

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68863; File No. SR-NYSEArca-2012-142)

February 7, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade the Guggenheim Enhanced Total Return ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On December 13, 2012, 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” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Guggenheim Enhanced Total Return ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on December 27, 2012.<sup>3</sup> On February 4, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 68488 (December 20, 2012), 77 FR 76326 (“Notice”). See also Securities Exchange Act Release No. 68488 (December 20, 2012), 78 FR 1892 (January 9, 2013) (SR-NYSEArca-2012-142) (correcting a typographical error by the Federal Register to the File No. reference).

<sup>4</sup> Amendment No. 1 amended the following sentence: “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.” As amended, the sentence reads: “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 or principal-only securities.” This amendment was intended to clarify that the Fund will not invest in inverse floaters. See Notice, supra note 3, at 76328. Because the changes made by Amendment No. 1 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by the Claymore Exchange-Traded Fund Trust 2 (“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. 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. The Exchange states that the Adviser is affiliated with a broker-dealer and that the Adviser 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 Fund’s portfolio.<sup>6</sup>

### Guggenheim Enhanced Total Return ETF

The Fund’s investment objective will be to seek maximum total return, composed of income and capital appreciation. The Fund will normally<sup>7</sup> invest in a portfolio of fixed-income instruments of varying maturities and equity securities.

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<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 (“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 (“Securities Act”) and the 1940 Act relating to the Fund (File Nos. 333-135105 and 811-21910) (“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> See NYSE Arca Equities Rule 8.600, Commentary .06. 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.

<sup>7</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

## 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, collateralized loan obligations, 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>8</sup>

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>9</sup>

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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>8</sup> Generally, a corporate bond must have \$100 million or more par amount outstanding to be considered as an eligible investment.

<sup>9</sup> 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

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 or principal-only securities.<sup>10</sup> This limitation does not apply to securities issued or guaranteed by federal agencies or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration, the Federal Housing Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation. The Fund may purchase or sell securities on a when-issued, delayed-delivery, or forward-commitment basis and may engage in short sales.

The Fund may invest in short-term instruments such as commercial paper,<sup>11</sup> repurchase agreements,<sup>12</sup> and reverse repurchase agreements.<sup>13</sup> The Fund may invest in money market

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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.

<sup>10</sup> See supra note 4.

<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).

instruments (including other funds that 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 that 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 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, 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

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<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.

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, 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”), which pool investors’ funds for investments primarily in commercial real estate properties, to the extent allowed by law. 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

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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 markets that are parties to a comprehensive surveillance sharing agreement with the Exchange.

<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.

<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)).

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 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>

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 its instrumentalities.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities<sup>20</sup> (calculated at the time of investment), including Rule 144A securities. The Fund will

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

<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> 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

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.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code.<sup>21</sup>

The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange further represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>22</sup> 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

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participations in corporate loans. Participation interests generally will be acquired from a commercial bank or other financial institution ("Lender") or from other holders of a participation interest ("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 ("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.

<sup>21</sup> 26 U.S.C. 851.

<sup>22</sup> 17 CFR 240.10A-3.

calculated daily and that 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>23</sup>

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.<sup>24</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>25</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>26</sup> In particular, the Commission finds that the

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<sup>23</sup> The Exchange represents that the Fund's broad-based securities benchmark index will be identified in an amendment to the Registration Statement to be filed following the Fund's first full calendar year of performance.

<sup>24</sup> See Notice and Registration Statement, supra notes 3 and 5, respectively.

<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>27</sup> 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>28</sup> which sets forth Congress's 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. 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>29</sup> 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

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<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>29</sup> According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

for the Fund's calculation of NAV at the end of the business day.<sup>30</sup> The NAV per Share of the Fund will be determined as of the close of the New York Stock Exchange (usually 4:00 p.m. Eastern Time) each day the New York Stock Exchange is open for trading, and 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 New York Stock Exchange via the National Securities Clearing Corporation. 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. 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. The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further 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 Commission notes that 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

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<sup>30</sup> On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's website: 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. The website information will be publicly available at no charge.

Portfolio will be made available to all market participants at the same time.<sup>31</sup> In addition, 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. The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>32</sup> Further, the Commission notes that 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.<sup>33</sup> All of the equity investments to be held by the Fund, including the non-U.S.-listed equity securities, will trade in markets that are ISG members or markets that are parties to a comprehensive surveillance sharing agreement with the Exchange.<sup>34</sup> The Exchange represents that it 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. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer and that the Adviser has

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<sup>31</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>32</sup> See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. 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.

<sup>33</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>34</sup> See supra note 14.

implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.<sup>35</sup>

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, 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.<sup>36</sup>

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<sup>35</sup> See supra note 6. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("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.

<sup>36</sup> See supra note 14.

- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) 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; (c) 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; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) 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 (f) trading information.
- (5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>37</sup> as provided by NYSE Arca Equities Rule 5.3.
- (6) While the Fund generally will invest more than 50% of its assets in investment-grade fixed-income instruments, the Fund may invest up to 35% of its total assets in high-yield debt securities.
- (7) 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 its investment objective and will not be used to enhance leverage.

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<sup>37</sup> 17 CFR 240.10A-3.

- (8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, master demand notes, and loan participation interests.<sup>38</sup>
- (9) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

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

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>39</sup> and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>38</sup> See supra note 20.

<sup>39</sup> 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2012-142), as modified by Amendment No. 1 thereto be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).