

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82138; File No. SR-NYSEArca-2017-88)

November 21, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the U.S. Equity Cumulative Dividends Fund – Series 2027 and the U.S. Equity Ex-Dividend Fund – Series 2027 under NYSE Arca Rule 8.200-E, Commentary .02

I. Introduction

On August 8, 2017, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the U.S. Equity Cumulative Dividends Fund – Series 2027 (“Dividend Fund”) and the U.S. Equity Ex-Dividend Fund – Series 2027 (“Ex-Dividend Fund,” each a “Fund,” and collectively the “Funds”) under NYSE Arca Equities Rule 8.200, Commentary .02.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on August 28, 2017.<sup>4</sup> On November 14, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> On

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

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

<sup>3</sup> The Commission notes that, on August 17, 2017, the Commission approved a proposed rule change that, among other things, created a single rulebook of the Exchange. See Securities Exchange Act Release No. 81419, 82 FR 40044 (Aug. 23, 2017) (SR-NYSEArca-2017-40). As a result, NYSE Arca Equities Rule 8.200 became NYSE Arca Rule 8.200-E.

<sup>4</sup> See Securities Exchange Act Release No. 81453 (Aug. 22, 2017), 82 FR 40816.

<sup>5</sup> In Amendment No. 1 (“Amendment No. 1”), which amended and replaced the proposed rule change in its entirety, the Exchange: (1) changed the custodian of the Funds; (2) stated that the Dividend Fund will seek investment results that, before fees and expenses, correspond to the performance of the Solactive U.S. Cumulative Dividends Index Series 2027 over each calendar year; (3) clarified that the value of the Dividend Fund’s Shares will be affected by the ordinary cash dividends that have been paid to date and general expectations in the market regarding the future levels of such dividends; (4) clarified that the Dividend Fund’s exposure to dividend payments made by S&P 500 constituent

November 16, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>6</sup> The Commission has not received any comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendments No.1 and 2 thereto.

II. The Exchange's Description of the Proposal<sup>7</sup>

The Exchange proposes to list and trade the Shares under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts.<sup>8</sup> Each Fund

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companies will be based exclusively on its investments in annual S&P 500 dividend futures contracts; (5) clarified that pricing may be an example of a market factor pursuant to which the Dividend Fund may invest in quarterly S&P 500 dividend futures contracts; (6) clarified that the Ex-Dividend Fund will seek investment results that, before fees and expenses, correspond to the performance of the Solactive U.S. Equity Ex-Dividends Index – Series 2027 so as to provide shareholders with returns that are equivalent to the performance of 0.5 shares of SPDR® S&P 500® ETF less the value of current and future expected ordinary cash dividends to be paid on the S&P 500 constituent companies over the term of the Ex-Dividend Fund; (7) stated that the quarterly S&P 500 Index futures contracts are traded on the Chicago Mercantile Exchange (“CME”); (8) clarified that the Ex-Dividend Fund intends to track the performance of the Solactive Ex-Dividend Index by selling annual S&P dividend futures contracts; (9) represented that the Trust (defined herein) will issue and sell Shares of a Fund in one or more block size aggregations of 50,000 shares; (10) represented that an updated indicative fund value” (“IFV”) will be calculated and disseminated by a third party service provider in accordance with the rules of the Exchange, and the IFV will be calculated by using the prior day’s closing net asset value (“NAV”) per Share of a Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade prices for instruments traded by a Fund; and (11) made other technical changes. Because Amendment No. 1 made the clarifying changes and representations summarized above and does not raise unique or novel regulatory issues. Amendment No. 1 is not subject to notice and comment.

<sup>6</sup> In Amendment No. 2, which is a partial amendment, the Exchange updated the proposed rule change to reflect that the Registration Statement has been filed with the Commission. Because Amendment No. 2 simply deletes information regarding the draft registration statement and provides information related to the filed Registration Statement and does not raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

<sup>7</sup> Additional information regarding the Funds, the Trust, and the Shares can be found in Amendments No. 1 and 2 and the Registration Statement. See supra notes 5 and 6 and infra note 9.

will be a series of Metaurus Equity Component Trust (“Trust”), a Delaware statutory trust.<sup>9</sup> Metaurus Advisors LLC (“Metaurus” or “Sponsor”) will be the sponsor, commodity pool operator and commodity trading advisor of each Fund. The Funds’ administrator will be SEI Investments Global Fund Services, (“Administrator”), who will be responsible for the day-to-day administration of the Trust and the Funds, including valuing all of the portfolio holdings of the Funds and calculating the NAV of the Funds. The Bank of New York Mellon will serve as registrar and transfer agent for the Funds as well as custodian for the Funds. Each Fund is a commodity pool as defined in the Commodity Exchange Act<sup>10</sup> and the applicable regulations of the Commodity Futures Trading Commission (“CFTC”).

A. U.S. Equity Cumulative Dividends Fund – Series 2027

The Dividend Fund will seek investment results that, before fees and expenses, correspond to the performance of the Solactive U.S. Cumulative Dividends Index – Series 2027 (“Solactive Dividend Index”) over each calendar year. The Dividend Fund will be a term fund that will terminate on or prior to December 31, 2027. The Dividend Fund will seek to provide shareholders of the Dividend Fund with returns designed to replicate the dividends on constituent companies of the S&P 500 Index (“S&P 500”), without exposure to the underlying securities.

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<sup>8</sup> Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

<sup>9</sup> On November 15, 2017, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) relating to the Funds (File No. 333-221591) (“Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement.

<sup>10</sup> 7 U.S.C. 1a(10).

The Dividend Fund intends primarily to invest its assets in the component instruments of the Solactive Dividend Index, as well as cash and cash equivalents.<sup>11</sup> The component instruments of the Solactive Dividend Index consist of U.S. Treasury Securities (“Treasury Securities”) and long positions in annual futures contracts listed on the CME<sup>12</sup> that provide exposure to dividends paid on the S&P 500 constituent companies (“Annual S&P 500 Dividend Futures Contracts”)<sup>13</sup> pro rata for each year of the life of the Dividend Fund.<sup>14</sup> The value of the Annual S&P 500 Dividend Futures Contracts, on which the value of the Dividend Fund will be based, will tend to increase if the actual dividends paid or expected to be paid by S&P 500 constituent companies in the periods tracked by the Annual S&P 500 Dividend Futures Contracts increase; the value of the Annual S&P 500 Dividend Futures Contracts will tend to decrease if the actual dividends paid or expected to be paid by S&P 500 constituent companies (as measured

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<sup>11</sup> Cash equivalents are short-term instruments with maturities of less than three months and shall include the following: (i) certificates of deposit issued against funds deposited in a bank or savings and loan association; (ii) bankers’ acceptances, which are short-term credit instruments used to finance commercial transactions; (iii) repurchase agreements and reverse repurchase agreements; (iv) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (v) commercial paper, which are short-term unsecured promissory notes; (vi) Treasury Securities, and (vii) money market funds, including exchange-traded funds (“ETFs”). The ETFs in which a Fund may invest will be ETFs that invest principally in money market instruments, and all ETF shares will be listed and traded on national securities exchanges.

<sup>12</sup> CME Group, Inc. is a member of the Intermarket Surveillance Group (“ISG”). See note 8, infra.

<sup>13</sup> The Dividend Fund will hold the following Annual S&P 500 Dividend Futures Contracts: S&P 500 Annual Dividend Index Futures with annual expiry of 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, and 2027.

<sup>14</sup> As a result, in addition to the Treasury Securities, cash and/or cash equivalents, the Dividend Fund is initially expected to hold each of the Annual S&P 500 Dividend Futures Contracts that are traded and expire during its ten-year term. Each year thereafter, until December 2027 when the Dividend Fund will terminate, the Dividend Fund will hold one less Annual S&P 500 Dividend Futures Contract due to expiry of the prior year’s contract.

in the current year by the Dividend Points Index) decrease in the periods tracked by the Annual S&P 500 Dividend Futures Contracts. While the Dividend Fund will invest primarily in the component instruments of the Solactive Dividend Index, cash and cash equivalents, in certain instances, the Dividend Fund may invest in quarterly S&P 500 dividend futures contracts<sup>15</sup> (“Quarterly S&P 500 Dividend Futures Contracts, and, together with the Annual S&P 500 Dividend Futures Contracts, the “Dividend Futures Contracts”), rather than the Annual S&P 500 Dividend Futures Contracts if, in the judgment of Metaurus, utilizing such alternative maturity instruments would be in the best interest of the Dividend Fund (e.g., due to liquidity or similar market factors).

The Dividend Fund expects to pay monthly cash distributions to its shareholders throughout each calendar year. Such distributions will, on an annual basis, before fees and expenses, equal all or a substantial portion of the Dividend Fund’s NAV attributable to the ordinary cash dividends accumulated by the S&P 500 Dividend Points Index (Annual “Dividend Points Index”) for the year (as reflected in the current year’s Annual S&P 500 Dividend Futures Contracts held by the Dividend Fund).<sup>16</sup> The Dividend Fund’s exposure to dividend payments made by S&P 500 constituent companies will be based exclusively on its investments in the Annual S&P 500 Dividend Futures Contracts.

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<sup>15</sup> The Dividend Fund will hold the following Quarterly S&P 500 Dividend Futures Contracts: S&P 500 Quarterly Dividend Index Futures with quarterly expiry of 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, and 2027. These contracts trade on the CME.

<sup>16</sup> The Dividend Points Index resets to zero on the third Friday of each December contemporaneously with the expiration of the applicable Annual S&P 500 Dividend Futures Contract.

The Dividend Fund will not employ leverage<sup>17</sup> to implement its investment strategy. The Dividend Fund may, however, enter into short-term loans and reverse repurchase agreements for liquidity purposes, including to fund distributions.

Solactive Dividend Index. The Solactive Dividend Index is an index that is owned, maintained, calculated and distributed by Solactive AG, an independent index sponsor and data provider (“Solactive”).<sup>18</sup> The index aims to represent the discounted present value of all listed Annual S&P 500 Dividend Futures Contracts out to and including the December 2027 Annual S&P 500 Dividend Futures Contract.

To accomplish this, each Annual S&P 500 Dividend Futures Contract market price will be discounted by using the computed yield of a specified Treasury Security with a similar or prior maturity date as the corresponding Annual S&P 500 Dividend Futures Contract expiry. After annual expiry of an Annual S&P 500 Dividend Futures Contract, such futures contract and its corresponding Treasury Security will be removed from the Solactive Dividend Index during the annual rebalancing of the Solactive Dividend Index. All specifications and information relevant for calculating the Solactive Dividend Index are made available at <http://www.solactive.de>.

The Solactive Dividend Index is calculated and published in United States dollars (“USD”) based on the prices of the components on the applicable listing exchanges posted by quotation services or otherwise as determined by Solactive. The Solactive Dividend Index does not weigh the values of the index components. The value of the Solactive Dividend Index is

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<sup>17</sup> Leverage means the use of loans, borrowings and extensions of credit from third parties for the purchase of investments.

<sup>18</sup> The Sponsor developed the algorithm on which the Solactive Dividend Index is based and licensed it to Solactive. Solactive is not affiliated with the Sponsor and is solely responsible for calculating the Solactive Dividend Index.

widely disseminated every 15 seconds on each “Business Day”<sup>19</sup> by major market data vendors during the NYSE Arca’s Core Trading Session.

The Exchange represents that a committee composed of staff from Solactive is responsible for decisions regarding the composition of the Solactive Dividend Index as well as any amendments to the index calculation methodology. Members of the committee can recommend changes to the index calculation methodology for calculating the Solactive Dividend Index and submit them to the committee for approval. Members of the committee are subject to procedures designed to prevent the use and dissemination of material non-public information regarding changes to the Solactive Dividend Index.

B. U.S. Equity Ex-Dividend Fund – Series 2027

The Ex-Dividend Fund will be a term fund that will terminate on or prior to December 31, 2027. The Ex-Dividend Fund will seek investment results that, before fees and expenses, correspond to the performance of the Solactive U.S. Equity Ex-Dividends Index – Series 2027 (“Solactive Ex-Dividend Index”, and together with the Solactive Dividend Index, the “Underlying Indexes”) so as to provide shareholders with returns that are equivalent to the performance of 0.5 shares of SPDR<sup>®</sup> S&P 500<sup>®</sup> ETF (“SPDRs”)<sup>20</sup> less the value of current and future expected ordinary cash dividends to be paid on the S&P 500 constituent companies over the term of the Ex-Dividend Fund.

In seeking to track the Solactive Ex-Dividend Index, the Ex-Dividend Fund intends to replicate the returns of SPDRs through: (1) owning long positions in quarterly S&P 500 Index futures contracts traded on the CME (“Quarterly S&P 500 Index Futures Contracts”) rather than

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<sup>19</sup> A “Business Day” means any day on which the NYSE Arca is open for business, including any partial-day opening.

<sup>20</sup> Shares of SPDRs are listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.100 (Portfolio Depositary Receipts).

shares of SPDRs;<sup>21</sup> and (2) selling Annual S&P 500 Dividend Futures Contracts. The Ex-Dividend Fund may also hold Treasury Securities, cash, and cash equivalents. If in the best interest of the Ex-Dividend Fund, the Ex-Dividend Fund also may invest in annual S&P 500 Index futures contracts<sup>22</sup> (“Annual S&P 500 Index Futures Contracts,” and, together with the Quarterly S&P 500 Index Futures Contracts, the “Index Futures Contracts”) and Quarterly S&P 500 Dividend Futures Contracts.

The Ex-Dividend Fund will not employ leverage<sup>23</sup> to implement its investment strategy. The Ex-Dividend Fund may, however, enter into short-term loans and reverse repurchase agreements for liquidity purposes.

#### Solactive Ex-Dividend Index

The Solactive Ex-Dividend Index tracks the performance of SPDRs together with the performance of short positions in the Annual S&P 500 Dividend Futures Contracts for each year from the Ex-Dividend Fund’s launch date through December 2027. The index is owned, maintained, calculated, and distributed by Solactive.<sup>24</sup>

The Solactive Ex-Dividend Index aims to represent the current value of 0.5 shares of SPDRs, less the current value of ordinary cash dividends expected to be paid on the S&P 500, until the Ex-Dividend Fund’s maturity. The current value of such dividends is represented by the Solactive Dividend Index. The Solactive Dividend Index aims to represent the discounted present value of all listed Annual S&P 500 Dividend Futures Contracts out to and including the

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<sup>21</sup> The Quarterly S&P 500 Index Futures Contracts include: (i) S&P 500 Futures and (ii) E-mini S&P 500 Futures. These contracts trade on the CME.

<sup>22</sup> These contracts trade on the CME.

<sup>23</sup> See supra note 7.

<sup>24</sup> The Sponsor developed the algorithm on which the Solactive Ex-Dividend Index is based and licensed it to Solactive. Solactive is not affiliated with the Sponsor and is solely responsible for calculating the Solactive Ex-Dividend Index.

December 2027 Annual S&P 500 Dividend Futures Contracts expiry. The Solactive Ex-Dividend Index includes shares of SPDRs and short positions in Annual S&P 500 Dividend Futures Contracts for each year from the Ex-Dividend Fund's launch date through December 2027. The Solactive Ex-Dividend Index, which is calculated and published in USD, is based on the most recent prices of the index components on the applicable listing exchanges posted by quotation services or otherwise as determined by Solactive. In calculating the index value, no weighting is applied to the components. All specifications and information relevant for calculating the Solactive Ex-Dividend Index are made available at <http://www.solactive.de>.

The Solactive Ex-Dividend Index is widely disseminated every 15 seconds on each Business Day by major market data vendors during the NYSE Arca's Core Trading Session.

A committee composed of staff from Solactive is responsible for decisions regarding the composition of the Solactive Ex-Dividend Index as well as any amendments to the index calculation methodology. Members of the committee can recommend changes to the index calculation methodology for calculating the Solactive Ex-Dividend Index and submit them to the committee for approval. Members of the committee are subject to procedures designed to prevent the use and dissemination of material non-public information regarding changes to the Solactive Ex-Dividend Index.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>25</sup> In particular, the Commission finds that the proposed rule

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<sup>25</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

change, as modified by Amendments No. 1 and 2, is consistent with Section 6(b)(5) of the Act,<sup>26</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>27</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. According to the Exchange, quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). The Funds' website, [www.metaurus.com](http://www.metaurus.com), will display the applicable end of day closing NAV. The daily holdings of each Fund will be available on the Funds' website before 9:30 a.m. E.T. each day. The Funds' website disclosure of portfolio holdings will be made daily and will include, as applicable: the composite value of the total portfolio; the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information; the value of each Treasury Security and cash equivalent; and the amount of cash held in each Fund's portfolio. Accordingly, each investor will have access to the current daily holdings of each Fund through the Funds' website, which will be publicly accessible at no

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<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

charge. This website disclosure of each Fund's daily holdings will occur at the same time as the disclosure by the Trust of the daily holdings to authorized participants so that all market participants are provided daily holdings information at the same time. The intraday, closing prices, and settlement prices of the S&P 500 Futures Contracts will be readily available from the CME website, automated quotation systems, published or other public sources, or major market data vendors. Pricing information for cash equivalents is available from major market data vendors. In addition, price information for the underlying money market ETFs is available from the applicable exchange. Quotation information from brokers and dealers or pricing services is available for Treasury Securities. Complete real-time data for the S&P 500 Futures Contracts is available by subscription through on-line information services. CME also provides delayed futures information on current and past trading sessions and market news free of charge on its website.

Additionally, the Commission believes that the proposal to list and trade the Shares is reasonably designed to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not 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. Further, the Exchange may halt trading during the day in which an interruption to the dissemination of the Indicative Fund Value ("IFV") or the value of an Underlying Index occurs. If the interruption to the dissemination of the IFV, or the value of an Underlying Index, persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Trading in Shares of a Fund will be halted if the circuit breaker parameters in

NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Commission believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees. Moreover, trading of the Shares will be subject to NYSE Arca Rule 8.200-E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered market makers in Trust Issued Receipts to facilitate surveillance. The Commission notes that the Exchange or the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and S&P 500 Futures Contracts 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 and S&P 500 Futures Contracts from such markets and other entities. In addition, all S&P 500 Futures Contracts are traded on CME, an ISG member and the Exchange may obtain information regarding trading in the Shares and S&P 500 Futures Contracts from markets and other entities that are members of ISG.<sup>28</sup>

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. In support of this proposal, the Exchange represented that:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200-E.<sup>29</sup>

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<sup>28</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>29</sup> See Amendment No. 1, supra note 5.

- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.<sup>30</sup>
- (3) 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, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>31</sup>
- (4) Prior to the 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. Specifically, the Information Bulletin will discuss the following: (a) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Rule 9.2-E(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; (d) how information regarding the IFV is disseminated; (e) how information regarding portfolio holdings is disseminated; (f) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently

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<sup>30</sup> See id.

<sup>31</sup> See id.

with the confirmation of a transaction; and (g) trading information.<sup>32</sup>

- (5) For initial and continued listing, each Fund will be in compliance with Rule 10A-3 under the Act,<sup>33</sup> as provided by NYSE Arca Rule 5.3-E.<sup>34</sup>
- (6) A minimum of 50,000 Shares of a Fund will be outstanding at the commencement of trading on the Exchange.<sup>35</sup>
- (7) All statements and representations made in this filing regarding (a) the description of the portfolios, indexes and reference assets, (b) limitations on portfolio holdings, indexes and reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.<sup>36</sup>
- (8) The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds 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.<sup>37</sup> If a Fund is not

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<sup>32</sup> See Amendment 1, supra note 5.

<sup>33</sup> 17 CFR 240.10A-3.

<sup>34</sup> See Amendment 1, supra note 5.

<sup>35</sup> See id.

<sup>36</sup> See id.

<sup>37</sup> See id. The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016), available at: <http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf>. In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of each Fund’s compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in Amendments No. 1 and 2. The Commission notes that the Shares must comply with the requirements of NYS Arca Rule 8.200-E, Commentary .02 thereto to be listed and traded in the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No.1 and 2, is consistent with Section 6(b)(5) of the Act<sup>38</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> that the proposed rule change (SR-NYSEArca-2017-88), as modified by Amendments No. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>38</sup> 15 U.S.C. 78f(b)(5).

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 17 CFR 200.30-3(a)(12).

