

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88924; File No. SR-NYSEArca-2020-07)

May 21, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR SSGA Responsible Reserves ESG ETF under NYSE Arca Rule 8.600-E

I. Introduction

On January 14, 2020, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the SPDR SSGA Responsible Reserves ESG ETF (“Fund”), under NYSE Arca Rule 8.600-E (Managed Fund Shares). The proposed rule change was published for comment in the Federal Register on January 30, 2020.³ On March 12, 2020, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ On April 22, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88031 (January 24, 2020), 85 FR 5493.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 88364, 85 FR 15550 (March 18, 2020). The Commission designated April 29, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

superseded the proposed rule change as originally filed.⁶ On April 24, 2020, the Commission published notice of Amendment No. 1 and instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.⁸ On May 11, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.⁹ The Commission has received no comment letters on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

⁶ Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nysearca-2020-07/srnysearca202007-7104394-215848.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 88738, 85 FR 24050 (April 30, 2020).

⁹ In Amendment No. 2, the Exchange: (i) clarified that the Fund would not be permitted to invest in sovereign debt obligations issued or guaranteed by emerging market countries or their agencies; (ii) represented that the Fund may not invest more than 5% of its total assets in any one Short-Term Fixed Income Security (as defined below) at the time of purchase (excluding U.S. Government securities and inflation-protected public obligations (“TIPS”)); (iii) clarified that the Fund’s holdings in Short-Term Fixed Income Securities, and cash and cash equivalents will allow the Fund to maintain a maximum dollar-weighted average maturity of sixty days or less and dollar-weighted average life of 120 days or less and will have remaining maturities of 397 calendar days or less; (iv) represented that the Fund’s Short-Term Fixed Income Securities all will be investment grade; (v) represented that the Fund’s fixed income investments as a whole, including Short-Term Fixed Income Securities and cash equivalents, will include at least 13 non-affiliated issuers; and (vi) made technical, clarifying, and conforming changes. Amendment No. 2 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nysearca-2020-07/srnysearca202007-7180920-216791.pdf>.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2¹⁰

A. Description of the Fund

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Rule 8.600-E, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund is a series of the SSGA Active Trust (“Trust”).¹¹ SSGA Funds Management, Inc. (“Adviser”) will be the investment adviser to the Fund,¹² State Street Global Advisors Funds Distributors, LLC will be the distributor of the Fund’s Shares, and State Street Bank and Trust Company will be the custodian and transfer agent for the Fund.

According to the Exchange, the investment objective of the Fund will be to seek to maximize current income while giving consideration to environmental, social and governance

¹⁰ Additional information regarding the Fund, the Trust, and the Shares can be found in Amendment No. 2, supra note 9, and in the Registration Statement, infra note 11.

¹¹ The Exchange states that on December 20, 2019, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and the Investment Company Act of 1940 (“1940 Act”) relating to the Fund (File Nos. 333-173276 and 811-22542) (“Registration Statement”). The Exchange also states that the Commission has issued an order granting certain exemptive relief under the 1940 Act to the Trust. See Investment Company Act Release No. 29524, December 13, 2010 (File No. 812-13487) (“Exemptive Order”). The Exchange represents that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

¹² The Exchange states that the Adviser is a wholly-owned subsidiary of State Street Global Advisors, Inc., which itself is a wholly-owned subsidiary of State Street Corporation. The Exchange states that the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the portfolio. The Exchange further states that in the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser 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, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

(“ESG”) criteria, consistent with the preservation of capital and liquidity by investing in a portfolio of high-quality, short-term debt obligations. The Fund will follow an investment process in which the Adviser bases its decisions on the relative attractiveness of different short-term debt instruments while considering ESG criteria at the time of purchase. According to the Exchange, the Adviser intends to consider ESG criteria at the time of purchase by using ESG-related metrics for each Fund investment. The potential investment universe will first be screened to remove issuers involved in, and/or which derive significant revenue from, certain practices, industries or product lines, including: extreme event controversies, controversial weapons, civilian firearms, thermal coal extraction, tobacco, and UN global compact violations. While issuers in the financial services sector are not included in the initial screening process, the Adviser will consider scoring criteria to assign an ESG rating to issuers in the financial services sector.

1. Principal Investments

According to the Exchange, the Fund will attempt to meet its investment objective by investing in a broad range of “Short-Term Fixed Income Securities,” as described below. Under normal market conditions,¹³ the Fund will invest at least 80% of its net assets in Short-Term Fixed Income Securities, and cash and cash equivalents¹⁴ to maintain a maximum dollar-weighted average maturity of sixty days or less and dollar-weighted average life of 120 days or less. Short-Term Fixed Income Securities in which the Fund will invest will have remaining maturities of 397 calendar days or less, and will consist of the following:

¹³ The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

¹⁴ The term “cash equivalents” is defined in Commentary .01(c) to NYSE Arca Rule 8.600-E.

- short-term obligations of the U.S. Government, its agencies, instrumentalities, authorities or political subdivisions (other than cash equivalents);
- mortgage pass-through securities;¹⁵
- corporate bonds, floating rate bonds or variable rate bonds (including “inverse floaters”);
- bank obligations, including negotiable certificates of deposit, time deposits and bankers’ acceptances¹⁶ (other than cash equivalents);
- zero coupon securities;
- Eurodollar Certificates of Deposit (“ECDs”), Eurodollar Time Deposits (“ETDs”) and Yankee Certificates of Deposit (“YCDs”);¹⁷
- TIPS of the U.S. Treasury, as well as TIPS of major governments other than the United States;
- repurchase and reverse repurchase agreements (other than repurchase and reverse repurchase agreements that are cash equivalents);
- sovereign debt obligations issued or guaranteed by foreign governments (excluding emerging market countries) or their agencies;
- commercial paper (other than cash equivalents); and

¹⁵ The Exchange states that the Fund will seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of “to-be-announced” or “TBA transactions.”

¹⁶ Under normal market conditions, the Fund intends to invest more than 25% of its total assets in bank obligations.

¹⁷ The Exchange states that ECDs and ETDs are U.S. dollar denominated certificates of deposit and time deposits, respectively, issued by non-U.S. branches of domestic banks and non-U.S. banks, and YCDs are U.S. dollar denominated certificates of deposit issued by U.S. branches of non-U.S. banks.

- private placements, restricted securities and Rule 144A securities.

2. Other Investments

While the Fund, under normal market conditions, will invest at least 80% of the Fund's net assets in the securities described above in "Principal Investments," the Fund may invest its remaining assets in exchange traded funds ("ETFs")¹⁸ and securities of non-exchange-traded investment company securities, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.¹⁹ The Exchange represents that the Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

B. Application of Generic Listing Requirements

The Exchange states that it submitted this proposed rule change because the portfolio for the Fund will not meet all of the generic listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E applicable to the listing of Managed Fund Shares. The Exchange represents that the Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(a)(1)(A) through (E) with respect to the Fund's investments in non-exchange-traded

¹⁸ The Exchange states that for purposes of this filing, "ETFs" are Investment Company Units (as described in NYSE Arca Rule 5.2-E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100-E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600-E). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse or leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹⁹ The Exchange states that investments in other non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund.

investment company securities²⁰ and Commentary .01(b)(3) to NYSE Arca Rule 8.600-E with respect to the Fund's investments in Short-Term Fixed Income Securities.²¹

The Fund may invest in shares of non-exchange traded open-end management investment company securities, which are equity securities. To the extent the Fund invests in shares of non-exchange-traded open-end management investment company securities, the Fund will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600-E (U.S. Component Stocks) with respect to such holdings. The Exchange notes that investments in non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund. In addition, the Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of

²⁰ Commentary .01(a)(1) to NYSE Arca Rule 8.600-E provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis (subject to exclusions for Derivative Securities Products and Index-Linked Securities): (A) component stocks that in the aggregate account for at least 90% of the equity weight of the portfolio each shall have a minimum market value of at least \$75 million; (B) component stocks that in the aggregate account for at least 70% of the equity weight of the portfolio each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months; (C) the most heavily weighted component stock shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component shall 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; (E) except as provided in (F), equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act; and (F) no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded American Depositary Receipts.

²¹ Commentary .01(b)(3) to NYSE Arca Rule 8.600-E requires that an underlying portfolio (excluding exempted securities) that includes fixed income securities shall 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) to NYSE Arca Rule 8.600-E.

Section 12(d)(1) of the 1940 Act and the rules thereunder. The Exchange further notes that such securities must satisfy applicable 1940 Act diversification requirements and have a net asset value based on the value of securities and financial assets the investment company holds.

In addition, the Exchange states that the Fund's investments in Short-Term Fixed Income Securities may not comply with Commentary .01(b)(3) to NYSE Arca Rule 8.600-E.

Commentary .01(b)(3) requires that an underlying portfolio (excluding exempted securities) that includes fixed income securities to include a minimum of 13 non-affiliated issuers, unless at least 70% of the weight of the portfolio consists of equity securities as described in Commentary .01(a) to NYSE Arca Rule 8.600-E. The Exchange believes that any concerns related to non-compliance with this requirement are mitigated by the types of instruments that the Fund would hold. The Adviser represents that the Fund is not a money market fund but its investment strategy follows certain guidelines applicable to such funds. Specifically, the Fund will only invest in Short-Term Fixed Income Securities to allow the Fund to maintain a maximum dollar-weighted average maturity of sixty days or less and dollar-weighted average life of 120 days or less. The Fund will only invest in Short-Term Fixed Income Securities that have remaining maturities of 397 calendar days or less and that are investment grade. The Fund's Short-Term Fixed Income Securities will include those instruments that are included in the definition of cash and cash equivalents, but are not considered cash and cash equivalents because they have maturities of three months or greater and up to 397 days. In addition, the Fund's Short-Term Fixed Income Securities may include securities that are not of the type characterized as cash equivalents, including foreign government securities (excluding emerging market countries' securities) and corporate bonds. The Exchange represents that the Fund's investments in sovereign debt obligations (which will not include obligations of emerging market countries),

corporate bonds, floating rate bonds, and variable rate bonds will be limited to 30% of the Fund's total assets. The Exchange also represents that the Fund may not invest more than 5% of its total assets in any one Short-Term Fixed Income Security (excluding U.S. Government securities and TIPS) at time of purchase. In addition, the Exchange states that the Fund's fixed income investments as a whole, including Short-Term Fixed Income Securities and cash equivalents, will include at least 13 non-affiliated issuers.

The Exchange notes that, other than Commentary .01(a)(1)(A) through (E) regarding the Fund's investments in non-exchange-traded investment company securities and Commentary .01(b)(3) regarding the Fund's investments in Short-Term Fixed Income Securities, as described above, the Fund will meet all other requirements of Rule 8.600-E.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,²³ 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.

According to the Exchange, other than Commentary .01(a)(1)(A) through (E) with respect to the Fund's investments in non-exchange-traded investment company securities and

²² 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).

²³ 15 U.S.C. 78f(b)(5).

Commentary .01(b)(3) with respect to the Fund's investments in Short-Term Fixed Income Securities, as described above, the Fund will meet all other requirements of NYSE Arca Rule 8.600-E, and the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E.

With respect to the Fund's investments in shares of non-exchange-traded open-end investment company securities, which will not comply with the requirements for equity securities set forth in Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600-E,²⁴ the Commission notes that: (1) such securities must satisfy applicable 1940 Act diversification requirements; and (2) the value of such securities is based on the value of securities and financial assets held by those investment companies.²⁵ In addition, the Exchange states that investments in non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund.²⁶ The Commission therefore believes that the Fund's investments in non-exchange-traded open-end management investment company securities would not make the Shares susceptible to fraudulent or manipulative acts and practices.²⁷

The Fund's investments in Short-Term Fixed Income Securities will not meet the requirement for 13 non-affiliated issuers in Commentary .01(b)(3) to NYSE Arca Rule 8.600-E.²⁸ The Commission, however, believes that certain restrictions on the Short-Term Fixed

²⁴ See supra note 20.

²⁵ See Amendment No. 2, supra note 9.

²⁶ See id.

²⁷ The Commission notes it has approved other exchange-traded funds that can hold non-exchange-traded open-end management investment company securities in a manner that does not comply with Commentary .01(a)(1) to Rule 8.600-E. See, e.g., Securities Exchange Act Release No. 86362 (July 12, 2019), 84 FR 34457 (July 18, 2019) (SR-NYSEArca-2019-36).

²⁸ See supra note 21.

Income Securities help to mitigate concerns regarding the Shares being susceptible to manipulation because of the Fund's investment in the Short-Term Fixed Income Securities.²⁹ Specifically, the Exchange states that Short-Term Fixed Income Securities will include instruments that are included in the definition of cash equivalents,³⁰ but are not considered cash equivalents because they have maturities of three months or greater. As proposed, the Fund's investments in Short-Term Fixed Income Securities will also include sovereign debt obligations (which will not include obligations of emerging market countries), corporate bonds, floating rate bonds and variable rate bonds, but such holdings would be limited to 30% of the Fund's total assets.³¹ In addition, although the Fund's investments in Short-Term Fixed Income Securities would include sovereign debt, they would exclude sovereign debt obligations of emerging market countries.³² Further, the Short-Term Fixed Income Securities in which the Fund may invest will have remaining maturities of 397 days or less and will be investment grade.³³ In addition, the Fund may not invest more than 5% of its total assets, measured at the time of purchase, in any one Short-Term Fixed Income Security (excluding U.S. Government securities and TIPS).³⁴ The Exchange also states that the Fund's fixed income investments as a whole,

²⁹ The Commission notes that the Short-Term Fixed Income Securities will comply with all other requirements for fixed income securities set forth in Commentary .01(b) to NYSE Arca Rule 8.600-E, and the cash equivalents the Fund may invest in will comply with the requirements of Commentary .01(c). See Amendment No. 2, supra note 9.

³⁰ See supra note 14.

³¹ See Amendment No. 2, supra note 9.

³² See id.

³³ See id.

³⁴ See id.

including Short-Term Fixed Income Securities and cash equivalents, will include at least 13 non-affiliated issuers.³⁵

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio holdings or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in the filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange. In addition, 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 monitor³⁶ 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).

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 2. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act³⁷ and the rules and regulations thereunder applicable to a national securities exchange.

³⁵ See id.

³⁶ The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of 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.

³⁷ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 2 is consistent with the Act. 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. Please include File Number SR-NYSEArca-2020-07 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-2020-07. 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, 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the Federal Register. The Commission notes that Amendment No. 2 clarified the investments of the Fund and restrictions thereon and the application of NYSE Arca Rule 8.600-E, Commentary .01 to the Fund's investments. Amendment No. 2 also provided other clarifications and additional information related to the proposed rule change. The changes and additional information in Amendment No. 2 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³⁸ to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

³⁸ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁹ that the proposed rule change (SR-NYSEArca-2020-07), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

J. Matthew DeLesDernier
Assistant Secretary

³⁹ Id.

⁴⁰ 17 CFR 200.30-3(a)(12).