

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71617; File No. SR-NYSEArca-2013-135)

February 26, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade Shares of db-X Ultra-Short Duration Fund and db-X Managed Municipal Bond Fund under NYSE Arca Equities Rule 8.600

I. Introduction

On December 27, 2013, 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 db-X Ultra-Short Duration Fund and db-X Managed Municipal Bond Fund (each a “Fund,” and collectively “Funds”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on January 15, 2014.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. Each Fund is a series of the DBX ETF Trust (“Trust”), 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>4</sup> The Funds will be managed by DBX Advisors LLC

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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. 71269 (January 9, 2014), 79 FR 2725 (“Notice”).

<sup>4</sup> The Trust is registered under the 1940 Act. The Exchange states that on December 19,

(“Adviser”). Deutsche Investment Management Americas Inc. will be the investment sub-adviser for the Funds (“Sub-Adviser”). ALPS Distributors, Inc. will be the Funds’ distributor (“Distributor”). The Bank of New York Mellon will be the administrator, custodian and fund accounting and transfer agent for each Fund. The Exchange states that the Adviser and Sub-Adviser are not broker-dealers, but both the Adviser and Sub-Adviser are affiliated with a broker-dealer, and each has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the respective Fund’s portfolio.<sup>5</sup>

The Exchange has made the following representations and statements in describing the Funds and their respective investment strategies, including other portfolio holdings and investment restrictions.

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2012, 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 Funds (File Nos. 333-170122 and 811-22487) (“Registration Statement”). The Trust has also filed an Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14004), dated October 29, 2013 (“Exemptive Application”). See Investment Company Act Release No. 30770 (October 29, 2013), 78 FR 66086 (November 4, 2013). The Exchange represents that the Shares will not be listed on the Exchange until an order (“Exemptive Order”) under the 1940 Act has been issued by the Commission with respect to the Exemptive Application. The Exchange also represents that investments made by the Funds will comply with the conditions set forth in the Exemptive Order.

<sup>5</sup> See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or Sub-Adviser becomes a registered broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolios.

## db-X Ultra-Short Duration Fund—Principal Investments

The investment objective of the db-X Ultra-Short Duration Fund will be to seek to provide current income consistent with total return. Under normal market conditions,<sup>6</sup> the Fund will seek to achieve its investment objective by investing at least 65% of its net assets in debt securities. Debt securities will include: (1) debt securities of U.S. and foreign government agencies and instrumentalities, and U.S. Government obligations (including U.S. agency mortgage pass-through securities, as described below); (2) U.S. and foreign corporate debt securities, mortgage-backed and asset-backed securities, adjustable rate loans that have a senior right to payment (“senior loans”), money market instruments, and fixed and other floating-rate debt securities; and (3) taxable municipal and tax-exempt municipal bonds.<sup>7</sup> Under normal market conditions, the Fund currently does not intend to hold more than 10% of its total assets in non-U.S. dollar denominated debt securities.

The Fund may invest in investment-grade (rated BBB- or higher by Standard & Poor’s Ratings Services, Inc. (“S&P”) and Fitch, Inc. (“Fitch”) or Baa3 or higher by Moody’s Investors Service, Inc. (“Moody’s”) or, if unrated, determined by the Fund’s Adviser and/or Sub-Adviser to be of comparable quality<sup>8</sup>) and non-investment grade (rated BB+ or lower by S&P and Fitch

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<sup>6</sup> The term “under normal market conditions” includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; 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>7</sup> The Fund normally will target an average portfolio duration (a measure of sensitivity to interest rate changes) of no longer than one year.

<sup>8</sup> In determining whether a security is of “comparable quality,” the Adviser or Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security’s maturity date;

or Ba1 or lower by Moody's or, if unrated, determined by the Fund's Adviser and/or Sub-Adviser to be of comparable quality) debt securities of U.S. and foreign issuers, including issuers located in countries with new or emerging securities markets.<sup>9</sup> The Fund's investments in non-investment grade debt securities, including non-investment grade senior loans and other non-investment grade floating-rate debt securities, will be limited to 50% of its total assets.

The senior loans in which the Fund will invest generally will be loans rated by a Nationally Recognized Statistical Rating Organization ("NRSRO") registered with the Commission. However, the Fund also may invest in senior loans that: (i) may not be rated by a NRSRO, or listed on any national exchange; or (ii) are not secured by collateral.

The Fund may invest in mortgage-backed and asset-backed securities. Mortgage-backed securities are mortgage-related securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities, or issued by non-government entities. Mortgage-related securities represent pools of mortgage loans assembled for sale to investors by various government agencies such as Government National Mortgage Association ("GNMA") and government-related organizations such as Federal National Mortgage Association ("FNMA") and Federal Home Loan Mortgage Corporation ("FHLMC"), as well as by non-government issuers such as commercial banks, savings and loan institutions, mortgage bankers, and private mortgage insurance companies. Other asset-backed securities are structured like mortgage-backed securities, but instead of mortgage loans or interests in mortgage loans, the underlying

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liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

<sup>9</sup> Generally, with respect to at least 75% of the Fund's portfolio, a corporate bond of a developed market issuer must have \$100 million or more par amount outstanding to be considered as an eligible investment and a corporate bond of an emerging market issuer must have \$200 million or more par amount outstanding to be considered as an eligible investment.

assets may include items such as motor vehicle installment sales or installment loan contracts, leases of various types of real and personal property, and receivables from credit card agreements and from sales of personal property. Asset-backed securities typically have no U.S. Government backing. The Fund will limit investments in mortgage-backed and asset-backed securities issued or guaranteed by non-government entities to 15% of the Fund's net assets.

The Fund may invest a portion of its assets in U.S. agency mortgage pass-through securities. The term "U.S. agency mortgage pass-through security" refers to a category of pass-through securities backed by pools of mortgages and issued by one of several U.S. government-sponsored enterprises: GNMA, FNMA, or FHLMC.

The Fund may invest a portion of its assets in various types of U.S. Government obligations. U.S. Government obligations are a type of bond. U.S. Government obligations include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies, or instrumentalities.<sup>10</sup> Payment of principal and interest on U.S. Government obligations (i) may be backed by the full faith and credit of the United States (as with U.S. Treasury obligations and GNMA certificates) or (ii) may be backed solely by the issuing or guaranteeing agency or instrumentality itself (as with FNMA, FHLMC, and Federal Home Loan Bank).

#### db-X Managed Municipal Bond Fund—Principal Investments

The investment objective of the db-X Managed Municipal Bond Fund will be to seek to provide current income consistent with total return.

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<sup>10</sup> U.S. Government obligations include, but are not limited to, mortgage-backed and asset-backed securities that are issued or guaranteed by the U.S. government, as well as U.S. agency mortgage pass-through securities, as described above.

Under normal market conditions,<sup>11</sup> the Fund will invest at least 80% of net assets, plus the amount of any borrowings for investment purposes, in securities issued by municipalities across the United States (and including the Commonwealth of Puerto Rico and U.S. territories such as the U.S. Virgin Islands and Guam) whose income is free from regular federal income tax.

Although the Fund may adjust duration of its holdings over a wider range, it generally intends to keep it between five and nine years.

The Fund may buy municipal securities of all maturities. These may include revenue bonds (which are backed by revenues from a particular source) and general obligation bonds (which are typically backed by the issuer's ability to levy taxes). They may also include municipal lease obligations and investments representing an interest therein.

The Fund will normally invest at least 65% of total assets in municipal securities of top credit quality (rated AAA+ through A- by S&P and Fitch or Aaa1 through A3 by Moody's or, if unrated, determined by the Fund's Adviser and/or Sub-Adviser to be of comparable quality). The Fund may invest up to 10% of total assets in high yield debt securities (commonly referred to as "junk" bonds) rated BB+ or lower by S&P and Fitch or Ba1 or lower by Moody's or, if unrated, determined by the Fund's Adviser and/or Sub-Adviser to be of comparable quality.<sup>12</sup>

#### Other Investments

While each Fund, under normal market conditions, will invest primarily in debt securities, each Fund may invest its remaining assets in other securities and financial instruments, as described below.

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<sup>11</sup> See supra note 6.

<sup>12</sup> See supra note 8.

The db-X Managed Municipal Bond Fund may invest a portion of its assets in various types of U.S. Government obligations. U.S. Government obligations are a type of bond. U.S. Government obligations include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies or instrumentalities. Payment of principal and interest on U.S. Government obligations (i) may be backed by the full faith and credit of the United States (as with U.S. Treasury obligations and GNMA certificates) or (ii) may be backed solely by the issuing or guaranteeing agency or instrumentality itself (as with FNMA, FHLMC, and Federal Home Loan Bank).

The db-X Ultra-Short Duration Fund generally intends to use interest rate swaps, and/or small amounts of currency forwards, which are types of derivatives (a contract whose value is based on, for example, indices, currencies, or securities) for duration management (e.g., reducing the sensitivity of a Fund's portfolio to interest rate changes). In addition, the Fund generally may use: (i) credit default swaps based on one or more issues of debt securities or on an index or indexes of debt securities to increase the Fund's income, to gain exposure to a bond issuer's credit quality characteristics without directly investing in the bond, or to hedge the risk of default on bonds held in the Fund's portfolio; and (ii) total return swaps based on one or more issues of debt securities or on an index or indexes of debt securities, or interest rate swaps, to seek to enhance potential gains.

The db-X Managed Municipal Bond Fund generally may use interest rate swaps or U.S. Treasury futures.

Investments in derivative instruments by the Funds will be made in accordance with the 1940 Act and consistent with each Fund's investment objective and policies. To limit the potential risk associated with transactions in derivatives, the Funds will segregate or " earmark"

assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Directors ("Board") and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Funds will include appropriate risk disclosure in their offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Funds, including the Funds' use of derivatives, may give rise to leverage, causing the Funds' Shares to be more volatile than if they had not been leveraged.

The db-X Ultra Short-Duration Fund may invest in convertible securities traded on an exchange or over-the counter ("OTC"). Convertible securities include bonds, debentures, notes, preferred stocks, and other securities that may be converted into a prescribed amount of common stock or other equity securities at a specified price and time. The holder of convertible securities is entitled to receive interest paid or accrued on debt, or dividends paid or accrued on preferred stock, until the security matures or is converted.

Each Fund may invest in the securities of other investment companies (including money market funds and exchange-listed ETFs) to the extent permitted under the 1940 Act.

The Funds will not invest in leveraged or leveraged inverse ETFs.

#### Investment Restrictions

Each Fund will be classified as "non-diversified" under the 1940 Act.<sup>13</sup>

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the

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<sup>13</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.



Adviser,<sup>14</sup> consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of such Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>15</sup>

While each of the Funds will be actively-managed and not tied to an index, under normal market conditions, each Fund's respective portfolio will meet certain criteria for index-based, fixed income ETFs contained in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02.<sup>16</sup>

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<sup>14</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>15</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>16</sup> *See* NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 governing fixed income based Investment Company Units. The requirements of Rule 5.2(j)(3), Commentary .02(a) include the following: (i) components that in the aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more (Rule 5.2(j)(3), Commentary.02(a)(2)); (ii) no component fixed-income security (excluding Treasury Securities and government-

With respect to qualification as a regulated investment company (“RIC”), each Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a RIC for purposes of Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>17</sup>

With respect to each of the Funds, such Fund’s investments will be consistent with the Fund’s investment objective.

The Funds will not invest in equity securities other than convertible securities and securities issued by other investment companies, including money market funds and ETFs. The Funds will not invest in non-U.S. equity securities.

Additional information regarding the Trust, the Funds, 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>18</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>19</sup> and the rules and regulations thereunder

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sponsored entity securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities will not in the aggregate account for more than 65% of the weight of the index or portfolio (Rule 5.2(j)(3), Commentary.02(a)(4)); and (iii) an underlying index or portfolio (excluding one consisting entirely of exempted securities) must include securities from a minimum of 13 non-affiliated issuers (Rule 5.2(j)(3), Commentary.02(a)(5)). The db-X Managed Municipal Bond Fund will meet the criteria in Rule 5.2(j)(3) as referenced above except for the criteria in Rule 5.2(j)(3), Commentary .02(a)(2).

<sup>17</sup> 26 U.S.C. 851.

<sup>18</sup> See Notice and Registration Statement, supra notes 3 and 4, respectively.

<sup>19</sup> 15 U.S.C. 78f.

applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>21</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 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 Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 for the Shares 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>22</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), of Shares of each Fund will be widely disseminated at least every 15 seconds during the Exchange's Core Trading Session by one or more major market data vendors.<sup>23</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on its website the Disclosed Portfolio, as defined in NYSE

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<sup>20</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).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>23</sup> According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from the CTA or other data feeds.

Arca Equities Rule 8.600(c)(2), that will form the basis for such Fund's calculation of net asset value ("NAV") at the end of the business day.<sup>24</sup> NAV per Share of each Fund will be calculated as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. Eastern Time) on each day the New York Stock Exchange is open. A basket composition file disclosing each Fund's securities, 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 of 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. Intra-day and closing price information regarding debt securities, including debt securities of U.S. and foreign government agencies and instrumentalities, U.S. Government obligations (including U.S. agency mortgage pass-through securities), U.S. and foreign corporate debt securities, mortgage-backed and asset-backed securities, senior loans, fixed and other floating-rate debt securities, money market instruments, taxable municipal bonds, and tax-exempt municipal bonds will be available from major market data vendors. Price information regarding U.S. Treasury futures will be available from the applicable exchange and from major market data vendors. Price information regarding currency forwards will be available from major market data vendors. Major market data vendors provide

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<sup>24</sup> On a daily basis, the Adviser or Sub-Adviser will disclose on the Funds' website for each portfolio security and financial instrument of each Fund the following information: ticker symbol (if applicable); name of security and financial instrument; number of shares, if applicable, and 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.

intra-day and end-of-day prices for credit default swaps, interest rate swaps, and total return swaps. Price information for exchange-traded equity investments, including ETFs and exchange-traded convertible securities, will be available from the applicable exchange or major market data vendors. Price information for convertible securities traded OTC and other investment company securities, including money market funds, also will be available from major market data vendors. Each Fund's website will include a form of the prospectus for each respective 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, with respect to each Fund, the Exchange will obtain a representation from the issuer of the respective 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.<sup>25</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 each Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>26</sup> Further, the Commission notes that the Reporting Authority that provides the

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<sup>25</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>26</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 all relevant factors in exercising its discretion to halt or suspend trading in the Shares of each Fund. Trading

Disclosed Portfolio of each Fund 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>27</sup> The Commission notes that the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange,<sup>28</sup> will communicate as needed regarding trading in the Shares, exchange-traded investment company securities, exchange-traded convertible securities, and exchange-traded futures with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded investment company securities, exchange-traded convertible securities, and exchange-traded futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”). 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 and Sub-Adviser are not broker-dealers, but both the Adviser and Sub-Adviser are affiliated with a broker-dealer, and each has implemented and will

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in Shares of either 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>27</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>28</sup> The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the respective Fund's portfolio.<sup>29</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 of each Fund 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 represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading

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<sup>29</sup> See supra note 5. 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, Sub-Adviser, and their 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.

of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

- (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/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>30</sup> as provided by NYSE Arca Equities Rule 5.3.
- (6) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.
- (7) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

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<sup>30</sup> 17 CFR 240.10A-3.



- (8) With respect to each of the Funds, such Fund’s investments will be consistent with the Fund’s investment objective. Investments in derivative instruments by the Funds will be made in accordance with the 1940 Act and consistent with each Fund’s investment objective and policies. To limit the potential risk associated with transactions in derivatives, the Funds will segregate or “ earmark ” assets determined to be liquid by the Adviser in accordance with procedures established by the Trust’s Board and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments.
- (9) The Funds will not invest in equity securities other than convertible securities and securities issued by other investment companies, including money market funds and ETFs. The Funds will not invest in non-U.S. equity securities. The Funds will not invest in leveraged or leveraged inverse ETFs.

This approval order is based on all of the Exchange’s representations and description of the Funds, 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>31</sup> and the rules and regulations thereunder applicable to a national securities exchange.

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

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NYSEArca-2013-135) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).