

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79101; File No. SR-NYSEArca-2016-131)

October 14, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the Virtus Enhanced U.S. Equity ETF under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3)

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

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

The Exchange proposes to list and trade the shares of the Virtus Enhanced U.S. Equity ETF (the “Fund”), a series of Virtus ETF Trust II (the “Trust”), under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) (“Investment Company Units”). The proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Virtus Enhanced U.S. Equity ETF (“Fund”) under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units on the Exchange.⁴ The Fund will be an index-based exchange traded fund (“ETF”). The Shares will be offered by the Virtus ETF Trust II (the “Trust”), which is registered with the Commission as an investment company and has filed a registration statement on Form N-1A (the “Registration Statement”) with the Commission on behalf of the Fund.⁵

The investment adviser to the Fund will be Virtus ETF Advisers LLC (the “Adviser”). ETF Distributors LLC will serve as the distributor (the “Distributor”) of Fund shares on an agency basis. The Bank of New York Mellon (the “Administrator”) will be the administrator, custodian and transfer agent for the Fund.⁶

⁴ NYSE Arca Equities Rule 5.2(j)(3)(A) provides that an Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities).

⁵ See the Trust’s registration statement on Form N-1A, dated September 1, 2016 (File Nos. 333-206600 and 811-23078). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

⁶ The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). See Investment Company Act Release No. 30825 (December 11, 2013) (File No. 812-14212)

Description of the Shares and the Fund

As discussed in more detail below, the Fund’s investment objective is to seek investment results that, before fees and expenses, closely correspond to the price and yield performance of the Rampart Enhanced U.S. Equity Index (the “Index”). The Index was developed by Rampart Investment Management Company, LLC (the “Index Provider”), and the Index is calculated and maintained by NYSE Global Index Group (the “Index Calculation Agent”). The Index Provider is affiliated with the Adviser and the Distributor. The Index Calculation Agent is not affiliated with the Adviser, Distributor, Administrator, or the Trust.

Commentary .01(b)(1) to Rule 5.2(j)(3) provides that, if the applicable index is maintained by a fund advisor or a broker-dealer, such fund advisor or broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer or fund advisor.⁷ The Index Provider is registered as an investment adviser, but does not serve as adviser or sub-adviser to the Fund, and is affiliated with one or more broker-dealers. The Adviser is not registered as a broker-dealer. The Adviser and Index Provider are affiliated with one or more broker-dealers, and the Adviser and Index Provider each have implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to

(“Exemptive Order”). Investments made by the Fund will comply with the conditions in the Exemptive Order.

⁷ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser 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.

information concerning the composition and/or changes to the portfolio and Index.⁸ In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio.⁹

In the event (a) the Adviser or Index Provider becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or index provider 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

⁸ The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index.

⁹ The Exchange represents that the Adviser, and its related personnel, are subject to Advisers Act Rule 204A-1. This rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the “generic” listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), applicable to the listing of Investment Company Units based upon an index of “US Component Stocks.”¹⁰ Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. Because, as discussed in more detail herein, the Index may consist partially of options on the S&P 500 Index, rather than entirely US Component Stocks, the Index does not satisfy the requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3).¹¹

¹⁰ NYSE Arca Equities Rule 5.2(j)(3) provides that the term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act and an American Depositary Receipt, the underlying equity securities of which is registered under Sections 12(b) or 12(g) of the Act.

¹¹ The Exchange notes that the S&P 500 Index has been previously approved by the Commission under Section 19(b)(2) of the Act in connection with the listing and trading of index options and Portfolio Depositary Receipts, as well as other securities. See, e.g., Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (SR-CBOE-83-8) (approving the listing and trading of options on the S&P 500 Index); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (SR-Amex-92-18) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index). NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(5) provides that all securities in the applicable index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Each component stock of the S&P 500 Index is a US Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Fund and the Index meet all of the requirements of the listing standards for Investment Company Units in Rule 5.2(j)(3) and the requirements of Commentary .01, except the requirements in Commentary .01(a)(A)(1)-(5), as the Index consists of options on the S&P 500 Index. The S&P 500 Index consists of US Component Stocks and satisfies the requirements of Commentary .01(a)(A)(1)-(5).

Except for the requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), the Index meets all other requirements of Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3).

Virtus Enhanced U.S. Equity ETF

Index Methodology

The Index is comprised of an equity portfolio enhanced by an “Options Strategy Overlay”. The equity portfolio is comprised of the largest 400 U.S. exchange-listed stocks as measured by market capitalization. The portfolio is market capitalization-weighted and is reconstituted and rebalanced on a quarterly basis. The Options Strategy Overlay uses an objective, rules-based methodology to transact in options linked to the S&P 500 Index (SPX). SPX options are traded on the Chicago Board Options Exchange. Each week, out of the money SPX put options and out of the money SPX call options are sold. The proceeds are used to buy an SPX call option. The strike prices of the options are systematically selected according to the prevailing volatility environment. In general, in higher volatility environments the short options will be struck farther out of the money.

Principal Investments of the Fund

Under normal market conditions,¹² the Fund will invest not less than 80% of its total assets in component securities of the Index. Additionally, under normal market conditions, the Fund will invest not less than 80% of its total assets in U.S. exchange-traded common stocks.

¹² The term “normal market conditions” is defined in NYSE Arca Equities Rule 8.600 (c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

The Fund will also seek to generate additional income by writing SPX call options and will seek additional capital appreciation by purchasing SPX call options.

Other Investments

While the Fund, under normal market conditions will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

The Fund may invest in short-term, high quality securities issued or guaranteed by the U.S. government (in addition to U.S. Treasury securities) and non-U.S. governments, and each of their agencies and instrumentalities; debt securities issued by U.S. government sponsored enterprises; repurchase agreements backed by U.S. government and non-U.S. government securities; money market mutual funds; and deposit and other obligations of U.S. and non-U.S. banks and financial institutions (“Money Market Instruments”).

The Fund may invest in exchange-traded funds (“ETFs”).¹³

The Fund may invest in U.S. exchange-traded equity index futures contracts.

The Fund may invest in U.S. exchange-traded index options (other than SPX) and U.S. exchange-traded options on ETFs.

The Fund may invest in U.S. exchange-traded options on futures contracts and U.S. exchange-traded options on stocks.

¹³ The ETFs in which the Fund may invest are 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). The Fund will not invest in leveraged ETFs (e.g., 2X or 3X) or inverse or inverse leveraged ETFs (e.g., -1X or -2X).

Investment Restrictions

The Fund will not invest in any non-U.S. equity securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.¹⁴

The Fund intends to qualify each year as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.¹⁵

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value ("NAV"),¹⁶ only in large blocks of Shares ("Creation Units"), in transactions with "Authorized Participants" (as described below). Creation Units generally will consist of 50,000 Shares, though the size of a Creation Unit may change from time to time.

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the "Deposit Securities") per Creation Unit and the "Cash Component" (defined below), computed as described below, or (ii) the cash value of the Deposit Securities ("Deposit Cash") and the "Cash Component," computed

¹⁴ The Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or earmark liquid assets or otherwise cover the transactions that give rise to such risk. See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

¹⁵ 26 U.S.C. 851.

¹⁶ The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange ("NYSE"), generally 4:00 p.m. Eastern Time ("E.T.") (the "NAV Calculation Time"). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

as described below. Because certain listed derivatives are not currently eligible for in-kind transfer, they will be substituted with an amount of cash of equal value (i.e., Deposit Cash) when the Fund processes purchases of Creation Units in-kind. Specifically, the Fund will not accept exchange-traded options as Deposit Securities.

When accepting purchases of Creation Units for cash, the Fund may incur additional costs associated with the acquisition of Deposit Securities that would otherwise be provided by an in-kind purchase. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable. The Cash Component serves the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

A portfolio composition file, to be sent via the National Securities Clearing Corporation (“NSCC”), will be made available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.) containing a list of the names and the required amount of each security in the Deposit Securities to be included in the current Fund Deposit for the Fund (based on information about the Fund’s portfolio at the end of the previous business day). In addition, on each business day, the estimated Cash Component, effective through and including the previous business day, will be made available through NSCC.

The Fund Deposit will be applicable for purchases of Creation Units of the Fund until such time as the next-announced Fund Deposit is made available.

All purchase orders must be placed by an “Authorized Participant.” An Authorized Participant must be either a broker-dealer or other participant in the Continuous Net Settlement System (“Clearing Process”) of the NSCC or a participant in The Depository Trust Company (“DTC”) with access to the DTC system, and must execute an agreement with the Distributor that governs transactions in the Fund’s Creation Units. In-kind portions of purchase orders will be processed through the Clearing Process when it is available.

Shares of the Fund may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Distributor and only on a business day. The Fund, through the NSCC, will make available immediately prior to the opening of business on each business day, the list of the names and quantities of the Fund’s portfolio securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (“Fund Securities”). Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the “Cash Redemption Amount”). In the event that the Fund 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. Notwithstanding the foregoing, at the Trust’s discretion, an Authorized Participant may receive the corresponding

cash value of the securities in lieu of the in-kind securities representing one or more Fund Securities.¹⁷

The right of redemption may be suspended or the date of payment postponed: (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 or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as permitted by the Commission.

For an order involving a Creation Unit to be effectuated at the Fund's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order ("Order Cut-Off Time"). The Order Cut-Off Time for creation and redemption orders for the Fund will be 4:00 p.m. E.T. Order for creations or redemptions of Creation Units for cash generally must be submitted by 4:00 p.m. E.T. A standard creation or redemption transaction fee (as applicable) will be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

The Fund Securities received on a redemption will generally correspond pro rata, to the extent practicable, to the securities in the Fund's portfolio. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

Because certain listed derivatives are not eligible for in-kind transfer, they will be substituted with an amount of cash of equal value when the Fund processes redemptions of

¹⁷ The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

Creation Units in-kind. Specifically, the Fund will transfer the corresponding cash value of exchange-traded options in lieu of in-kind securities.

Net Asset Value

The Fund will calculate its NAV at the close of the Exchange's Core Trading Session¹⁸ of each business day (normally 4:00 p.m. E.T.) using the values of the Fund's portfolio securities.

The Fund will calculate its NAV by: (i) taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total amount of Shares outstanding.

In valuing its securities, the Fund will use market quotes or official closing prices if they are readily available. In cases where quotes are not readily available, the Fund may value securities based on fair values developed using methods approved by the Fund's Board of Trustees ("Board"), as discussed below. When valuing Money Market Instruments with remaining maturities of 60 days or less, the Fund may use the security's amortized cost, which approximates the security's market value.

ETFs, index options, options on ETFs, equity index futures contracts, options on futures contracts, and options on stocks will be valued at the last reported sale price or the official closing price on that exchange where the security or other instrument is primarily traded on the day that the valuation is made. With respect to derivative instruments, if, however, neither the last sales price nor the official closing price is available, each of these derivative instruments will be valued based on the midpoint of bid-ask prices.

Money Market Instruments (except for money market mutual funds) will generally be valued based on the midpoint of bid-ask prices received from independent pricing services as of

¹⁸ The Core Trading Session is 9:30 a.m. to 4:00 p.m. E.T.

the announced closing time for trading in fixed-income instruments in the market in which they trade. In determining the value of such a Money Market Instrument, pricing services determine valuations for normal institutional-size trading units of such securities using valuation models or matrix pricing, which incorporates yield and/or price with respect to bonds that are considered comparable in characteristics such as rating, interest rate and maturity date and quotations from securities dealers to determine current value. Money market mutual funds will be valued at their respective NAV.

Availability of Information

The Fund's website (www.virtus.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁹ and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its 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; for

¹⁹ The Bid/Ask Price of the Fund's Shares will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

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; 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 portfolio composition file, which will include the security names and quantities of securities and other assets required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated prior to the opening of the Exchange via the NSCC. The portfolio will represent one Creation Unit of the Fund. Authorized Participants may refer to the portfolio composition file for information regarding options, short-term U.S. Treasury Securities, Money Market Instruments, and any other instrument that may comprise the Fund's portfolio on a given day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, 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 may be viewed on screen or downloaded from the Commission's website at www.sec.gov.

Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares and U.S. exchange-traded common stocks will be available via the Consolidated Tape Association ("CTA") high-speed line. Quotation and last

sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority.

In addition, the value of the Index will be published by one or more major market data vendors every 15 seconds during the Core Trading Session. In addition, the Intraday Indicative Value (“IIV”) as defined in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(c) will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market vendors.²⁰ All Fund holdings will be included in calculating the IIV.

The dissemination of the IIV is intended to allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to approximate that value throughout the trading day. The intra-day, closing and settlement prices of the portfolio securities and other Fund investments, including common stocks and options, will also be readily available from the exchanges trading such instruments, automated quotation systems, published or other public sources,. The intra-day, closing and settlement prices of Money Market Instruments will be readily available from published and other public sources or on-line information services.

Initial and Continued Listing

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index will not meet the requirements of NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(A)(1-5) in that the Index will include options. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A-3²¹ under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation

²⁰ Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available IIV’s taken from the CTA or other data feeds.

²¹ See 17 CFR 240.10A-3.

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 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 a Fund. Shares of the Fund will be halted if the “circuit breaker” parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the IIV, Index value or the value of the Index components is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the Fund that the NAV for the Fund will be calculated daily and will be made available to all market participants at the same time. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. Shares

will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

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 designed to detect violations of Exchange rules and applicable federal securities laws.²² 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.

²² 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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, options and futures with 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, options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²³ The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

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

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) 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 Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

²³ 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.

Information Bulletin

Prior to the commencement of trading of Shares in the Fund, the Exchange will inform its ETP Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV or Index value will not be calculated or publicly disseminated; (4) how information regarding the IIV and Index value will be disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the 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 Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁴ in general and Section 6(b)(5) of the Act²⁵ in particular in that it is designed to prevent fraudulent

²⁴ 15 U.S.C. 78f.

²⁵ 15 U.S.C. 78f(b)(5).

and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 5.2(j)(3), except that the Index will partially consist of options on the S&P 500 Index. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

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 every day the NYSE is open, and that the NAV will be made available to all market participants at the same time. In addition, a large amount of publicly available information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Index consists entirely of US Component Stocks and SPX options, which are traded on the Chicago Board Options Exchange.

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. 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

quotations and last sale information will be available via the CTA high-speed line. Quotation and last sale information for the Shares, ETFs, and U.S. exchange traded common stocks will be available via the CTA high-speed line. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. The intra-day, closing and settlement prices of exchange-traded portfolio assets, including common stocks and options will be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. The Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its 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; 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; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. In addition, a portfolio composition file, which will include the security names and quantities of securities and other assets required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated prior to the opening of the Exchange via the NSCC. Authorized Participants may refer to the portfolio composition file for information regarding options, short-term U.S. Treasury Securities, Money Market Instruments, and any other

instrument that may comprise the Fund's portfolio on a given day. Moreover, prior to commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading the Shares inadvisable. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Fund's 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 exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances administered by the Exchange and FINRA on behalf of the Exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, US Component Stocks and options with other markets and other entities that are members of ISG, and the Exchange and FINRA, on behalf of the Exchange, or both, may obtain trading information in the Shares, US Component Stocks and options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, US Component Stocks and options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, 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 purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded fund 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 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. Please include File Number SR-NYSEArca-2016-131 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-2016-131. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSEArca-2016-131 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.²⁶

Robert W. Errett
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).