

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77992; File No. SR-NYSEArca-2016-79)

June 3, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 24, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”). 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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares<sup>4</sup>:  
Virtus Japan Alpha ETF (“Fund”).<sup>5</sup>

The Shares will be offered by Virtus ETF Trust II (“Trust”), which is registered with the Commission as an open-end management investment company.<sup>6</sup> Virtus ETF Advisers LLC will

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<sup>4</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>5</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); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR-NYSEArca-2010-57) (order approving listing and trading of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving listing and trading of Cambria Global Tactical ETF); 71540 (February 12, 2014), 79 FR 9515 (February 19, 2014) (SR-NYSEArca-2013-138) (order approving listing and trading of shares of the iShares Enhanced International Large-Cap ETF and iShares Enhanced International Small-Cap ETF).

<sup>6</sup> The Trust is registered under the 1940 Act. On February 26, 2016, 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), and under the 1940 Act relating to the Fund (File Nos. 333-206600 and 811-23078) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration

serve as the investment adviser to the Fund (“Adviser”). Euclid Advisors LLC will serve as the Fund’s sub-adviser (“Sub-Adviser”). ETF Distributors LLC (“Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. Virtus ETF Solutions LLC will serve as the administrator for the Fund. The Bank of New York Mellon (“Transfer Agent”) will serve as accounting services 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. 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.<sup>7</sup> Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to

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Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30825 (December 11, 2013) (File No. 812-14212).

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

NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the 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 and Sub-Adviser are not registered broker-dealers but are affiliated with a broker-dealer and each 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 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, 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, under normal circumstances,<sup>8</sup> the Fund will invest not less than 80% of its assets in the common stocks of certain Japanese companies listed in the JPX-Nikkei 400 Total Return Index (“Index”), a free-float adjusted market capitalization-

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responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>8</sup> The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund’s investments are made for temporary defensive purposes; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

weighted equity index composed of 400 Tokyo Stock Exchange-listed securities, and the financial instruments listed below.

According to the Registration Statement, the Fund will be actively-managed through the selection, at any given time, of approximately 80-100 common stocks from the Index based on quantitative and qualitative factors, including an assessment of the following characteristics: cash flow return on invested capital; earnings quality and momentum; operational quality; corporate governance policies; and capital stewardship. The Fund may invest in such Index components by directly purchasing shares of common stock or investing in American Depositary Receipts (“ADRs”)<sup>9</sup> on the common stock of such Index components. Securities held by the Fund may be underweighted or overweighted relative to their positions in the Index.

Although the Fund will focus on investment in securities in the Index as described above, the Fund may also invest in common stocks of other Japanese companies with characteristics similar to those listed on the Index, as determined by the Sub-Adviser. With respect to such common stocks, the Fund will only invest in securities that are listed on the Tokyo Stock Exchange<sup>10</sup> and that have a market capitalization of \$250,000,000 U.S. dollars or greater. The Fund may also invest in ADRs on such common stocks.

Positions may be reduced or removed when the Sub-Adviser determines that a security has become overweighted within the Fund’s portfolio, that the security’s prospects have

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<sup>9</sup> ADRs are bought and sold in the United States and are typically issued by a U.S. bank or trust company which evidence ownership of underlying securities by a foreign corporation. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange-listed.

<sup>10</sup> Japan Exchange Regulation (“JPX-R”) is a member of the Intermarket Surveillance Group and information relating to transactions in Tokyo Stock Exchange listed securities is available through JPX-R.

adversely changed, that the Fund should raise funds for new or other investments or that there are more attractive opportunities.

### Other Investments

While the Fund, under normal circumstances, will invest at least 80% of its assets in common stock of Japanese companies listed in the Index, common stock of certain other Japanese companies and ADRs, as described above, the Fund will invest its remaining assets in the securities and financial instruments described below.

The Fund may invest in securities index futures contracts and foreign currency futures contracts.<sup>11</sup> According to the Registration Statement, in general, the Fund will not purchase or sell futures contracts unless either (i) the futures contracts are purchased for “bona fida hedging” purposes (as defined under applicable Commodity Futures Trading Commission regulations) or (ii) if purchased for other purposes, the sum of the amounts of initial margin deposits and premiums required to establish such positions on the Fund’s existing futures would not exceed 5% of the liquidation value of the Fund’s total assets.

The Fund may also invest in forward contracts and non-deliverable forward (“NDF”) contracts on the foreign currency spot market.

The Fund may invest in when-issued and forward commitment securities, which means delivery and payment take place a number of days after the date of the commitment to purchase, if the Fund holds sufficient liquid assets to meet the purchase price.

The Fund may invest in the following equity securities (other than non-exchange traded investment company securities): common stocks traded on U.S. or Japanese securities exchanges

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<sup>11</sup> In instances involving the purchase of futures contracts, the Fund will deposit in a segregated account with its custodian an amount of cash, cash equivalents and/or appropriate securities equal to the cost of such futures contracts, to the extent that such deposits are required under the 1940 Act.

(other than the Tokyo Stock Exchange); common stocks traded on the over-the-counter market; U.S. and foreign exchange-traded preferred stocks; U.S. and foreign exchange-traded convertible preferred stocks; U.S. and foreign exchange-traded convertible bonds; U.S. and foreign exchange-traded warrants; and U.S. and foreign exchange-traded rights. The Fund will not invest in ADRs on any of these equity securities.

In addition, the Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder,<sup>12</sup> other open-end investment companies, including other exchange-traded funds (“ETFs”).<sup>13</sup>

The Fund may invest in Currency Trust Shares.<sup>14</sup>

The Fund may invest in real estate investment trusts (“REITs”) traded on U.S. exchanges and Japanese exchanges.

The Fund may enter into short sales of securities. The Fund may also enter into short sales “against the box,” i.e., when the Fund sells a security short while owning a securities equivalent in kind and amount to the securities sold short (or securities convertible or exchangeable into such securities) and will hold such securities while the short sale is outstanding.

The Fund may invest in the following money market instruments: U.S. Government obligations; corporate debt obligations<sup>15</sup> (including, without limitation, those subject to

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<sup>12</sup> 15 U.S.C. 80a-12(d)(1).

<sup>13</sup> For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse ETFs or in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

<sup>14</sup> Currency Trust Shares are securities such as those described in NYSE Arca Equities Rule 8.202.

repurchase agreements); banker's acceptances (credit instruments evidencing the obligation of a bank to pay a draft drawn on it by a customer); certificates of deposit of domestic branches of banks (certificates representing the obligation of a bank to repay funds deposited with it for a specified period of time); commercial paper<sup>16</sup> (unsecured, short-term debt obligation of a bank, corporation or other borrower); and master notes (unsecured obligations which are redeemable upon demand of the holder and which permit the investment of fluctuating amounts at varying rates of interest).

The Fund may invest assets in shares of money market funds.

### Investment Restrictions

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.<sup>17</sup>

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<sup>15</sup> The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its corporate bond assets in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries.

<sup>16</sup> According to the Registration Statement, the Fund will directly invest in commercial paper only if such commercial paper is rated in one of the two highest rating categories as rated by a major credit agency or, if unrated, will be of comparable quality as determined by the Sub-Adviser.

<sup>17</sup> Cash equivalents are short-term instruments with maturities of less than 3 months. Short-term instruments shall include the following: (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers' acceptances; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits; (vi) commercial paper; and (vii) money market funds.

The Fund intends 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>18</sup>

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets, which are investments that cannot be sold or disposed of in the ordinary course of business within seven days at approximately the prices at which they are valued. Under the supervision of the Board of Trustees of the Trust (“Board”), the Fund will determine the liquidity of the Fund’s investments, which will be monitored by the Board pursuant to reports. If through a change in values, net assets or other circumstances, the Fund were in a position where more than 15% of its net assets were invested in illiquid assets, it would seek to take appropriate steps to protect liquidity.

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>19</sup>

The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted

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<sup>18</sup> 26 U.S.C. 851.

<sup>19</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).

under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Index.

### Net Asset Value

According to the Registration Statement, a Share's net asset value ("NAV") will be determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE") (normally at 4:00 p.m., Eastern Time ("E.T.)) on each day that the NYSE is open for trading. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The NAV of the Shares for the Fund is equal to the Fund's total assets minus the Fund's total liabilities divided by the total number of Shares outstanding. Interest and investment income on the Fund's assets accrue daily and are included in the Fund's total assets. Expenses and fees (including investment advisory, management, administration and distribution fees, if any) accrue daily and are included in the Fund's total liabilities. The NAV that is published is rounded to the nearest cent; however, for purposes of determining the price of Creation Units, the NAV is calculated to five decimal places.

The pricing and valuation of portfolio securities is determined in good faith in accordance with procedures approved by, and under the direction of, the Board. In determining the value of the Fund's assets, equity securities (other than non-exchange traded investment company securities), including shares of preferred stocks, convertible preferred stocks, warrants, rights, ETFs, REITs, Currency Trust Shares and sponsored and unsponsored ADRs, generally will be valued at market value using quotations from the primary market on which they are traded. The Fund normally will use third party pricing services to obtain market quotations.

Money market instruments and cash equivalents will be valued on the basis of broker quotes or valuations provided by a third party pricing service, which in determining value utilizes information regarding recent sales, market transactions in comparable securities, quotations from dealers and various relationships between securities.

Futures contracts will generally be valued at the settlement price of the relevant exchange.

Investments in other open end investment companies (other than ETFs) that are registered under the 1940 Act, including money market funds, will be valued based upon the NAVs reported by such registered open end investment companies. The prospectuses for these companies explain the circumstances under which they will use fair value pricing and the effects of using fair value pricing.

NDFs and foreign forward currency contracts will be valued intraday using market quotes, or another proxy as determined to be appropriate by a third party market data provider.

Securities and assets for which market quotations are not readily available or which cannot be accurately valued using the Fund's normal pricing procedures will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. Fair value pricing may be used, for example, in situations where (i) portfolio securities, such as securities with small capitalizations, are so thinly traded that there have been no transactions for that security over an extended period of time; (ii) an event occurs after the close of the exchange on which a portfolio security is principally traded that is likely to change the value of the portfolio security prior to the Fund's NAV calculation; (iii) the exchange on which the portfolio security is principally traded closes early; or (iv) trading of the particular portfolio security is halted during the day and does not resume prior to the Fund's NAV

calculation. In addition, the Trust may fair value foreign equity portfolio securities each day the Trust calculates the Fund's NAV. Pursuant to policies adopted by the Board, the Adviser will consult with Bank of New York Mellon and the Sub-Adviser on a regular basis regarding the need for fair value pricing. The Fund's policies regarding fair value pricing are intended to result in a calculation of the Fund's NAV that fairly reflects portfolio security values as of the time of pricing. A portfolio security's "fair value" price may differ from the price next available for that portfolio security using the Fund's normal pricing procedures, and the fair value price may differ substantially from the price at which the security may ultimately be traded or sold. The Board will monitor and evaluate the Fund's use of fair value pricing, and will periodically review the results of any fair valuation under the Trust's policies.

#### Creation and Redemption of Shares

According to the Registration Statement, Shares of the Fund will be "created" at NAV by certain large institutions only in block-size "Creation Units" of 50,000 Shares or multiples thereof. The size of a Creation Unit is subject to change. Only an "Authorized Participant" may create or redeem Creation Units directly with the Fund. Each Authorized Participant will enter into an authorized participant agreement with the Trust, Distributor and Transfer Agent ("Participant Agreement"). An Authorized Participant must either be (i) a broker-dealer or other participant ("Participating Party") in the clearing process through the Continuous Net Settlement System ("Clearing Process") of the National Securities Clearing Corporation ("NSCC") or a clearing agency that is registered with the Commission or (ii) a participant of the Depository Trust Company ("DTC Participant").

A creation transaction generally takes place when an Authorized Participant deposits into the Fund a basket of equity securities included in the Fund's portfolio ("Deposit Securities") and a specified cash payment ("Cash Component").

Similarly, Shares can be redeemed only in Creation Units, generally in exchange for Deposit Securities and a Cash Component.

The prices at which creations and redemptions occur are based on the next calculation of NAV after a creation or redemption order is received in an acceptable form under the Participant Agreement.

The consideration for purchase of Creation Units generally will consist of an in-kind deposit of Deposit Securities for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and a Cash Component (calculated as described in this section below). Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

According to the Registration Statement, the function of the Cash Component will be to compensate for any differences between the NAV per Creation Unit and the market value of the Deposit Securities. The Cash Component would be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (i.e., the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount and the Authorized Participant will deliver the Cash Component. If the Cash Component is a negative number (i.e., the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash

Component will be such negative amount, and the Authorized Participant will be entitled to receive cash from the Fund in an amount equal to the Cash Component.

The Fund, through NSCC, will make available on each day on which the NYSE is open for business (“Business Day”), immediately prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund. The Fund, through NSCC, will also make available on each Business Day the estimated Cash Component, effective through and including the previous Business Day, per outstanding Creation Unit of the Fund.

According to the Registration Statement, the identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund may change as rebalancing adjustments and corporate action events are reflected from time to time by the Sub-Adviser with a view to the investment objective of the Fund. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash, i.e., a “cash in lieu” amount, to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery, that may not be eligible for transfer through the Clearing Process or that may not be eligible for trading by an Authorized Participant or the investor for which it is acting.

All orders to create Creation Units, whether through the Clearing Process (through a Participating Party) or outside the Clearing Process (through a DTC Participant), must be received by the Distributor no later than 3:00 p.m., E.T., on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form on a Business Day and only through a Participating Party or DTC Participant who has executed a Participant Agreement.

With respect to the Fund, the Trust, through NSCC, will make available immediately prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.) on each Business Day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Deposit Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

The redemption proceeds for a Creation Unit will generally consist of Deposit Securities, as announced by the Trust on the Business Day of the request for a redemption received in proper form, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after receipt of the request, and the value of the Deposit Securities, less a redemption transaction fee. In the event that the Deposit Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder.

If it is not possible to effect deliveries of the Deposit Securities, the Trust may in its sole discretion exercise its option to redeem such Shares in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit.<sup>20</sup> The Fund may also, in its sole discretion, upon request of the shareholder, provide such redeemer a portfolio of

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<sup>20</sup> The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

securities which differs from the exact composition of the Deposit Securities but does not differ in NAV.

The right of redemption may be suspended or the date of payment postponed with respect to the Fund: (i) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the NYSE is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

#### Availability of Information

The Fund's website ([www.virtus.com](http://www.virtus.com)), which will be publicly available prior to the public offering of Shares, will include quantitative information on a per-Share basis updated on a daily basis, including, for the Fund (i) the prior Business Day's NAV and mid-point of the bid-ask spread at the time of calculation of such NAV ("Bid-Ask Price"),<sup>21</sup> and a calculation of the premium and discount of the Bid-Ask Price against the NAV, and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on the Fund's website the Disclosed Portfolio for the Fund (as defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis of the Fund's calculation of the NAV on that Business Day.

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<sup>21</sup> The Bid-Ask Price of Shares of the Fund will be determined using the mid-point 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.

On a daily basis, the Adviser, on behalf of 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); the identity of the security, index, or other asset or instrument underlying the holding, if any; 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 (as applicable) required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket will represent one Creation Unit of the Fund.

In order to provide additional information regarding the indicative value of Shares of the Fund, one or more market data vendors will disseminate every 15 seconds an updated Indicative Intra-Day Value ("IIV") for the Fund as calculated by an information provider or market data vendor.

The Fund's IIV will be calculated based on the current market value of the Fund's portfolio holdings that will form the basis of the Fund's calculation of NAV at the end of the Business Day as disclosed on the Fund's website prior to the Business Day's commencement of trading.

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-Q, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and

those documents and the Form N-CSR and Form N-Q 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 will be available via the Consolidated Tape Association ("CTA") high-speed line. With respect to U.S. exchange-listed equity securities, the intra-day, closing and settlement prices of common stocks and exchange-traded equity securities (including shares of preferred stocks, convertible preferred stocks, warrants, rights, ETFs, REITs, Currency Trust Shares and ADRs) will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. With respect to non-U.S. exchange-listed equity securities, intra-day, closing and settlement prices of common stocks and other equity securities (including REITs traded on Japanese exchanges, preferred stocks, convertible preferred stocks, warrants and rights), will be available from the foreign exchanges on which such securities trade as well as from major market data vendors. Intra-day and closing price information relating to securities regularly traded in an over-the-counter market will be available from major market data vendors. Price information from brokers and dealers or pricing services will be available for money market instruments, money market funds, cash equivalents, forwards and NDFs held by the Fund. Quotation and last sale information for futures will be available from the exchange on which they are listed. Price information regarding investment company securities (other than exchange-traded investment company securities) will be available from the applicable fund.

In addition, the IIV,<sup>22</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>23</sup> The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day. The IIV should not be viewed as a "real-time" update of the NAV per Share of the Fund, which will be calculated once per day.

### 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>24</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: (i) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares

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<sup>22</sup> The IIV calculation will be an estimate of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The IIV price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the IIV and the market price of the Shares 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>23</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

<sup>24</sup> See NYSE Arca Equities Rule 7.12.

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 Exchange 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 Exchange 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>25</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.

### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are

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<sup>25</sup> 17 CFR 240.10A-3.

designed to detect violations of Exchange rules and applicable federal securities laws.<sup>26</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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).<sup>27</sup> 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 (“TRACE”).

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<sup>26</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>27</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 CSSA.

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

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts shall consist of futures contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

All statements and representations made in this filing regarding (i) the description of the portfolio, (ii) limitations on portfolio holdings or reference assets or (iii) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Funds [sic] are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

#### 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: (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 Equity Trading Permit 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 will not be calculated or publicly disseminated; (iv) how information regarding the IIV and the Disclosed Portfolio is disseminated; (v) 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 (vi) 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 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 Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>28</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

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<sup>28</sup> 15 U.S.C. 78f(b)(5).

Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Adviser has implemented a “fire wall” with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs and certain exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. 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 TRACE. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The ETFs held by the Fund will be traded on U.S. national securities exchanges and will be subject to the rules of such exchanges, as approved by the Commission. The Fund’s investments will be consistent with its investment objective and will not be used to enhance leverage.

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. 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 IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. These criteria are similar to certain "generic" listing criteria in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B), which relate to criteria applicable to an index or portfolio of U.S. and non-U.S. stocks underlying a series of Investment Company Units to be listed and traded on the Exchange pursuant to Rule 19b-4(e) under the Act. 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 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 [sic] 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. The intra-day, closing and settlement prices of the portfolio securities are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, 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 CSSA. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, 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 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 non-U.S. equity securities 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-2016-79 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-2016-79. 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 also will be available for inspection and copying at the principal offices 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-2016-79, 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>29</sup>

Brent J. Fields  
Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).