

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68488; File No. SR-NYSEArca-2012-142)

December 20, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade the Guggenheim Enhanced Total Return ETF under NYSE Arca Equities Rule 8.600

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 13, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): Guggenheim Enhanced Total Return ETF. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Guggenheim Enhanced Total Return ETF (the “Fund”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.<sup>4</sup> The Shares will be offered by the Claymore Exchange-Traded Fund Trust 2 (the “Trust”),<sup>5</sup> a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>6</sup>

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<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> The Trust is registered under the 1940 Act. On June 9, 2011, 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 1940 Act relating to the Fund (File Nos. 333-135105 and 811-21910) (the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29271 (May 18, 2010) (File No. 812-13534) (“Exemptive Order”).

<sup>6</sup> The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. See Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010)

The investment adviser for the Fund is Guggenheim Funds Investment Advisors, LLC (“Adviser”). The Bank of New York Mellon is the custodian and transfer agent for the Fund. Guggenheim Funds Distributors, LLC is the distributor for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. The Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information

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(SR-NYSEArca-2010-86) (order approving listing of Peritus High Yield ETF); 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR-NYSEArca-2011-11) (order approving listing of Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF).

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

concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition 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 such portfolio.

#### Principal Investment Strategies

According to the Registration Statement, the Fund's investment objective is to seek maximum total return, comprised of income and capital appreciation. The Fund will normally<sup>8</sup> invest in a portfolio of fixed income instruments of varying maturities and equity securities.

#### Fixed Income Instruments Investments

The fixed income instruments in which the Fund will invest include bonds, debt securities and other similar instruments, such as Treasury securities, collateralized mortgage obligations ("CMOs"), collateralized loan obligations ("CLOs") and mortgage- and asset-backed securities, issued by various U.S. and non-U.S. public- or private-sector entities. The Fund will normally invest at least 65% of its assets in fixed income instruments.

In addition, the Fund may invest in U.S. and non-U.S. dollar-denominated debt securities of U.S. and foreign corporations, governments, agencies and supra-national agencies.<sup>9</sup>

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<sup>8</sup> The term "normally" 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 causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>9</sup> Generally a corporate bond must have \$100 million or more par amount outstanding to be considered as an eligible investment.

While the Fund generally will invest more than 50% of its assets in investment grade fixed income instruments, the Fund also expects to invest to a maximum of 35% of its total assets in high yield debt securities (“junk bonds”), which are debt securities that are rated below investment grade by nationally recognized statistical rating organizations, or are unrated securities that the Adviser believes are of comparable quality. The Fund may invest up to 30% of its total assets in debt securities denominated in foreign currencies, and may invest without limitation in U.S. dollar-denominated debt securities of foreign issuers. The Fund may invest up to 20% of its total assets in debt securities and instruments that are economically tied to emerging market countries.<sup>10</sup>

The Fund may invest in mortgage- or asset-backed securities and is limited to 10% of its total assets in any combination of mortgage-related or other asset-backed interest-only, principal-only or inverse floater securities. This limitation does not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration (“GNMA”), the Federal Housing Administration (“FHA”), the Federal National Mortgage Association (“FNMA”) and the Federal Home Loan Mortgage Corporation (“FHLMC”). The Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.

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<sup>10</sup> According to the Registration Statement, emerging market countries are countries that major international financial institutions, such as the World Bank, generally consider to be less economically mature than developed nations. Emerging market countries can include every nation in the world except the United States, Canada, Japan, Australia, New Zealand and most countries located in Western Europe. Generally a corporate bond of an issuer in an emerging market must have \$200 million or more par amount outstanding to be considered as an eligible investment.

The Fund may invest in short-term instruments such as commercial paper<sup>11</sup>, repurchase agreements<sup>12</sup>, and/or reverse repurchase agreements<sup>13</sup>. The Fund may invest in money market instruments (including other funds which invest exclusively in money market instruments). These investments in money market instruments may be as part of a temporary defensive strategy to protect against temporary market declines.

The Fund may invest in debt securities that have variable or floating interest rates which are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate

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<sup>11</sup> The commercial paper in which the Fund may invest includes variable amount master demand notes and asset-backed commercial paper. Commercial paper normally represents short-term unsecured promissory notes issued in bearer form by banks or bank holding companies, corporations, finance companies and other issuers.

<sup>12</sup> Repurchase agreements are fixed-income securities in the form of agreements backed by collateral. These agreements, which may be viewed as a type of secured lending by the Fund, typically involve the acquisition by the Fund of securities from the selling institution (such as a bank or a broker dealer), coupled with the agreement that the selling institution will repurchase the underlying securities at a specified price and at a fixed time in the future (or on demand). These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of \$500 million and (ii) securities dealers (“Qualified Institutions”). The Adviser will monitor the continued creditworthiness of Qualified Institutions. The Fund may accept a wide variety of underlying securities as collateral for the repurchase agreements entered into by the Fund. Such collateral may include U.S. government securities, corporate obligations, equity securities, municipal debt securities, mortgage-backed securities and convertible securities. Any such securities serving as collateral are marked-to-market daily in order to maintain full collateralization (typically purchase price plus accrued interest).

<sup>13</sup> Reverse repurchase agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. Generally the effect of such transactions is that the Fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while in many cases the Fund is able to keep some of the interest income associated with those securities.

instrument. The Fund will not, however, invest in inverse floaters. Variable or floating interest rates generally reduce changes in the market price of securities from their original purchase price because, upon readjustment, such rates approximate market rates. Accordingly, as interest rates decrease or increase, the potential for capital appreciation or depreciation is less for variable or floating rate securities than for fixed rate obligations. Many securities with variable or floating interest rates purchased by the Fund will be subject to payment of principal and accrued interest (usually within seven days) on the Fund's demand. The terms of such demand instruments require payment of principal and accrued interest by the issuer, a guarantor and/or a liquidity provider. The Adviser will monitor the pricing, quality and liquidity of the variable or floating rate securities held by the Fund.

With respect to fixed income instrument investments, the Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

#### Equity Securities Investments

The Fund may invest up to 35% of its total assets in U.S. exchange listed equity securities and foreign equity securities.<sup>14</sup> The Fund may invest up to 30% of its total assets in U.S. exchange listed preferred stock, convertible securities<sup>15</sup> and other equity-related securities. The Fund may gain exposure to commodities through investment of up to 30% of its total assets,

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<sup>14</sup> The foreign equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG"), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. See note 30, *infra*.

<sup>15</sup> Convertible securities include bonds, debentures, notes, preferred stocks and other securities that entitle the holder to acquire common stock or other equity securities of the same or a different issuer.

which may include investments in exchange-traded products (“Underlying ETPs”)<sup>16</sup> and exchange-traded notes (“ETNs”)<sup>17</sup>. The Fund may invest in the securities of exchange listed real estate investment trusts (“REITs”) to the extent allowed by law, which pool investors’ funds for investments primarily in commercial real estate properties. Investment in REITs may be the most practical available means for the Fund to invest in the real estate industry.

#### Other Investments

As a non-principal investment strategy, the Fund may invest in insurance-linked securities and structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular security or security index), other than ETNs. The Fund may invest in certificates of deposit (“CDs”), time deposits and bankers’ acceptances from U.S. banks. A bankers’ acceptance is a bill of exchange or time draft drawn on and accepted by a commercial bank. A CD is a negotiable interest-bearing instrument with a specific maturity. CDs are issued by banks and savings and loan institutions in exchange for the deposit of funds and normally can be traded in the secondary market prior to maturity. A time deposit is a non-negotiable receipt issued by a bank in exchange for the deposit of funds. Like a CD, it earns a specified rate of interest over a definite period of time; however, it cannot be traded in the secondary market.

The Fund may invest in zero-coupon or pay-in-kind securities. These securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a

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<sup>16</sup> Underlying ETPs include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

<sup>17</sup> ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)).



deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities. Because zero-coupon and pay-in-kind securities do not pay current cash income, the price of these securities can be volatile when interest rates fluctuate.

The Fund may use delayed delivery transactions as an investment technique. Delayed delivery transactions, also referred to as forward commitments, involve commitments by the Fund to dealers or issuers to acquire or sell securities at a specified future date beyond the customary settlement for such securities. These commitments may fix the payment price and interest rate to be received or paid on the investment. The Fund may purchase securities on a delayed delivery basis to the extent that it can anticipate having available cash on the settlement date. Delayed delivery agreements will not be used as a speculative or leverage technique.

The Adviser may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers or dealers to purchase or sell foreign currencies at a future date (“forward contracts”).

The Fund may invest in the securities of other investment companies. Under Section 12(d) of the 1940 Act, or as otherwise permitted by the Commission, the Fund’s investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund’s total assets with respect to any one investment company and (iii) 10% of the Fund’s total assets with respect to investment companies in the aggregate.<sup>18</sup>

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<sup>18</sup> 15 U.S.C. 80a-12(d).

The Fund will be considered non-diversified and can invest a greater portion of assets in securities of individual issuers than a diversified fund.<sup>19</sup>

The Fund may not invest more than 25% of the value of its net assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities.<sup>20</sup>

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities<sup>21</sup> (calculated at the time of investment), including Rule 144A securities. The Fund will

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<sup>19</sup> A “non-diversified company”, as defined in Section 5(b)(2) of the 1940 Act, means any management company other than a diversified company (as defined in Section 5(b)(1) of the 1940 Act).

<sup>20</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

<sup>21</sup> The Fund may invest in master demand notes, which are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. The interest rate on a master demand note may fluctuate based upon changes in specified interest rates, be reset periodically according to a prescribed formula or be a set rate. Although there is no secondary market in master demand notes, if such notes have a demand feature, the payee may demand payment of the principal amount of the note upon relatively short notice. Master demand notes are generally illiquid and therefore subject to the Fund’s percentage limitations for holdings in illiquid securities. In addition, the Fund may purchase participations in corporate loans. Participation interests generally will be acquired from a commercial bank or other financial institution (a “Lender”) or from other holders of a participation interest (a “Participant”). The purchase of a participation interest either from a Lender or a Participant will not result in any direct contractual relationship with the borrowing company (the “Borrower”). The Fund generally will have no right directly to enforce compliance by the Borrower with the terms of the credit agreement. Instead, the Fund will be required to rely on the Lender or the Participant that sold the participation interest, both for the enforcement of the Fund’s rights against the Borrower and for the receipt and processing of payments due to the Fund under the loans. Under the terms of a participation interest, the Fund may be regarded as a member of the Participant, and thus the Fund is subject to the credit risk of both the Borrower and a Participant. Participation interests are generally subject to restrictions on resale. Generally, the Fund considers participation interests to be illiquid and therefore subject to the Fund’s percentage limitations for holdings in illiquid securities.

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 securities and other illiquid assets. Illiquid securities 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.<sup>22</sup>

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code.<sup>23</sup>

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>24</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily and that

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<sup>22</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

<sup>23</sup> 26 U.S.C. 851.

<sup>24</sup> 17 CFR 240.10A-3.

the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts or swap agreements.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance 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>25</sup>

#### Creations and Redemptions of Shares

Investors may create or redeem in Creation Unit size of 100,000 Shares or aggregations thereof ("Creation Unit") through an Authorized Participant, as described in the Registration Statement. In order to purchase Creation Units of a Fund, an investor must generally deposit a designated portfolio of securities (the "Deposit Securities") (and/or an amount in cash in lieu of some or all of the Deposit Securities) per each Creation Unit constituting a substantial replication, or representation, of the securities included in the Fund's portfolio as selected by the Adviser ("Fund Securities") and generally make a cash payment referred to as the "Cash Component." The list of the names and the amounts of the Deposit Securities will be made available by the Fund's custodian through the facilities of the National Securities Clearing Corporation ("NSCC") immediately prior to the opening of the NYSE Arca Core Trading

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<sup>25</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.

Session (9:30 a.m. to 4:00 p.m. Eastern time (“E.T.”)). The Cash Component will represent the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.

Shares may be redeemed only in Creation Unit size at their NAV on a day the NYSE Arca is open for business. The Fund’s custodian will make available immediately prior to the opening of the NYSE Arca Core Trading Session, through the facilities of NSCC, the list of the names and the amounts of the Fund’s portfolio constituents that will be applicable that day to redemption requests in proper form. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to purchases of Creation Units.

#### Net Asset Value

The NAV per Share of the Fund will be determined once daily as of the close of the New York Stock Exchange (“NYSE”), usually 4:00 p.m. E.T., each day the NYSE is open for trading, provided that (a) any assets or liabilities denominated in currencies other than the U.S. dollar shall be translated into U.S. dollars at the prevailing market rates on the date of valuation as quoted by one or more major banks or dealers that makes a two-way market in such currencies (or a data service provider based on quotations received from such banks or dealers ); and (b) U.S. fixed income instruments may be valued as of the announced closing time for trading in fixed income instruments on any day that the Securities Industry and Financial Markets Association announces an early closing time. NAV per Share is determined by dividing the value of the Fund’s portfolio securities, cash and other assets (including accrued interest), less all liabilities (including accrued expenses), by the total number of Shares outstanding.

Debt securities will be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type. The Fund’s debt securities, including some or all of the mortgage-

backed securities in which the Fund invests, may also be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Any such third-party pricing service may use a variety of methodologies to value some or all of the Fund's debt securities to determine the market price. For example, the prices of securities with characteristics similar to those held by the Fund may be used to assist with the pricing process. In addition, the pricing service may use proprietary pricing models. Short-term securities for which market quotations are not readily available will be valued at amortized cost, which approximates market value. Equity securities will be valued at the last reported sale price on the principal exchange on which such securities are traded, as of the close of regular trading on the NYSE on the day the securities are being valued or, if there are no sales, at the mean of the most recent bid and ask prices. Equity securities that are traded primarily on the NASDAQ Stock Market will be valued at the NASDAQ Official Closing Price. Securities for which market quotations (or other market valuations such as those obtained from a pricing service) are not readily available, including restricted securities, will be valued by a method that the Fund's Board of Trustees believes accurately reflects fair value. Securities will be valued at fair value when market quotations are not readily available or are deemed unreliable, such as when a security's value or meaningful portion of the Fund's portfolio is believed to have been materially affected by a significant event. Such events may include a natural disaster, an economic event like a bankruptcy filing, a trading halt in a security, an unscheduled early market close or a substantial fluctuation in domestic and foreign markets that has occurred between the close of the principal exchange and the NYSE. In such a case, the value for a security is likely to be different from the last quoted market price. In addition, due to the subjective and variable nature of fair

market value pricing, it is possible that the value determined for a particular asset may be materially different from the value realized upon such asset's sale.

#### Availability of Information

The Fund's website ([www.guggenheiminvestments.com](http://www.guggenheiminvestments.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>26</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>27</sup>

On a daily basis, the Adviser will disclose on the Fund's website for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if

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<sup>26</sup> The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>27</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge. In addition, price information for the debt and equity securities held by the Fund will be available through major market data vendors and on the securities exchanges on which such securities are listed and traded.

In addition, a basket composition file, which will include the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during



the Core Trading Session.<sup>28</sup> The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>29</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules

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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE

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<sup>28</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

<sup>29</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange’s current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>30</sup> All of the equity investments to be held by the Fund, including the non-U.S.-listed equity securities held by the Fund, will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.

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<sup>30</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“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 in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which 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 risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>31</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. While the Fund generally will invest more than 50% of its assets in investment grade fixed income instruments, the Fund also expects to invest to a maximum of 35% of its total assets in high yield debt securities. The Fund may invest up to 30% of its total assets in debt securities denominated in foreign currencies, and may invest without limitation in U.S. dollar-denominated debt securities of foreign issuers. The Fund may invest up to 20% of its total assets in debt securities and instruments that are economically tied to emerging market countries. The Fund may invest in mortgage- or asset-backed securities and is limited to 10% of its total assets in any combination of mortgage-related or other asset-backed interest-only, principal-only or inverse floater securities. (This limitation does not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as GNMA, FHA, FNMA and FHLMC.) The Exchange may obtain

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<sup>31</sup> 15 U.S.C. 78f(b)(5).

information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. While the Fund may hold non-U.S. equity securities, the Fund will only invest in non-U.S. equity securities that trade in markets that are members of the ISG or are parties to comprehensive surveillance sharing agreements with the Exchange. The Fund may hold in the aggregate up to 15% of its net assets in illiquid securities, including Rule 144A securities. The Fund will not employ any leverage in order to meet its investment objective. The Fund will not invest in derivative securities including options, swaps or futures.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. On a daily basis, the Adviser will disclose on the Fund's website for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. Price information for the debt and equity securities held by the Fund will be available through major market data vendors and on the securities exchanges on which such securities are listed and traded. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Portfolio Indicative Value will

be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. 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, and quotation and last sale information will be available via the CTA high-speed line. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares

and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-142 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2012-142. 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; 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-2012-142 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).