

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75244; File No. SR-NYSEArca-2015-23)

June 18, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, Relating to the Listing and Trading of Shares of the ALPS Enhanced Put Write Strategy ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On April 15, 2015, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the ALPS Enhanced Put Write Strategy ETF (“Fund”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The proposed rule change was published for comment in the Federal Register on May 5, 2015.³ On May 12, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On May 19, 2015, the Exchange filed Amendment No. 2 to the proposed rule change, but withdrew that amendment on May 20, 2015.⁵ On May 20, 2015, the Exchange filed Amendment No. 3 to the proposed rule change.⁶ The Commission received no comments on the proposal, as modified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74839 (Apr. 29, 2015), 80 FR 25729 (“Notice”).

⁴ Amendment No. 1 to the proposed rule change replaced and superseded the original filing in its entirety.

⁵ The Exchange withdrew Amendment No. 2 to the proposed rule change due to certain errors.

⁶ Amendment No. 3 to the proposed rule change corrected typographical errors and clarified that any futures and options on futures utilized by the Fund will be U.S. exchange-traded futures contracts on the S&P 500 Index and U.S. exchange-traded

by Amendment Nos. 1 and 3 thereto. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1 and 3 thereto.

II. Description of the Proposal

NYSE Arca proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by ALPS ETF Trust (“Trust”), which is registered with the Commission as an investment company.⁷ ALPS Advisors, Inc. is the investment adviser (“Adviser”) to the Fund.⁸ Rich Investment Solutions, LLC is the investment sub-adviser (“Sub-Adviser”) to the Fund. ALPS Fund Services, Inc. serves as the Trust’s administrator, and The Bank of New York Mellon serves as custodian (“Custodian”) and transfer agent for the Fund. ALPS Portfolio Solutions Distributor, Inc. is the distributor of the Fund’s Shares.

options on futures contracts on the S&P 500 Index. Amendment Nos. 1 and 3 are available at: <http://www.sec.gov/comments/sr-nysearca-2015-23/nysearca201523.shtml>.

⁷ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). The Exchange states that the Trust filed with the Commission a registration statement on Form N-1A under the Securities Act of 1933 (“Securities Act”) and under the 1940 Act relating to the Fund (File Nos. 333-148826 and 811-22175) (“Registration Statement”) on January 6, 2015. In addition, the Exchange represents that the Trust has obtained certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30553 (June 11, 2013) (File No. 812- 13884).

⁸ The Exchange represents that the Adviser is not a registered broker-dealer, but is affiliated with a broker-dealer and has implemented a “fire wall” with respect to that broker-dealer regarding access to information concerning the composition of or changes to the Fund’s portfolio. The Exchange further represents that, in the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser or any new adviser or sub-adviser, as the case may be, will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund’s portfolio holdings and investment restrictions.⁹

A. The Exchange’s Description of the Fund’s Principal Investment Policies

According to the Exchange, the investment objective of the Fund is to seek total return, with an emphasis on income as the source of that total return. The Fund will seek to achieve its investment objective by selling listed one-month put options on the SPDR[®] S&P 500[®] ETF Trust (“SPY”). SPY is an exchange-traded fund that seeks to provide investment results that, before expenses, correspond generally to the price and yield performance of the S&P 500[®] Index (“SPX” or “Index”). SPY holds a portfolio of the common stocks that are included in the SPX, with the weight of each stock in its portfolio substantially corresponding to the weight of that stock in the SPX. The Fund may also sell listed one-month put options directly on the SPX under certain circumstances (such as if those options have more liquidity and narrower spreads than options on SPY). SPY shares are listed on the Exchange and traded on national securities exchanges. SPX options are traded on the Chicago Board Options Exchange, and options on SPY are traded on national securities exchanges.

Each listed put option sold by the Fund will be an “American-style” option (i.e., an option that can be exercised at the strike price at any time prior to its expiration). As the seller of a listed put option, the Fund will incur an obligation to buy SPY underlying the option from the purchaser of the option at the option’s strike price, upon exercise by the option purchaser. If a

⁹ The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (“NAV”), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, supra notes 3 and 7, respectively.

listed put option sold by the Fund is exercised prior to expiration, the Fund will buy the SPY underlying the option at the time of exercise and at the strike price, and will hold SPY until the market close on expiration.¹⁰

The option premiums and cash (in respect of orders to create Shares in large aggregations known as “Creation Units,” as further described below) received by the Fund will be invested in an actively-managed portfolio of investment grade debt securities (“Collateral Portfolio”) at least equal in value to the Fund’s maximum liability under its written options (i.e., the strike price of each option). Investment grade debt securities are those rated “Baa” equivalent or higher by a nationally recognized statistical rating organization (“NRSROs”), or are unrated securities that the Sub-Adviser believes are of comparable quality. These investment grade debt securities will include Treasury bills (short-term U.S. government debt securities), corporate bonds, commercial paper, mortgage-backed securities (“MBS”), asset-backed securities (“ABS”), and notes issued or guaranteed by federal agencies or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration, the Federal Housing Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation. It is expected that the average duration of these securities will not exceed six months, and the maximum maturity of any single security will not exceed one year.

Under normal market conditions,¹¹ substantially all of the Fund’s net assets will be invested in options on SPY or SPX and in the Collateral Portfolio.

¹⁰ The Fund may also sell put options on the SPX directly under certain circumstances (such as if such options have more liquidity and narrower spreads than options on SPY) resulting in lower transaction costs than options on SPY. The puts are struck at-the-money (i.e., with a strike price that is equal to the market price of the underlying SPY) and are typically sold on a monthly basis, usually on the third Friday of the month (the “roll date”).

The Fund may invest up to 20% of its net assets in non-agency MBS and ABS in the aggregate. The Fund may seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of “to-be-announced” or “TBA transactions.” According to the Exchange, “TBA” refers to a commonly used mechanism for the forward settlement of U.S. agency mortgage pass-through securities and not to a separate type of mortgage-backed security. Most transactions in mortgage pass-through securities occur through the use of TBA transactions. TBA transactions are generally conducted in accordance with widely-accepted guidelines that establish commonly observed terms and conditions for execution, settlement and delivery. In a TBA transaction, the buyer and seller decide on general trade parameters, such as agency, settlement date, par amount, and price. The actual pools delivered are generally determined two days prior to settlement date. The Fund will enter into TBA transactions only with established counterparties (such as major broker-dealers) and the Sub-Adviser will monitor the creditworthiness of such counterparties.¹²

According to the Exchange, every month, the options sold by the Fund will be settled by delivery at expiration or will expire with no value, and new option positions will be established while the Fund sells any units of SPY it owns as a result of such settlements or of the Fund’s

¹¹ The term “under normal market conditions” includes, but is not limited to, the absence of extreme volatility or trading halts in the equity, options or fixed income markets or the financial markets generally; events or circumstances causing a disruption in market liquidity or orderly markets; 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.

¹² The Fund intends to invest cash pending settlement of any TBA transactions in money market instruments, repurchase agreements, commercial paper (including asset-backed commercial paper), or other high-quality, liquid short-term instruments, which may include money market funds affiliated with the Adviser or Sub-Adviser.

prior option positions having been exercised.¹³ The Exchange states that this monthly cycle likely will cause the Fund to have frequent and substantial turnover in its option positions. If the Fund receives additional inflows (and issues more Shares in “Creation Unit” size during a one-month period), the Fund will sell additional listed put options, which will be exercised or expire at the end of such one-month period. Conversely, if the Fund redeems Shares in Creation Unit size during a monthly period, the Fund will terminate the appropriate portion of the options it has sold.

With respect to no more than 20% of the Fund’s assets, the Fund may engage in certain opportunistic “put spread” and “call spread” strategies. Specifically, when the Sub-Adviser believes the SPX (and thus SPY) will rise or not decline in value, the Fund may engage in “put spreads” whereby the Fund will buy back certain of the written put options that are out of the money (i.e., the strike price of the put option is lower than the market price of the underlying SPY) prior to expiration in order to sell new put options that are less out of the money. Similarly, the Fund may buy back certain of its written put options prior to expiration in order to sell new longer-dated options that will remain open past the one-month period of the original option. Conversely, when the Sub-Adviser believes the SPX will decline in value, the Fund may engage in “call spreads” whereby the Fund will sell call options that are in-the-money (i.e., the strike price of the call option is lower than the market price of the underlying SPY) and buy back less in-the-money call options. The Sub-Adviser may employ a variant of this call spread strategy whereby the Fund buys more calls than it sells (as long as the Fund receives a net premium on the transactions). This may enable the Fund to perform better when the SPX (and thus SPY) experiences gains well above the strike price of the calls bought by the Fund. However, even if

¹³ The Fund may hold U.S. exchange-listed equity securities, generally shares of SPY, for temporary periods upon settlement or exercise of the options sold by the Fund.

the Fund engages in such call spreads, a declining SPX (and thus SPY) will significantly detract from Fund performance (given the Fund's principal strategy of selling put options on SPY).

B. The Exchange's Description of the Fund's Non-Principal Investment Policies

While, under normal market conditions, substantially all of the Fund's net assets will be invested in options on SPY or SPX and in the Collateral Portfolio, the Fund may invest its remaining assets in other securities and financial instruments, as described below. The Fund may invest its remaining assets in any one or more of the following instruments: money market instruments (as described below), in addition to those in which the Fund invests as part of the Collateral Portfolio, and including repurchase agreements or other funds that invest exclusively in money market instruments; convertible securities; structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index); forward foreign currency exchange contracts; swaps; over-the-counter ("OTC") options on SPY or on the S&P 500 Index; and futures contracts and options on futures contracts, as described further below. Swaps, options, and futures contracts may be used by the Fund in seeking to achieve its investment objective and in managing cash flows. The Fund may also invest in money market instruments or other short-term fixed income instruments as part of a temporary defensive strategy to protect against temporary market declines.

The Fund may invest in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) short-term obligations issued by the U.S. Government;¹⁴ (ii) negotiable certificates of deposit ("CDs"),

¹⁴ Obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities include bills, notes, and bonds issued by the U.S. Treasury, as well as

fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions;¹⁵ (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc. or "A-1+" or "A-1" by Standard & Poor's or, if unrated, of comparable quality as determined by the Adviser; (iv) repurchase agreements;¹⁶ and (v) money market mutual funds.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

The Fund may invest in the securities of other investment companies (including money market funds), subject to applicable restrictions under the 1940 Act.

To the extent the Fund utilizes futures and options on futures, the Fund will utilize U.S. exchange-traded futures contracts on the S&P 500 Index and U.S. exchange-traded options on futures contracts on the S&P 500 Index. The Fund may utilize such options on futures contracts as a hedge against changes in value of its portfolio securities, or in anticipation of the purchase of

"stripped" or "zero coupon" U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

¹⁵ CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

¹⁶ Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of \$500 million and (ii) securities dealers ("Qualified Institutions"). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

securities, and may enter into closing transactions with respect to such options to terminate existing positions.

To the extent the Fund enters into swap agreements, the Fund will enter into swap agreements based on the S&P 500 Index.

The Fund may invest in investment grade debt obligations traded in the U.S. Such debt obligations include, among others, bonds, notes, debentures, and variable rate demand notes. In choosing corporate debt securities on behalf of the Fund, the Sub-Adviser may consider (i) general economic and financial conditions; and (ii) the specific issuer's (a) business and management, (b) cash flow, (c) earnings coverage of interest and dividends, (d) ability to operate under adverse economic conditions, (e) fair market value of assets, and (f) other considerations deemed appropriate.

The Fund, in the absence of normal market conditions, may invest up to 100% of its total assets in debt securities that are rated investment grade by an NRSRO or are unrated securities that the Sub-Adviser believes are of comparable quality.

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

The Fund may use delayed delivery transactions as an investment technique. Delayed delivery transactions, also referred to as forward commitments, involve commitments by the Fund to dealers or issuers to acquire or sell securities at a specified future date beyond the customary settlement for such securities. These commitments may fix the payment price and interest rate to be received or paid on the investment. The Fund may purchase securities on a

delayed delivery basis to the extent that it can anticipate having available cash on the settlement date. Delayed delivery agreements will not be used as a speculative or leverage technique. The Fund also may purchase when-issued securities.

In addition, the Fund may invest in zero-coupon or pay-in-kind securities. These securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities.

C. The Exchange's Description of the Fund's Investment Restrictions

The Fund may hold up to an aggregate of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser.¹⁷ 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

¹⁷ Rule 144A securities are securities that, while privately placed, are eligible for purchase and resale pursuant to Rule 144A under the Securities Act. This rule permits certain qualified institutional buyers, such as the Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act. The Sub-Adviser, under supervision of the Board, will consider whether securities purchased under Rule 144A are illiquid and thus subject to the Fund's restriction on illiquid assets. Determination of whether a Rule 144A security is liquid or not is a question of fact. In making this determination, the Sub-Adviser will consider the trading markets for the specific security taking into account the unregistered nature of a Rule 144A security. In addition, the Sub-Adviser could consider the (i) frequency of trades and quotes; (ii) number of dealers and potential purchasers; (iii) dealer undertakings to make a market; and (iv) nature of the security and of market place trades (for example, the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer). The Sub-Adviser will also monitor the liquidity of Rule 144A securities, and if, as a result of changed conditions, the Sub-Adviser determines that a Rule 144A security is no longer liquid, the Sub-Adviser will review the Fund's holdings of illiquid securities to determine what, if any, action is required to assure that the Fund complies with its restriction on investment of illiquid securities.

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.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code. The Exchange further represents that the Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.¹⁸

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 3 thereto, is consistent with Section 6(b)(5) of the Exchange Act,²⁰ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

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

¹⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²¹ which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line and from the Exchange. The approximate value of the Fund's investments on a per-Share basis, the Indicative Intra-Day Value ("IIV"), which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors every 15 seconds during the Exchange's Core Trading Session.²² On each business day, before commencement of trading in the Shares in the Core Session on the Exchange, the Fund will disclose on its website the portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.²³

The NAV per Share will be calculated by the Custodian and determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m., Eastern time)

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²² According to the Exchange, several major market data vendors display or make widely available IIVs taken from CTA or other data feeds.

²³ 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.

(“NYSE Close”) on each day that such exchange is open. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding debt securities, money market instruments, convertible securities, structured notes, forward foreign currency exchange contracts, swaps, repurchase agreements, reverse repurchase agreements, US government securities, MBS and ABS, mortgage pass-throughs, variable or floating interest rate securities, when-issued securities, delayed delivery securities, zero-coupon securities, and pay-in-kind securities also will be available from major market data vendors. Price information for non-exchange-traded investment company securities will be available from major market data vendors and from the website of the applicable investment company. In addition, quotation and last-sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. The S&P 500 Index value is available from major market data vendors.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The 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. 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.²⁴ Trading in the Shares also will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Adviser is not a registered broker-dealer, but is affiliated with a broker-dealer, and has implemented a “fire wall” with respect to that broker-dealer regarding access to information concerning the composition or changes to the Fund’s portfolio.²⁵ Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (“ETP Holders”) in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading

²⁴ These may include: (1) the extent to which trading is not occurring in the securities or the financial instruments constituting 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.

²⁵ See supra note 8. The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser, Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless that 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.

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 federal securities laws.²⁶

The Exchange represents that it 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. In support of this proposal, the Exchange has also made the following representations:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and 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.
- (4) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts, and exchange-traded options contracts with other market and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, may obtain

²⁶ The Exchange states that 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.

trading information in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts, and exchange-traded options contracts from those markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, other exchange-traded equity securities, exchange-traded investment company securities, futures contracts, and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁷ The Exchange states that 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 FINRA's Trade Reporting and Compliance Engine.

- (5) Prior to the commencement of trading of Shares in the Fund, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (i) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV or Index value will not be calculated or publicly disseminated; (iv) how information regarding the IIV, the Disclosed

²⁷ For a list of the current members of ISG, see 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.

Portfolio, and the Index value will be disseminated; (v) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

- (6) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,²⁸ as provided by NYSE Arca Equities Rule 5.3.
- (7) 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 restricted securities deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance.
- (8) The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.
- (9) To the extent the Fund utilizes futures and options on futures, the Fund will utilize U.S. exchange-traded futures contracts on the S&P 500 Index and U.S. exchange-traded options on futures contracts on the S&P 500 Index. To the extent the Fund enters into swap agreements, the Fund will enter into swap agreements based on the S&P 500 Index.
- (10) Not more than 20% of the net assets of the Fund will be invested in MBS and ABS in the aggregate.
- (11) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.

²⁸ 17 CFR 240.10A-3.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and Amendment Nos. 1 and 3 to the proposed rule change. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 3 thereto, is consistent with Section 6(b)(5) of the Act²⁹ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³⁰ that the proposed rule change (SR-NYSEArca-2015-23), as modified by Amendment Nos. 1 and 3 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Brent J. Fields
Secretary

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).