

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73701; File No. SR-NYSEArca-2014-135)

November 28, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect a Change to the Process for Determining the Benchmark Values Used by the ETFS Platinum Trust, ETFS Palladium Trust, ETFS Precious Metals Trust and ETFS White Metals Basket Trust

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 25, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 change rule [sic] to reflect a change to the process for determining the benchmark values used by the ETFS Platinum Trust, the ETFS Palladium Trust, the ETFS Precious Metals Trust and the ETFS White Metals Basket Trust, each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.201, with respect to calculation of the net asset value of shares of each such trust. 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

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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.

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reflect a change in the administrative process for determining the benchmark values used by the ETFS Platinum Trust, the ETFS Palladium Trust, the ETFS Precious Metals Trust and the ETFS White Metals Basket Trust (each a “Trust” and, collectively, the “Trusts”) with respect to calculation of the net asset value (“NAV”) of shares (“Shares”) of each such Trust. The Trusts are listed and traded pursuant to NYSE Arca Equities Rules 8.201 for Commodity-Based Trust Shares. The sponsor for the Trusts is ETFS Services USA LLC (“Sponsor”).

The proposed administrative change would replace as of the close of business November 30, 2014 references to the “London AM Fix” and “London PM Fix,” (collectively, the “London Fix”), the current platinum and palladium price mechanism that the London Platinum and Palladium Fixing Company Limited (the “LPPFCL”) manually administers, with an electronic platinum and palladium bullion price fixing system (known as LMEbullion) administered by the London Metal Exchange (“LME”),<sup>4</sup> as described below.

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<sup>4</sup> The LME is regulated by the Financial Conduct Authority (FCA), an independent non-governmental body which exercises statutory regulatory power under the Financial Services and Markets Act of 2000 of the United Kingdom and which also regulates the

## Revised London Fix Procedures for Platinum and Palladium

On November 18, 2014, the Sponsor issued a press release (“Press Release”) stating that the LPPFCL has announced its intention to revise the London Fix pricing benchmark processes for platinum and palladium after November 30, 2014. The afternoon session of the London Fix has been the “Benchmark Price” for valuation of platinum and palladium bullion held respectively by each of the Trusts. The LPPFCL has accepted a proposal by the LME to administer revised platinum and palladium price benchmark mechanisms on its behalf. Commencing December 1, 2014, the LME will operate platinum and palladium bullion price fixing systems (LMEbullion) that will replicate electronically the current manual London Fix processes employed by the LPPFCL as well as provide electronic market clearing processes for platinum and palladium bullion transactions at the fixed prices established by the LME pricing mechanism.<sup>5</sup> The new electronic price fixing processes to be used by the LME will continue to establish and publish fixed prices for troy ounces of platinum and palladium twice each London trading day during fixing sessions beginning at 9:45 a.m. London time (the “LME AM Fix”) and 2:00 p.m. London time (the “LME PM Fix”). In addition to utilizing the same London Fix standards and methods, the LME will also supervise the platinum and palladium electronic price fixing processes through its market operations, compliance, internal audit and third-party complaint handling capabilities in order to support the integrity of the LME AM and PM Fixes.

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major participating members of the London Bullion Market Association and the London Platinum and Palladium Market (the “LPPM”).

<sup>5</sup> In a press release dated October 16, 2014, LME stated that LME’s electronic solution relating to the fix for platinum and palladium, LMEbullion, will provide a pricing methodology that fully meets the administrative and regulatory needs of market participants including the International Organization of Securities Commissions (“IOSCO”) Principles for Financial Benchmarks.

The Sponsor anticipates that, commencing December 1, 2014, the Sponsor will determine that the LME PM Fix will continue to be an appropriate basis for valuing platinum and palladium, as applicable, received upon purchase of a Trust's Shares, delivered upon redemption of a Trust's Shares and for determining the value of a Trust's platinum and palladium bullion, as applicable each trading day. The Sponsor also expects to determine that the LME PM Fix will fairly represent the commercial value of platinum and palladium bullion, as applicable, held by each Trust.

Exchange-Listed Platinum and Palladium-based Products

The Exchange lists and trades shares of exchange traded products that reference the London Fix for one or more purposes. Specifically, the Exchange lists and trades shares of the ETFS Platinum Trust<sup>6</sup>, the ETFS Palladium Trust<sup>7</sup>, the ETFS White Metals Basket Trust<sup>8</sup> and the ETFS Precious Metals Basket Trust,<sup>9</sup> each of which is currently listed on the Exchange under NYSE Arca Equities Rule 8.201.

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<sup>6</sup> See Securities Exchange Act Release Nos. 60970 (November 9, 2009), 74 FR 59319 (November 17, 2009) (SR-NYSEArca-2009-95) (notice of filing of proposed rule change to list and trade shares of the ETFS Platinum Trust) (“ETFS Platinum Notice”); 61220 (December 22, 2009) (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR-NYSEArca-2009-95) (order approving proposed rule change to list and trade shares of the ETFS Platinum Trust).

<sup>7</sup> See Securities Exchange Act Release Nos. 60971 (November 9, 2009), 74 FR 59283 (November 17, 2009) (SR-NYSEArca-2009-94) (notice of filing of proposed rule change to list and trade shares of the ETFS Palladium Trust) (“ETFS Palladium Notice”); 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR-NYSEArca-2009-94) (order approving proposed rule change to list and trade shares of the ETFS Palladium Trust).

<sup>8</sup> See Securities Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655 (August 6, 2010) (SR-NYSEArca-2010-71) (notice of filing of proposed rule change to list and trade shares of the ETFS White Metals Basket Trust); 62875 (September 9, 2010), 75 FR 56156 (September 15, 2010) (SR-NYSEArca-2010-71) (order approving proposed rule change to list and trade shares of the ETFS White Metals Basket Trust).

<sup>9</sup> See Securities Exchange Act Release No. 62402 (June 29, 2010), 75 FR 39292 (July 8,

With respect to the Trusts, the NAV of Shares of the respective Trusts is based on the London PM Fix, as described in the applicable rule filings relating to listing and trading of Shares of each of the Trusts<sup>10</sup> and in the registration statement under the Securities Act of 1933 Act (“1933 Act”) relating to each such Trust.<sup>11</sup> After November 30, 2014, the Trusts will utilize

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2010) (SR-NYSEArca-2010-56) (notice of filing of proposed rule change to list and trade shares of the ETFS Precious Metals Basket Trust); 62692 (August 11, 2010), 75 FR 50789 (August 17, 2010) (order approving proposed rule change to list and trade shares of the ETFS Precious Metals Basket Trust).

<sup>10</sup> As described in the ETFS Platinum Notice and the ETFS Palladium Notice, twice daily during London trading hours there is a fix which provides reference platinum and palladium prices for that day’s trading. Many long-term contracts will be priced on the basis of either the morning (AM) or afternoon (PM) London Fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations. The London Fix is the most widely used benchmark for daily platinum and palladium prices and is quoted by various financial information sources. The LPPM designated the LPPFCL to administer the London Fix. Formal participation in the London Fix is traditionally limited to four firms, each of which is a bullion dealer and a member of the LPPM. The chairmanship now rotates annually among the four LPPM fixing member firms. The morning session of the fix starts at 9:45 a.m. London time and the afternoon session starts at 2:00 p.m. London time. The four LPPM fixing members are currently: BASF SE, Goldman Sachs Group Inc., HSBC Holdings and Standard Bank PLC. Any other market participant wishing to participate in platinum and palladium trading on the fix is required to do so through one of the four LPPM fixing members. Orders are placed either with one of the four LPPM fixing members or with another precious metals dealer who will then be in contact with a LPPM fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a “trying price,” reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The platinum or palladium price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. The London Fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

<sup>11</sup> See the registration statement for the ETFS Palladium Trust on Form S-3, filed with the Commission on April 17, 2014 (No. 333-195335); the registration statement for the ETFS Platinum Trust on Form S-3ASR, filed with the Commission on June 3, 2013, and Post-Effective Amendment No.1 thereto, filed with the Commission on June 5, 2013 (File No. 333-189061); Post-Effective Amendment No. 1 to the registration statement for the ETFS Precious Metals Trust on Form S-3, filed with the Commission on August 13, 2014 (No.

the benchmark price ascertained through the LME administered electronic fixing process for purposes of calculating the NAV of such Trust's Shares. The Sponsor of the Trusts has represented that, on December 1, 2014, the Sponsor intends to use the LME PM Fix for purposes of determining the net asset value of Shares of the Trusts. Accordingly, the Exchange proposes to change the benchmark price used by the Trusts for calculation of the NAV of Shares of each of such Trust to the LME PM Fix.

Each LME AM and PM Fix is widely expected to be viewed as a full and fair representation of all market interest. The LME's electronic price fixing processes are similar to the non-electronic processes previously used to establish the applicable London Fix where the London Fix process adjusted the platinum or palladium price up or down until all the buy and sell orders entered by LPPM fixing members are matched, at which time the price was declared fixed. Nevertheless, the LME AM and PM Fixes have several advantages over the previous London Fix. The LME's electronic price fixing processes will be fully transparent in real time to the platinum and palladium market participants and, at the close of each electronic fixing, to the general public. The LME AM and PM Fixes are also to be established by more LBBM [sic] members (initially approximately ten) than was the London Fix (four LPPM fixing members). The LME's electronic price fixing processes also will be fully auditable by third parties since an audit trail exists from the beginning of each fixing session. Moreover, the market operation,

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333-195675); and Post-Effective Amendment No. 1 to the registration statement for the ETFS White Metals Basket Trust on Form S-1, filed with the Commission on August 13, 2014 (No. 333-195441) (each a "Registration Statement" and, collectively, the "Registration Statements").

compliance, internal audit and third-party complaint handling capabilities of the LME will support the integrity of the LME AM and PM Fix.<sup>12</sup>

The Exchange believes the new LME electronic price fixing processes will serve as an appropriate replacement to the London Fix for purposes of determining the NAV of Shares of the Trusts because of the transparency of the fixing process, the anticipated participation of an increased number of market participants compared to the London Fix, and the auditability of the palladium and platinum pricing mechanism.

In connection with this proposed rule change, (1) the Sponsor of the Trusts will issue a press release informing the public of the date a Trust will first use the LME PM Fix to value the palladium or platinum, as applicable, held by a Trust; (2) the Sponsor will file the applicable press release with the Commission by means of Form 8-K, which will be available on the applicable Trust's website; and (3) the Sponsor will file an amendment to the applicable Registration Statement relating to the proposed change.<sup>13</sup>

The Sponsor for the Trusts represents that there is no change to the investment objective of the applicable Trust from that described in the applicable proposed rule change.<sup>14</sup> The Trusts will be subject to all initial and continued listing requirements under NYSE Arca Equities Rule 8.201.

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<sup>12</sup> The Prudential Regulation Authority (PRA) at the Bank of England has overall responsibility for the prudential regulation of banks, building societies, credit unions, insurers and major investment firms, many of whom are active in the bullion market. The conduct of financial institutions is overseen by the Financial Conduct Authority (FCA), which was formed from the former Financial Services Authority and is separate from the Bank of England.

<sup>13</sup> The Sponsor for the Trusts represents that it manages the Trusts in the manner described in the applicable proposed rule change (see supra, notes 6-9), and will not implement the changes described herein until the instant proposed rule change is operative.

<sup>14</sup> See supra, notes 6-9.

Except for the changes noted above, all other facts presented and representations made in the proposed rule changes referenced above remain unchanged.

All terms referenced but not defined herein are defined in the applicable proposed rule changes referenced above.<sup>15</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>16</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, according to the LME press release, the new LMEbullion fixing processes will provide a pricing methodology that fully meets the administrative and regulatory needs of market participants, including the IOSCO Principles for Financial Benchmarks (the “IOSCO Principles”).<sup>17</sup> In order to meet the IOSCO Principles, the

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<sup>15</sup> See supra, notes 6-9.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> The IOSCO Principles are designed to enhance the integrity, the reliability and the oversight of benchmarks by establishing guidelines for benchmark administrators and other relevant bodies in the following areas: Governance: to protect the integrity of the benchmark determination process and to address conflicts of interest; Benchmark quality: to promote the quality and integrity of benchmark determinations through the application of design factors; Quality of the methodology: to promote the quality and integrity of methodologies by setting out minimum information that should be addressed within a methodology. These principles also call for credible transition policies in case a benchmark may cease to exist due to market structure change. Accountability mechanisms: to establish complaints processes, documentation requirements and audit reviews. The IOSCO Principles provide a framework of standards that might be met in different ways, depending on the specificities of each benchmark. In addition to a set of high level principles, the framework offers a subset of more detailed principles for

LMEbullion electronic process will be auditable and transparent. Moreover, the LME AM and PM Fix will be the clearing prices for platinum and palladium bullion transactions that will clear through an electronic clearing process that the LME is establishing simultaneously with the establishment of the LMEbullion process. The Exchange believes the new LME fixing processes will serve as an appropriate replacement to the London Fix for platinum and palladium for purposes of determining the NAV of Shares of the Trusts because of the transparency of the fixing process, the participation of an increased number of market participants (initially, approximately ten LPPM members) compared to the London Fix (four LPPM members), and the auditability of the pricing mechanism. For each LME AM and PM Fix session, buying and selling order placements will be displayed electronically in real time for all platinum and palladium fixing participants. The LME will observe all fixing session buying and selling order placements, including the identity of those submitting orders. In addition, each LME AM and PM Fix and all order placement information will become publicly available electronically through the LME via financial news media services (such as, Bloomberg, Thomson Reuters, FactSet, Metal Radar and other services) instantly after the conclusion of the fixing process, as described above.

The proposed change will permit the Trusts to continue to function as platinum- and palladium-based exchange-traded products by utilizing a new price mechanism to replace the London Fix, which is not expected to be available after November 30, 2014, and that will

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benchmarks having specific risks arising from their reliance on submissions and/or their ownership structure. For further information concerning the IOSCO Principles, see <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf>.

provide a sound and reasonable basis for calculation of NAV. Such prices will be widely disseminated by one or more major market data vendors and/or exchanges. Prior to or following the effectiveness of this proposed rule change, (1) the Sponsor of the Trusts will issue a press release informing the public of the date a Trust will first use the LME Fix to value the platinum and palladium held by a Trust; (2) the Sponsor of the Trusts will file the applicable press release with the Commission by means of Form 8-K, which will be available on the applicable Trust's website; and (3) the Sponsor will file an amendment to the applicable Registration Statements under the 1933 Act relating to the proposed change. Such press releases and Registration Statement amendments will protect investors and the public interest by providing notification to investors of the new LME price mechanism prior to the use of the LME PM Fix by the Trusts. The Sponsor represents that there is no change to the investment objective of the applicable Trust from that described in the applicable proposed rule change. The Trusts will comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.201. Except for the changes noted above, all other facts presented and representations made in proposed rule changes referenced above remain unchanged.

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 the LME's electronic price fixing processes will be fully transparent in real time to the platinum and palladium market participants and, at the close of each electronic fixing, to the general public. The LME's electronic price fixing processes also will be fully auditable by third parties since an audit trail exists from the beginning of each fixing session. Moreover, the market operation, compliance, internal audit and third-party complaint handling capabilities of the LME will support the integrity of the LME AM and PM Fix. The Trusts will continue to be listed and traded on the

Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201.

Except for the changes noted above, all other facts presented and representations made in proposed rule changes referenced above remain unchanged.<sup>18</sup>

**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. The proposed change will permit the Trusts to continue to function as platinum- or palladium-based exchange-traded products by utilizing an electronic mechanism to replace the manual London Fix, which is not expected to be available after November 30, 2014, and that will provide a sound and reasonable basis for calculation of NAV.

**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**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

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<sup>18</sup> See supra, notes 6-9.

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed change will provide additional transparency to platinum and palladium pricing compared to the previous London Fix for several reasons. The Exchange represents that LME's electronic price fixing processes will be fully transparent in real time to the platinum and palladium market participants and, at the close of each electronic fixing, to the general public. The Exchange represents that LME's electronic price fixing processes also will be fully auditable by third parties because an audit trail exists from the beginning of each fixing session. Moreover, the Exchange states that the market operation, compliance, internal audit and third-party complaint handling capabilities of the LME will support the integrity of the LME AM and PM Fix. The Exchange represents that the number of platinum and palladium participants that initially are expected to participate in the LMEbullion fixing process (approximately ten LPPM members) exceeds the number of market participants determining the London Fix prior to December 1, 2014 (currently four LPPM fixing members), and will contribute to the integrity and reliability of the pricing process.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Waiver of the operative delay will allow the Trusts, whose Shares are actively traded, to use the LME Fix as the basis for calculating the NAV by December 1, 2014, thereby facilitating the transition to the new price mechanism without disruption in trading. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>21</sup>

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<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>22</sup> of the Act to determine whether the proposed rule change should be approved or 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-2014-135 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2014-135. 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

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<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

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 such filing will also 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-2014-135 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>23</sup>

Brent J. Fields  
Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).