

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75071; File No. SR-NYSEArca-2015-44)

May 29, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the SPDR® SSgA Flexible Allocation ETF under NYSE Arca Equities Rule 8.600

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on May 15, 2015, NYSE Arca, Inc. (the “Exchange” of “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 list and trade shares of the SPDR® SSgA Flexible Allocation ETF under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

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

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

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 list and trade shares (“Shares”) of SPDR® SSgA Flexible Allocation ETF (the “Fund”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares<sup>3</sup> on the Exchange.<sup>4</sup> The Shares will be offered by SSgA Active ETF Trust (the “Trust”), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.<sup>5</sup> SSgA

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

<sup>4</sup> The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66343 (February 7, 2012), 77 FR 7647 (February 13, 2012) (SR-NYSEArca-2011-85) (order approving listing of five funds of the SSgA Active ETF Trust); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR-NYSEArca-2013-71) (order approving listing of the SPDR SSgA Ultra Short Term Bond ETF; SPDR SSgA Conservative Ultra Short Term Bond ETF; and SPDR SSgA Aggressive Ultra Short Term Bond ETF); and 62502 (March 21, 2014), 79 FR 17206 (March 27, 2014) (SR-NYSEArca-2014-11) (order approving listing of SPDR SSgA Risk Aware ETF, SPDR SSgA Large Cap Risk Aware ETF and SPDR SSgA Small Cap Risk Aware ETF).

<sup>5</sup> The Trust is registered under the 1940 Act. On December 18, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333-173276 and 811-22542) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release

Funds Management, Inc. (the “Adviser”) will serve as the investment adviser to the Fund. State Street Global Markets, LLC (the “Distributor” or “Principal Underwriter”) will be the principal underwriter and distributor of the Fund’s Shares. State Street Bank and Trust Company (the “Administrator,” “Custodian” or “Transfer Agent”) will serve as administrator, custodian and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>6</sup> In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the

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No. 29524 (December 13, 2010) (File No. 812-13487) (“Exemptive Order”).

<sup>6</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes 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 broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### Principal Investments

According to the Registration Statement, the Fund will seek to provide long-term total return. The Fund will be actively managed and will not seek to replicate the performance of a specified index.

According to the Registration Statement, under normal circumstances,<sup>7</sup> the Fund will invest substantially all of its assets in the SSgA Flexible Allocation Portfolio (“Portfolio”), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a

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<sup>7</sup> The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the equity 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.

result, the Fund will invest indirectly in all of the securities and assets owned by the Portfolio.<sup>8</sup>

The Adviser will allocate the Portfolio's assets among a variety of asset classes, market capitalization ranges, and market sectors selected by the Adviser. In selecting investments for the Portfolio, the Adviser will employ a tactical asset allocation strategy based on signals provided by models developed by the Adviser.

According to the Registration Statement, these models, which include both macro-economic and financial parameters, are designed to identify market strategies and develop a portfolio allocation that takes advantage of high-risk asset classes in favorable market conditions while limiting the Portfolio's exposure to such asset classes in unfavorable markets. In utilizing these models, the Adviser will seek to diversify the Portfolio's holdings by gaining exposure to a wide range of asset classes, including real estate (including real estate investment trusts ("REITs")); equity and fixed income securities, including high yield debt securities (commonly referred to as "junk bonds"); commodities; instruments that seek to track movements in volatility

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<sup>8</sup> The Fund is intended to be managed in a "master-feeder" structure, under which the Fund will invest substantially all of its assets in a corresponding Portfolio (i.e. a "master fund"), which is a separate 1940 Act-registered mutual fund that has an identical investment objective. As a result, the Fund (i.e. the "feeder fund") will have an indirect interest in all of the securities and other assets owned by the Portfolio. Because of this indirect interest, the Fund's investment returns should be the same as those of the Portfolio, adjusted for the expenses of the Fund. In extraordinary instances, the Fund reserves the right to make direct investments in securities.

The Adviser will manage the investments of the Portfolio. Under the master-feeder arrangement, and pursuant to the investment advisory agreement between the Adviser and the Trust, investment advisory fees charged at the Portfolio level will be deducted from the advisory fees charged at the Fund level. This arrangement avoids a "layering" of fees. In extraordinary instances, the Fund reserves the right to make direct investments in securities to meet its investment objectives directly. In addition, the Fund may discontinue investing through the master-feeder arrangement and pursue its investment objectives directly if the Fund's Board of Trustees ("Board") determines that doing so would be in the best interests of shareholders.

indices; and cash and cash equivalents or money market instruments.<sup>9</sup> The Portfolio's investments will range across domestic and international markets (including emerging markets). In seeking long-term total return, the Adviser will target a return that exceeds one-month London Interbank Offered Rate ("LIBOR") by at least 4% every year over a five-year investment timeframe, although there is no guarantee that this target will be achieved. According to the Registration Statement, the Adviser's allocation policy will involve adjusting the weightings of the Portfolio's holdings of the various asset classes in a proactive manner in an effort to optimize the Portfolio's risk/return ratio while complying with the Portfolio's investment constraints.

The Adviser will implement its asset allocation decisions primarily through exchange traded products ("ETPs").<sup>10</sup> The Portfolio may also buy and sell futures contracts based on the

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<sup>9</sup> Money market instruments are generally short-term investments that may include but are not limited to: (i) shares of money market funds (including those advised by the Adviser); (ii) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit ("CDs"), bankers' acceptances, fixed time deposits and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the date of purchase "Prime-1" by Moody's Investor's Service or "A-1" by Standard & Poor's, or if unrated, of comparable quality as determined by the Adviser; (v) non-convertible corporate debt securities (e.g., bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a-7 under the 1940 Act; (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by the Portfolio; and (vii) variable rate demand notes.

<sup>10</sup> ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); 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); ZManaged [sic] Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The ETPs all will

Chicago Board Options Exchange Volatility Index (“VIX Futures”) and equity options (including options on ETPs).<sup>11</sup>

ETPs include exchange traded funds (“ETFs”) registered under the 1940 Act (“Underlying ETFs”),<sup>12</sup> exchange traded commodity trusts<sup>13</sup> and exchange traded notes (“ETNs”).<sup>14</sup> The Portfolio may also invest in ETPs that are qualified publicly traded partnerships (“QPTPs”). A QPTP is an entity that is treated as a partnership for federal income tax purposes, subject to certain requirements.<sup>15</sup> In addition, the Portfolio may invest in certain ETPs that pay fees to the Adviser and its affiliates for management, marketing or other services.

The Underlying ETFs may include actively-managed ETFs and index-based ETFs, which seek to provide investment results that match the performance of an index by holding in its portfolio either the contents of the index or a representative sample of the securities in the index.

Alternatively, ETFs may be structured as grantor trusts or other forms of pooled investment

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be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETPs, the Fund will not invest in leveraged or inverse leveraged ETPs (e.g., 2X or 3X).

<sup>11</sup> The Portfolio may invest up to 20% of its assets in derivatives, including VIX Futures and equity options. See note 23, *infra*, and accompanying text.

<sup>12</sup> ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depositary Receipts) and 8.600 (Managed Fund Shares).

<sup>13</sup> An exchange traded commodity trust is a pooled trust that invests in physical commodities or commodity futures, and issues shares that are traded on a securities exchange that may trade at a discount or premium to the value of the holdings of the trusts.

<sup>14</sup> According to the Registration Statement, ETNs are debt obligations of investment banks which are traded on exchanges and the returns of which are linked to the performance of market indexes. In addition to trading ETNs on exchanges, investors may redeem ETNs directly with the issuer on a weekly basis, typically in a minimum amount of 50,000 units, or hold the ETNs until maturity. ETNs are listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6) (“Index-Linked Securities”).

<sup>15</sup> Income from QPTPs is generally qualifying income for purposes of Subchapter M of the Internal Revenue Code. See 26 U.S.C. 851 *et seq.*

vehicles that are not registered or regulated under the 1940 Act. These ETFs typically hold commodities, precious metals, currency or other non-securities investments. The Portfolio may invest up to 25% of its total assets in one or more ETPs that are QPTPs and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.<sup>16</sup>

#### Non-Principal Investments

While under normal circumstances<sup>17</sup> the Adviser will invest the Portfolio's net assets as described above, the Adviser may invest the Portfolio's net assets in other securities and financial instruments, as described below.

According to the Registration Statement, in the absence of normal circumstances the Fund may (either directly or through the corresponding Portfolio) temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.

The investment practices of the Portfolio are the same in all material respects to those of the Fund.

According to the Registration Statement, the Portfolio may invest in the following types of investments: convertible securities; variable rate demand notes; U.S. government and U.S. government agency securities; short term instruments, including money market instruments<sup>18</sup>;

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<sup>16</sup> Examples of such entities are the PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, and PowerShares DB Agriculture Fund, which are listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.200.

<sup>17</sup> See note 7, supra. As noted above, in extraordinary instances, the Fund reserves the right to make direct investments in securities to meet its investment objectives directly.

<sup>18</sup> See note 9, supra.



repurchase agreements, cash and cash equivalents on an ongoing basis to provide liquidity or for other reasons. The Portfolio may invest in equity and fixed income securities. Not more than 10% of the net assets of the Fund will consist of equity securities that trade in markets that are not members of the Intermarket Surveillance Group (“ISG”) or are not parties to a comprehensive surveillance sharing agreement with the Exchange.

According to the Registration Statement, the Portfolio may invest in convertible securities. Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio. A convertible security may also be called for redemption or conversion by the issuer after a particular date and under certain circumstances (including a specified price) established upon issue.

According to the Registration Statement, the Portfolio may purchase publicly traded common stocks and preferred securities of domestic and foreign corporations.

According to the Registration Statement, the Portfolio may invest in U.S. government obligations and U.S. government agency securities. 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.

According to the Registration Statement, the Portfolio may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. A repurchase agreement is an agreement under which a fund acquires a financial instrument (e.g., a security issued by the U.S. government or an agency thereof, a banker’s acceptance or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day).

According to the Registration Statement, the Portfolio may invest in bonds, including U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies and supra-national entities.<sup>19</sup>

According to the Registration Statement, the Portfolio may invest in sovereign debt. Sovereign debt obligations are issued or guaranteed by foreign governments or their agencies. Sovereign debt may be in the form of conventional securities or other types of debt instruments such as loans or loan participations. The Portfolio may invest up to 10% of its net assets in high yield debt securities.

According to the Registration Statement, the Portfolio may invest in inflation-protected public obligations, commonly known as “TIPS,” of the U.S. Treasury, as well as TIPS of major governments and emerging market countries, excluding the United States. TIPS are a type of security issued by a government that are designed to provide inflation protection to investors.

According to the Registration Statement, the Portfolio may invest in variable and floating rate securities.<sup>20</sup> Variable rate securities are instruments issued or guaranteed by entities such as (1) the U.S. government or an agency or instrumentality thereof, (2) corporations, (3) financial institutions, (4) insurance companies, or (5) trusts that have a rate of interest subject to adjustment at regular intervals but less frequently than annually.

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<sup>19</sup> The Portfolio may invest a portion of its assets in Build America Bonds. The Build America Bond program allows state and local governments to issue taxable bonds for capital projects and to receive a direct federal subsidy payment from the Treasury Department for a portion of their borrowing costs.

<sup>20</sup> A variable rate security provides for the automatic establishment of a new interest rate on set dates. A floating rate security provides for the automatic adjustment of its interest rate whenever a specified interest rate changes. Interest rates on these securities are ordinarily tied to, and are a percentage of, a widely recognized interest rate, such as the yield on 90-day US Treasury bills or the prime rate of a specified bank.

According to the Registration Statement, the Portfolio may invest in Variable Rate Demand Obligations (“VRDOs”). VRDOs are short-term tax exempt fixed income instruments whose yield is reset on a periodic basis. VRDO securities tend to be issued with long maturities of up to 30 or 40 years; however, they are considered short-term instruments because they include a put feature which coincides with the periodic yield reset.

According to the Registration Statement, the Portfolio may invest in restricted securities. Restricted securities are securities that are not registered under the Securities Act, but which can be offered and sold to “qualified institutional buyers” under Rule 144A under the Securities Act.<sup>21</sup> When Rule 144A restricted securities present an attractive investment opportunity and meet other selection criteria, the Portfolio may make such investments depending on the market that exists for the particular security. The Board has delegated the responsibility for determining the liquidity of Rule 144A restricted securities that the Portfolio may invest in to the Adviser.<sup>22</sup>

According to the Registration Statement, in addition to ETPs, the Portfolio may invest in the securities of other investment companies, including affiliated funds, money market funds and closed-end funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

According to the Registration Statement, the Portfolio may invest in REITs.

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<sup>21</sup> According to the Registration Statement, when Rule 144A restricted securities present an attractive investment opportunity and meet other selection criteria, the Portfolio may make such investments whether or not such securities are “illiquid” depending on the market that exists for the particular security. The Board has delegated the responsibility for determining the liquidity of Rule 144A restricted securities that the Portfolio may invest in to the Adviser. See note 27, infra.

<sup>22</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) and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

According to the Registration Statement, the Portfolio may enter into reverse repurchase agreements.

In addition to the VIX Futures and equity options described under “Principal Investments,” the Portfolio may also invest in options, swaps, forward contracts and futures contracts, for hedging purposes or to provide exposure to a particular issuer, industry, sector or country.<sup>23</sup>

According to the Registration Statement, the Portfolio will only invest in exchange-traded futures contracts. According to the Registration Statement, futures contracts generally provide for the future sale by one party and purchase by another party of a specified commodity or security at a specified future time and at a specified price. Index futures contracts are settled daily with a payment by one party to the other of a cash amount based on the difference between the level of the index specified in the contract from one day to the next.

According to the Registration Statement, the Portfolio may invest in both exchange traded and over-the-counter (“OTC”) traded options. According to the Registration Statement, the Portfolio may purchase and sell put and call options. Such options may relate to particular securities and may or may not be listed on a national securities exchange and issued by the Options Clearing Corporation. The Fund may engage in short sales “against the box.” In a short sale against the box, the Fund agrees to sell at a future date a security that it either contemporaneously owns or has the right to acquire at no extra cost.

According to the Registration Statement, the Portfolio may enter into swap agreements, including interest rate, index and total return swap agreements. Swap agreements are contracts between parties in which one party agrees to make periodic payments to the other party based on

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<sup>23</sup> The Portfolio may invest up to 20% of its assets in derivatives, including VIX Futures and equity options.

the change in market value or level of a specified rate, index or asset. In return, the other party agrees to make payments to the first party based on the return of a different specified rate, index or asset. In the case of a credit default swap (“CDS”), the contract gives one party (the buyer) the right to recoup the economic value of a decline in the value of debt securities of the reference issuer if the credit event (a downgrade or default) occurs.

According to the Registration Statement, the Portfolio may conduct foreign currency transactions on a spot (i.e., cash) or forward basis (i.e., by entering into forward contracts to purchase or sell foreign currencies). At the discretion of the Adviser, the Portfolio may enter into forward currency exchange contracts for hedging purposes to help reduce the risks and volatility caused by changes in foreign currency exchange rates.

#### Investment Restrictions

According to the Registration Statement, the Portfolio and Fund will each be classified as “diversified.”<sup>24</sup> According to the Registration Statement, the Portfolio and the Fund do not intend to concentrate their investments in any particular industry.<sup>25</sup>

According to the Registration Statement, the Portfolio and the Fund intend to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a “regulated investment company” for purposes of the Internal Revenue Code of 1986.<sup>26</sup>

The 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>24</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a-5(b)(1)).

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

<sup>26</sup> 26 U.S.C. 851 et seq.

Adviser, consistent with Commission guidance, and repurchase agreements having maturities longer than seven days.<sup>27</sup> The 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 the 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>28</sup>

The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage.

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<sup>27</sup> The Board has delegated the responsibility for determining the liquidity of Rule 144A Restricted Securities that the Portfolio may invest in to the Adviser. 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) and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>28</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 1933 Act).

### Net Asset Value

According to the Registration Statement, the Fund will calculate net asset value (“NAV”) using the NAV of the Portfolio. To the extent that the Fund invests in instruments other than those in the Portfolio, the Fund will calculate its NAV based on all assets.

NAV per Share for the Fund will be computed by dividing the value of the net assets of the Portfolio (i.e., the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Portfolio will be calculated by the Custodian and determined at the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. Eastern time (“E.T.”)) on each day that such exchange is open. Fixed-income assets will generally be valued as of the announced closing time for trading in fixed-income instruments in a particular market or exchange. Creation/redemption order cut-off times (as described further below) may also be earlier on such days.

According to the Adviser, the Portfolio’s investments will be valued at market value or, in the absence of market value with respect to any investment, at fair value in accordance with valuation procedures adopted by the Board of Trustees of the SSgA Master Trust and the Board of Trustees of the SSgA Active ETF Trust<sup>29</sup> (the “Board”) and in accordance with the 1940 Act.

In calculating the Portfolio’s NAV per Share, the Portfolio’s investments will generally be valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a

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<sup>29</sup> The Board of Trustees of the SSgA Master Trust and the Board of Trustees of the SSgA Active ETF Trust have adopted the same valuation procedures.

major market maker (or dealer), or (iii) based on amortized cost. In the case of shares of other funds that are not traded on an exchange, a market valuation means such fund's published NAV per share. The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Board of the SSgA Master Trust from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation.

Equity securities traded on a national securities exchange, including ETPs, common and preferred stock, preferred securities, REITs and investment company securities (collectively, "U.S. Exchange-traded Securities"), will be valued at the last reported sale price or the official closing price on that exchange where the stock is primarily traded on the day that the valuation is made. Foreign exchange-traded common stocks and preferred securities will be valued at the last sale or official closing price on the relevant exchange on the valuation date. Equity securities traded in the OTC market will be valued at the last reported sale price on the valuation date. Restricted securities will be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments. If, however, neither the last sale price nor the official closing price is available, each of these securities will be valued at either the last reported sale price or official closing price as of the close of regular trading of the principal market on which the security is listed consistent with the respective primary benchmark. OTC-traded preferred securities and OTC-traded convertible securities will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Securities of investment companies other than ETPs registered under the 1940 Act, including affiliated funds, money market funds and closed-end funds, will be valued at NAV



Fixed income securities, including money market instruments, convertible securities, variable rate demand notes, U.S. government and U.S. government agency securities, bonds (including bonds of foreign corporations, governments, agencies and supra-national entities), other sovereign debt, TIPs, VRDOs, repurchase agreements and reverse repurchase agreements, will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market or exchange. In determining the value of a fixed income investment, pricing services determine valuations for normal institutional-size trading units of such securities using valuation models or matrix pricing, which incorporates yield and/or price with respect to bonds that are considered comparable in characteristics such as rating, interest rate and maturity date and quotations from securities dealers to determine current value. Short-term investments that mature in less than 60 days when purchased will be valued at cost adjusted for amortization of premiums and accretion of discounts.

Exchange-traded futures contracts, including VIX Futures, will be valued at the settlement price determined by the applicable exchange. Exchange-traded option contracts, including options on futures, will be valued at their most recent sale price. If no such sales are reported, these contracts will be valued at their most recent bid price. In certain cases, some of the Fund's exchange-traded derivative securities may be valued at the mean between the last available bid and ask prices.

OTC-traded derivative securities, including options, swaps, and currency-forwards will normally be valued on the basis of quotes obtained from a third-party broker-dealer who makes markets in such securities or on the basis of quotes obtained from a third-party pricing service.

Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at market rates on the date of valuation (generally as of 4:00 p.m. Greenwich Mean Time) as quoted by one or more sources. Forward foreign currency contracts will be valued based upon the difference in the forward exchange rates at the dates of entry into the contracts and the forward rates as of the current valuation date as quoted by one or more independent sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the SSgA Master Trust's procedures require the Pricing and Investment Committee ("Committee") to determine a security's fair value if a market price is not readily available, in accordance with the 1940 Act.<sup>30</sup> In determining such value the Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (e.g., movement in interest rates, market indices, and prices from the Portfolio's index provider). In these cases, the Portfolio's NAV may reflect certain portfolio securities' fair values rather than their market prices.

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<sup>30</sup> If a security's market price is not readily available or does not otherwise accurately reflect the fair value of the security, the security will be valued by another method that the Board believes will better reflect fair value in accordance with the Trust's valuation policies and procedures and in accordance with the 1940 Act. The Board has delegated the process of valuing securities for which market quotations are not readily available or do not otherwise accurately reflect the fair value of the security to the Committee. The Committee, subject to oversight by the Board, may use fair value pricing in a variety of circumstances, including but not limited to, situations when trading in a security has been suspended or halted. Accordingly, the Portfolio's NAV may reflect certain securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be received on the sale of the security. The Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Portfolio and the Fund.

The pre-established pricing methods and valuation policies and procedures outlined above may change, subject to the review and approval of the Committee and Board, as necessary.

#### Creation and Redemption of Shares

According to the Registration Statement, the Fund will offer and issue Shares only in aggregations of a specified number of Shares (each, a “Creation Unit”). Creation Unit sizes will be 50,000 Shares per Creation Unit. The Creation Unit size for the Fund may change. The Fund will issue and redeem Shares only in Creation Units on a continuous basis at the NAV per share next determined after receipt of an order on a Business Day. The NAV of the Fund will be determined once each Business Day, normally as of the close of trading on the New York Stock Exchange (normally, 4:00 p.m., E.T.). An order to purchase or redeem Creation Units will be deemed to be received on the Business Day on which the order is placed provided that the order is placed in proper form prior to the applicable cut-off time (typically required by 2:00 p.m. E.T.). A “Business Day” with respect to the Fund will be, generally, any day on which the New York Stock Exchange is open for business.

Creation/redemption order cut-off times may be earlier on any day that the Securities Industry and Financial Markets Association (“SIFMA”) (or applicable exchange or market on which the Portfolio’s investments are traded) announces an early closing time.

The consideration for purchase of a Creation Unit of the Fund will generally consist of the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and a specified cash payment (the “Cash Component”). However, consideration may consist of the cash value of the Deposit Securities (“Deposit Cash”) and Cash Component.

Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component will constitute the “Fund Deposit,” which represents the minimum initial and

subsequent investment amount for a Creation Unit of the Fund. The “Cash Component” is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. If the Cash Component is a positive number (i.e., the net asset value per Creation Unit exceeds the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component shall be such positive amount. If the Cash Component is a negative number (i.e., the net asset value per Creation Unit is less than the market value of the Deposit Securities or Deposit Cash, as applicable), the Cash Component shall be such negative amount and the creator will be entitled to receive cash in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

The Custodian, through the National Securities Clearing Corporation, will make available on each Business Day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., E.T.), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. Such Fund Deposit is subject to any applicable adjustments as described in the Registration Statement, in order to effect purchases of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities or the required amount of Deposit Cash, as applicable, is made available.

The Trust reserves the right to permit or require the substitution of the Deposit Cash to replace any Deposit Security, which shall be added to the Cash Component, including, without limitation, in situations where the Deposit Security: (i) may not be available in sufficient quantity

for delivery, (ii) may not be eligible for transfer through the systems of the Depository Trust Company for corporate securities and municipal securities; (iii) may not be eligible for trading by an authorized participant or the investor for which it is acting; (iv) would be restricted under the securities laws or where the delivery of the Deposit Security to the authorized participant would result in the disposition of the Deposit Security by the authorized participant becoming restricted under the securities laws, or (v) in certain other situations in accordance with the Exemptive Order.<sup>31</sup>

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a Business Day.

With respect to the Fund, the Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) on each Business Day, the list of the names and share quantities of the Fund's portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day ("Fund Securities"). Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Custodian on the Business Day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as

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<sup>31</sup> To be eligible to be an authorized participant, an entity must (a) enter into a participant agreement and (b) be a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC or a DTC participant.

next determined after a receipt of a request in proper form, and the value of the Fund Securities (the “Cash Redemption Amount”), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the net asset value of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust’s discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of the in-kind securities value representing one or more Fund Securities.

The Trust may, in its discretion, exercise its option to redeem Shares in cash, and the redeeming Shareholders will be required to receive their redemption proceeds in cash, as described in the Registration Statement. The investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form.

#### Availability of Information

The Fund’s website ([www.spdrs.com](http://www.spdrs.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund’s website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day’s reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),<sup>32</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts

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<sup>32</sup> The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>33</sup>

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding' and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and the Trust's Form N-CSR and Form N-SAR, filed twice a year.

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<sup>33</sup> Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume 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.

Quotation and last sale information for the Shares and underlying U.S. Exchange-traded Securities will be available via the Consolidated Tape Association ("CTA") high-speed line. The intra-day, closing and settlement prices of U.S. Exchange-traded Securities, as well as exchange-traded futures and foreign exchange-traded common stocks and preferred securities, will be readily available from the national securities exchanges trading such securities as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Intra-day and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority.

Quotation information from brokers and dealers or pricing services will be available for fixed income securities, including money market instruments, convertible securities, variable rate demand notes, U.S. government and U.S. government agency securities, bonds (including bonds of foreign corporations, governments, agencies and supra-national entities), other sovereign debt, TIPs, VRDOs, repurchase agreements and reverse repurchase agreements; spot and forward currency transactions; and equity securities traded in the OTC market, such as restricted



securities and securities of investment companies other than ETPs registered under the 1940 Act, including affiliated funds, money market funds and closed-end funds. Pricing information regarding each asset class in which the Fund or Portfolio will invest is generally available through nationally recognized data service providers through subscription arrangements. Price information regarding OTC-traded derivative instruments, including, options, swaps, and spot and currency-related derivatives, as well as equity securities traded in the OTC market, including Rule 144A Restricted Securities, OTC-traded preferred securities and OTC-traded convertible securities, is available from major market data vendors. Pricing information regarding each asset class in which the Fund or Portfolio will invest will generally be available through nationally recognized data service providers through subscription arrangements.

In addition, the Indicative Optimized Portfolio Value (the Fund<sup>34</sup> which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600 (c)(3), 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>35</sup> The dissemination of the IOPV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund and of the Portfolio on a daily basis and to provide a close estimate of that value throughout the trading day.

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

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<sup>34</sup> Premiums and discounts between the IOPV and the market price may occur. This should not be viewed as a "real-time" update of the NAV per Share of the Fund, which will be calculated only once a day.

<sup>35</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>36</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of Equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca

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<sup>36</sup> See NYSE Arca Equities Rule 7.12.

Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>37</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for 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 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.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>38</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for 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 NAV per Share of the Fund will be calculated daily and that the NAV and the Disclosed Portfolio of the Fund will be made available to all market participants at the same time.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable

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

<sup>38</sup> 17 CFR 240.10A-3.

federal securities laws.<sup>39</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying U.S. Exchange-traded Securities, exchange-traded options, futures, and foreign exchange-traded common stocks and preferred securities with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying U.S. Exchange-traded Securities, exchange-traded options, futures, and common stocks and preferred securities of foreign corporations from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and U.S. Exchange-traded Securities, exchange-traded options, futures, and common stocks and preferred securities of foreign corporations from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>40</sup> In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held

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<sup>39</sup> 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.

<sup>40</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). Not more than 10% of the net assets of the Fund will consist of equity securities that trade in markets that are not members of the ISG or are not parties to a comprehensive surveillance sharing agreement with the Exchange.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (4) how information regarding the IOPV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange

Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>41</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio.

In addition, the Trust’s Pricing and Investment Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Portfolio and the Fund. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs (e.g., 2X or 3X). The Portfolio may invest up to 20% of its assets in derivatives, including VIX Futures and equity options. Not more than 10% of the net

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<sup>41</sup> 15 U.S.C. 78f(b)(5).

assets of the Fund will consist of equity securities that trade in markets that are not members of the ISG or are not parties to a comprehensive surveillance sharing agreement with the Exchange. The 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 assets deemed illiquid by the Adviser. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying U.S. Exchange-traded Securities, exchange-traded options, futures, and common stocks and preferred securities of foreign corporations with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying U.S. Exchange-traded Securities, exchange-traded options, futures, and foreign exchange-traded common stocks and preferred securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and U.S. Exchange-traded Securities, exchange-traded options, futures, and common stocks and preferred securities of foreign corporations from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and

underlying U.S. Exchange-traded Securities will be available via the Consolidated Tape Association (“CTA”) high-speed line. The intra-day, closing and settlement prices of U.S. Exchange-traded Securities, as well as exchange-traded futures and foreign exchange-traded common stocks and preferred securities, will be readily available from the national securities exchanges trading such securities as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Intra-day and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority.

Quotation information from brokers and dealers or pricing services will be available for fixed income securities, including money market instruments, convertible securities, variable rate demand notes, U.S. government and U.S. government agency securities, bonds (including bonds of foreign corporations, governments, agencies and supra-national entities), other sovereign debt, TIPs, VRDOs, repurchase agreements and reverse repurchase agreements; spot and forward currency transactions; and equity securities traded in the OTC market, such as restricted securities and securities of investment companies other than ETPs registered under the 1940 Act, including affiliated funds, money market funds and closed-end funds. Pricing information regarding each asset class in which the Fund or Portfolio will invest is generally available through nationally recognized data service providers through subscription arrangements. Price information regarding OTC-traded derivative instruments, including, options, swaps, and spot and currency-related derivatives, as well as equity securities traded in the OTC market, including Rule 144A Restricted Securities, OTC-traded preferred securities and OTC-traded convertible securities, is available from major market data vendors. Pricing information regarding each asset



class in which the Fund or Portfolio will invest will generally be available through nationally recognized data service providers through subscription arrangements.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an actively-managed exchange-traded product that will principally hold ETPs that are listed and traded on U.S. registered exchanges and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

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

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-44 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2015-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE,

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-2015-44 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>42</sup>

Brent J. Fields  
Secretary

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<sup>42</sup> 17 CFR 200.30-3(a)(12).