4, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change to Amend NYSE Arca Rule 8.700-E and to List and Trade Shares of the Dynamic Short Short-Term Volatility Futures ETF

I. Introduction

On August 7, 2019, NYSE Arca, Inc. (“NYSE Arca” or “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 proposal to: (1) amend NYSE Arca Rule 8.700-E to add futures contracts and swaps on the Cboe Volatility Index (“VIX” or “VIX Index”) to the financial instruments that an issue of Managed Trust Securities³ may hold; and (2) to list and trade shares (“Shares”) of the Dynamic Short Short-Term Volatility Futures ETF (“Fund”), a series of Dynamic Shares Trust (“Trust”) under proposed amended

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ Managed Trust Security means a security that is registered under the Securities Act of 1933 (15 U.S.C. 77a), as amended (the “Securities Act”), and (i) is issued by a trust (“Trust”), or any series thereof, that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, is not registered or required to be registered as an investment company under the Investment Company Act of 1940, as amended, and is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts and/or swaps selected by the Trust’s advisor consistent with the Trust’s investment objectives, which will only include exchange-traded futures contracts involving commodities, commodity indices, currencies, currency indices, stock indices, the EURO STOXX 50 Volatility Index (VSTOXX), fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, and/or swaps on stock indices, fixed income indices, commodity indices, VSTOXX, commodities, currencies, currency indices, or interest rates, each as disclosed in the Trust’s prospectus as such may be amended from time to time, and cash and cash equivalents; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value. See NYSE Arca Rule 8.700-E(c)(1).

NYSE Arca Rule 8.700-E. The proposed rule change was published for comment in the Federal Register on August 26, 2019.⁴ The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

II. Summary of the Proposed Rule Change⁵

A. Proposed Amendments to NYSE Arca Rule 8.700-E

NYSE Arca Rule 8.700-E governs the listing and trading of Managed Trust Securities. The Exchange proposes to amend NYSE Arca Rule 8.700-E(c)(1) by expanding the definition of “Managed Trust Securities.” Currently, the definition of Managed Trust Securities specifies (among other things) that the trust that issues Managed Trust Securities may hold futures and swaps overlying certain types of reference assets, in addition to certain currency forwards.⁶ The proposed rule change would add the VIX Index to the list of permitted reference assets underlying such futures and swaps.

The Exchange states the following regarding the VIX Index.⁷ The VIX Index is an up-to-the-minute market estimate of expected volatility that is calculated by using real-time prices of options on the S&P 500[®] Index (“SPX options”) listed on Cboe Exchange, Inc. (“Cboe”). It is designed to reflect investors’ consensus view of future (30-day) expected stock market volatility. Only SPX options with Friday expirations are used to calculate the VIX Index. The VIX Index is calculated between 2:15 a.m. Central Time (“C.T.”) and 8:15 a.m. C.T. and between 8:30 a.m. C.T. and 3:15 p.m. C.T. The VIX Index is calculated by using the midpoints of real-time SPX option bid/ask quotes. Only SPX options with more than 23 days and less than 37 days to the

⁴ See Securities Exchange Act Release No. 86714 (August 209, 2019), 84 FR 44642 (“Notice”).

⁵ For a complete description of the Exchange’s proposal, see Notice, supra note 3.

⁶ See supra note 3

⁷ See Notice, supra note 4, 84 FR at 44644.

Friday SPX expiration are used to calculate the VIX Index. These SPX options are then weighted to yield a constant, 30-day measure of the expected volatility of the S&P 500 Index. VIX levels are calculated by Cboe and disseminated at 15-second intervals to market information vendors via the Options Price Reporting Authority.

The Exchange states the following regarding futures on the VIX Index (“VIX Futures” or “VIX Futures Contracts”).⁸ The Cboe Futures Exchange (“CFE”) began listing and trading VIX Futures” on March 26, 2004 under the ticker symbol VX. VIX Futures reflect the market’s estimate of the value of the VIX Index on various expiration dates in the future. According to the Registration Statement,⁹ the value of a VIX Futures Contract is based on the expected reading of the VIX Index at the expiration of such VIX Futures, and therefore represents forward implied volatility of the S&P 500 over the 30-day period following the expiration of the VIX Futures. As a result, a movement in the VIX Index today will not necessarily result in a corresponding movement in the price of VIX Futures. VIX Futures, which trade only on CFE, trade between the hours of 8:30 a.m.- 3:15 p.m. C.T. The CFE is a member of the Intermarket Surveillance Group (“ISG”). Monthly and weekly expirations in VIX Futures are available and trade nearly 24 hours a day, five days a week. VIX Weekly futures began trading on CFE in 2015.

B. Listing and Trading of the Shares

The Exchange proposes to list and trade the Shares under proposed amended NYSE Arca Rule 8.700-E. The Exchange states the following regarding the Fund. The Trust’s sponsor, Dynamic Shares LLC (“Sponsor”), will serve as its commodity pool operator upon its registration with the Commodity Futures Trading Commission and is not registered or affiliated

⁸ See id. at 44644.

⁹ On June 5, 2019, the Trust submitted to the Commission its draft registration statement on Form S-1 under the Securities Act.

with a broker-dealer. Wilmington Trust Company is the sole “Trustee” of the Trust. The Nottingham Company will be the “Administrator” for the Fund. Nottingham Shareholder Services, LLC will serve as the “Transfer Agent” for the Fund for “Authorized Participants.” Capital Investment Group, Inc. will serve as the “Distributor” for the Fund. The Fund will seek to provide investors with inverse exposure to the implied volatility of the broad-based, large-cap U.S. equity market. Such exposure will be for one full trading day. The Fund will be actively managed and will not be benchmarked to the VIX Index.¹⁰ The pursuit of the Fund’s daily investment objective means that the Fund’s return for a period longer than a full trading day will be the product of the series of daily returns, with daily repositioned exposure, for each trading day during the relevant period. As a consequence, the return for investors that invest for periods less than a full trading day or for a period different than a trading day will not be the product of the return of the Fund’s stated daily inverse investment objective. Under normal market conditions,¹¹ the Fund will seek to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of short positions in VIX Futures Contracts with monthly expirations. The Fund expects to primarily take short positions in VIX Futures by shorting the next two near term VIX Futures and rolling the nearest month VIX Futures Contract to the next month on a daily basis. As such, the Fund expects to have a constant one-month rolling short position in first and second month VIX Futures. The Fund also may hold cash and cash equivalents, including U.S. Treasury securities. The Fund will seek to dynamically manage its notional exposure to VIX Futures. For example, when the VIX Index is below its historical average, the Fund’s notional exposure will be lower than a traditional short VIX short term

¹⁰ The Fund does not seek to track the performance of the VIX Index or the S&P 500® and can be expected to perform very differently from the VIX Index over all periods of time.

¹¹ Normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

futures ETF, which may maintain a fixed notional exposure every day. When the VIX Index is going up, the Fund will gradually increase its notional exposure, up to a ceiling of -0.5 times its net asset value (“NAV”). The Fund expects that its notional exposure will not exceed -0.5 times its NAV, but that its notional exposure may exceed -0.5 times its NAV during intraday trading before recalibration.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹² and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ 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. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁵ which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

A. Exchange’s Proposal to Amend Rule 8.700-E

The Commission believes that the proposal to amend NYSE Arca Rule 8.700-E(c)(1) to

¹² 15 U.S.C. 78f.

¹³ 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).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

add futures contracts and swaps on the VIX Index to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions is consistent with Section 6(b)(5) of the Act. The Commission notes that it has previously approved: (1) the addition of VIX Futures to the definition of Futures Reference Assets applicable to “Futures-Linked Securities” in NYSE Arca Rule 5.2-E(j)(6) (Index-Linked Securities);¹⁶ (2) the listing and trading on the Exchange of series of Trust Issued Receipts that reference VIX Futures;¹⁷ and (3) an earlier expansion of NYSE Arca Rule 8.700-E to add the VSTOXX as a permitted reference asset to the futures contracts and swaps that may be held by trusts that issue Managed Trust Securities.¹⁸

The existing initial and continued listing criteria applicable to Managed Trust Securities would continue to apply, and the continued listing standards require, among other things, that: (1) the Disclosed Portfolio (as defined in NYSE Arca Rule 8.700-E(c)(2) be disseminated at least daily and to all market participants at the same time; (2) an intraday indicative value (“IIV”) be calculated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session; and (3) following the initial 12-month period after the commencement of trading of an issue of Managed Trust Securities, (a) the trust must have 50,000 or more Managed Trust Securities issued and outstanding, (b) the market value of all Managed Trust Securities issued and outstanding must be \$1,000,000 or more, and (c)

¹⁶ See Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR-NYSEArca-2008-111).

¹⁷ See Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR-NYSEArca-2008-111).

¹⁸ See Securities Exchange Act Release No. 82066 (November 13, 2007), 82 FR 54434 (November 17, 2017) (SR-NYSEArca-2017-85). The VSTOXX is designed to reflect market expectations of near-term to long-term volatility by measuring the square root of the implied variances across all options of a given time to expiration. See *id.* at 54434.

there must be 50 or more record and/or beneficial holders.¹⁹

Further, the Commission notes that the Exchange has represented that its surveillance procedures are adequate to deter and detect violations of Exchange rules.²⁰

B. Exchange's Proposal to List and Trade the Shares

The Commission believes that the proposal to list and trade the Shares is consistent with Section 11A(a)(1)(C)(iii) of the Act. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Additionally, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

The Commission also believes that the proposal to list and trade the Shares is consistent with Section 6(b)(5) of the Act. The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Trust's NAV and the NAV per Share will be calculated and disseminated daily. The Exchange will disseminate for the Trust on a daily basis by means of the CTA high-speed line information with respect to the most recent NAV per Share, and the number of Shares outstanding. The Exchange also will make available on its website daily trading volume, closing prices and the NAV per Share. The IIV for the Shares will be calculated and disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On a daily basis, the Trust will disclose on its website

¹⁹ See NYSE Arca Rule 8.700-E(e)(2).

²⁰ See Notice, supra note 4, at 44647.

www.dynamicsharesetf.com) for all of the assets held by the Fund the following information: name; ticker symbol (if applicable); CUSIP or other identifier (if applicable); description of the holding; with respect to derivatives, the identity of the security, commodity, index or other underlying asset; the quantity or aggregate amount of the holding as measured by par value, notional value or amount, number of contracts or number of units (if applicable); maturity date; coupon rate (if applicable); effective date or issue date (if applicable); market value; percentage weighting in the Disclosed Portfolio; and expiration date (if applicable). The Trust's website information will be publicly available at no charge. Pricing for VIX, VIX Futures, as well as the underlying SPX options, will be available from major market data vendors. Pricing for VIX Futures will also be available from CFE. Pricing for SPX options is also available from Cboe. Price information for cash equivalents is available from major market data vendors.

The Exchange will obtain a representation from the Trust that the NAV and the NAV per Share will be calculated daily and that the NAV, the NAV per Share, and the composition of the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to NYSE Arca Rule 7.12-E and 8.700-E(e)(2)(D), which set forth circumstances under which trading in the Shares may be halted. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Commission notes that the Exchange has represented that its surveillance procedures are

adequate to continue to properly monitor the Exchange trading of the Shares in all trading sessions.²¹

Additionally, the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.²² The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees.

In support of this proposal, the Exchange has made the following representations:

1. The Trust will be subject to the criteria in NYSE Arca Rule 8.700-E for initial and continued listing of the Shares.²³
2. In the event (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Disclosed Portfolio.²⁴
3. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.²⁵

²¹ See Notice, supra note 4, at 44647.

²² See NYSE Arca Rule 8.700-E(c)(2)(B)(ii).

²³ See Notice, supra note 4, at 44647.

²⁴ See id. at 44644.

²⁵ See id. at 44647.

4. Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.²⁶
5. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and VIX Futures with other markets or other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and VIX Futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares and VIX Futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain cash equivalents held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine.²⁷
6. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2-E(a), which

²⁶ See id. at 44647.

²⁷ See id. at 44647.

imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (4) how information regarding the IOPV and the Disclosed Portfolio is disseminated; (5) the risks involved in trading the Shares during the opening and late trading sessions when an updated IOPV will not be calculated or publicly disseminated; and (6) trading information.²⁸

7. The Exchange represents that, for the initial and continued listing of the Shares, the Trust must be in compliance with NYSE Arca Rule 5.3-E and Rule 10A-3 under the Act.²⁹
8. A minimum of 100,000 Shares will be outstanding at the start of trading on the Exchange.³⁰
9. All statements and representations made in this filing regarding (a) the description of the portfolio of the Fund, (b) limitations on portfolio of the Fund, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.³¹
10. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will

²⁸ See id. at 44647-44648.

²⁹ See id. at 44647.

³⁰ See id. at 44647.

³¹ See id. at 44647.

monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).³²

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

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act³³ the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-NYSEArca-2019-55), be, and hereby is, approved.

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

Jill M. Peterson
Assistant Secretary

³² See id. at 44647.

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).