

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82592; File No. SR-NYSEArca-2017-99)

January 26, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Hartford Schrodgers Tax-Aware Bond ETF under NYSE Arca Rule 8.600-E

I. Introduction

On October 11, 2017, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 Hartford Schrodgers Tax-Aware Bond ETF (“Fund”) under NYSE Arca Rule 8.600-E. The proposed rule change was published for comment in the Federal Register on October 31, 2017.<sup>3</sup> On November 21, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On December 14, 2017, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On January 18, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by

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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> See Securities Exchange Act Release No. 81944 (October 25, 2017), 82 FR 50461.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 82323, 82 FR 60455 (December 20, 2017). The Commission designated January 29, 2018 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

Amendment No. 1.<sup>6</sup> The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal, as Modified by Amendment No. 2<sup>8</sup>

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Rule 8.600-E, which governs the listing and trading of Managed Fund Shares. The Fund is a series of

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<sup>6</sup> In Amendment No. 2, the Exchange: (1) stated that State Street Bank and Trust Company will serve as transfer agent and custodian for the Fund; (2) removed certain conditions on the definition of the “fire wall” between the Sub-Adviser and its broker-dealer subsidiary; (3) represented that personnel who make decisions on the Fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund’s portfolio; (4) clarified that cash and cash equivalents are included in the Fund’s principal investments and specified that for purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600-E; (5) provided additional information regarding the Fund’s non-principal investments; (6) specified that restricted securities are included in the Fund’s non-principal investments; (7) added an explanation regarding the Manager’s belief that the creation and redemption cutoff time (1:00 p.m. Eastern Time) will not have a material impact on an authorized participant’s arbitrage opportunities with respect to the Fund; (8) added a statement that the Manager represents that, to the extent the Trust effects the creation or redemption of Shares wholly or partially in cash, such transactions will be effected in the same manner for all authorized participants; (9) specified additional quantitative information relating to the Shares that will be included on the Fund’s website; (10) supplemented the description of the availability of information for the Fund’s investments; (11) defined the term “periods of high cash inflows or outflows” as used in this filing; (12) added a statement that the Manager represents that the fixed income weight of the Fund’s portfolio, other than holdings in Municipal Securities, will meet the generic listing requirements of Commentary .01(b) to NYSE Arca Rule 8.600-E; (13) stated that the Manager will be the “Reporting Authority” for purposes of NYSE Arca Rule 8.600-E(d)(2)(B)(ii); and (14) made other clarifications, corrections, and technical changes. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nysearca-2017-99/nysearca201799-2935844-161848.pdf>.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> For more information regarding the Fund and the Shares, see Amendment No. 2, supra note 6.

the Hartford Funds Exchange-Traded Trust (“Trust”), which is registered with the Commission as an open-end management investment company.<sup>9</sup>

Hartford Funds Management Company, LLC (“Manager”) will be the investment manager to the Fund, and Schroder Investment Management North America Inc. (“Sub-Adviser”) will be the sub-adviser to the Fund and perform the daily investment of the assets for the Fund.<sup>10</sup> ALPS Distributors, Inc. will be the principal underwriter to the Fund. State Street Bank and Trust Company will serve as transfer agent and custodian for the Fund.

According to the Exchange, the Fund will seek total return on an after-tax basis and will seek to achieve its investment objective by investing in a diversified portfolio of fixed income debt instruments of varying maturities.<sup>11</sup>

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<sup>9</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On June 26, 2017, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333-215165 and 811-23222). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 32454 (January 27, 2017) (File No. 812-13828-01).

<sup>10</sup> According to the Exchange, neither the Manager nor the Sub-Adviser is registered as a broker-dealer, but each is affiliated with a broker-dealer. The Exchange states that the Manager and Sub-Adviser each has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio. In addition, personnel who make decisions on the Fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund’s portfolio. In the event (a) the Manager or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

<sup>11</sup> In seeking to achieve the Fund’s investment objective, the Sub-Adviser will employ a tax-aware investing strategy that attempts to realize total return for shareholders,

A. Principal Investments

Under normal market conditions,<sup>12</sup> the Fund will invest principally (that is, more than 50% of its assets) in the U.S. dollar-denominated fixed income debt instruments described below, and in cash and cash equivalents.<sup>13</sup>

The fixed income debt instruments in which the Fund may invest as part of its principal investment strategy are securities issued or guaranteed by the U.S. government and its agencies, government-sponsored enterprise securities, corporate bonds, agency mortgage-backed securities (including “to be announced” or “TBA” transactions), agency asset-backed securities (“ABS”), “Municipal Securities” (as described below), sovereign debt, and debt securities issued by supranational organizations. They may pay fixed, variable, or floating interest rates.

The Fund may invest in the following Municipal Securities: general obligation bonds; revenue (or limited obligation) bonds; private activity (or industrial development) bonds; bonds that are collateralized with agency and/or treasury securities; municipal notes; municipal lease obligations; and municipal inverse floaters.

B. Other Investments

While the Fund, under normal market conditions, will invest principally in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

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primarily in the form of current income and price appreciation, by balancing investment considerations and tax considerations.

<sup>12</sup> The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

<sup>13</sup> For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600-E.

The Fund may invest in U.S. and foreign non-agency ABS, which are securities backed by a pool of some underlying asset, including but not limited to home equity loans, installment sale contracts, credit card receivables, or other assets.

The Fund may invest in U.S. and foreign non-agency mortgage-related securities. Mortgage-related securities may be composed of one or more classes and may be structured either as pass-through securities or collateralized debt obligations (which include collateralized bond obligations and collateralized loan obligations).

The Fund may invest in U.S. exchange-traded closed-end funds and exchange-traded funds (“ETFs”).<sup>14</sup> The Fund also may invest in non-exchange-traded securities of other registered investment companies (i.e., mutual funds).

The Fund may engage actively in transactions in derivatives (futures, options, swaps, and forward rate agreements) as described below. The Fund will normally use derivatives to supplement the effective management of its duration profile, to gain exposure to particular securities or markets, in connection with hedging transactions, or for purposes of efficient portfolio management, including managing cash flows or as part of the Fund’s risk management process.

The Fund may invest in U.S. and foreign exchange-traded and over-the counter (“OTC”) put and call options. The Fund may engage in options transactions on any security, index, or instrument in which it may invest.

The Fund may invest in U.S. and foreign exchange-traded and OTC currency options.

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<sup>14</sup> For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Rule 5.2-E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100-E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600-E). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund will not invest in inverse or leveraged (e.g., +2x, -2x) index ETFs.

The Fund may invest in U.S. and foreign exchange-traded futures contracts and options on futures contracts with respect to equity and debt securities, foreign currencies, aggregates of equity and debt securities (aggregates are composites of equity or debt securities that are not tied to a commonly known index), interest rates, indices, commodities, and other financial instruments.

The Fund may enter into the following U.S exchange-traded, foreign exchange-traded, and OTC swaps: commodity swaps; total return swaps; currency swaps; credit default swaps (“CDS”); CDS index swaps (“CDX”); asset swaps; inflation swaps; event-linked swaps; interest rate swaps; swaps on specific securities or indices; and swaps on rates (such as mortgage prepayment rates). The Fund may invest in U.S. exchange-traded and OTC municipal derivatives (i.e., municipal credit default swaps, municipal market data derivatives, rate locks, caps, collars, and floors). The Fund may also enter into options on swap agreements (“swaptions”).<sup>15</sup>

The Fund may enter into forward rate agreements.

The Fund may invest in inflation-protected debt securities.

The Fund may invest in convertible and nonconvertible preferred stock traded OTC or on U.S. and non-U.S. exchanges.

The Fund may hold restricted securities, which are securities that cannot be offered for public resale unless registered under the applicable securities laws or that have a contractual restriction that prohibits or limits their resale.<sup>16</sup>

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<sup>15</sup> Options on swaps are traded OTC. In the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

<sup>16</sup> Restricted securities include private placement securities that have not been registered under the applicable securities laws, such as Rule 144A securities, and securities of U.S. and non-U.S. issuers that are issued pursuant to Regulation S.

With respect to any of the Fund's investments, the Fund may invest in when-issued and delayed delivery securities and forward commitments.

C. Investment Restrictions

The Exchange represents that the Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

With respect to the Fund's investments in Municipal Securities, under normal market conditions, except for periods of high cash inflows or outflows,<sup>17</sup> the Fund will satisfy the following criteria:

1. The Fund will have a minimum of 20 non-affiliated issuers;
2. No single Municipal Securities issuer will account for more than 10% of the weight of the Fund's portfolio;
3. No individual bond will account for more than 5% of the weight of the Fund's portfolio;
4. The Fund will limit its investments in Municipal Securities of any one state or U.S. territory to 25% of the Fund's total assets, except that up to and including 40% of the Fund's total assets may be invested in Municipal Securities of issuers in each of California, New York, and Texas;
5. The Fund's investments in Municipal Securities will be diversified among issuers in at least 10 states and U.S. territories; and

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<sup>17</sup> "Periods of high cash inflows or outflows" as used in this filing means rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods. During such periods, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash.

6. The Fund will be diversified among a minimum of five different sectors of the Municipal Securities market.<sup>18</sup>

The Exchange states that pre-refunded bonds will be excluded from the above limits given that they have a high level of credit quality and liquidity.<sup>19</sup>

D. Application of Generic Listing Requirements

The Exchange proposes to list and trade the Shares under NYSE Arca Rule 8.600-E, which includes generic listing requirements for Managed Fund Shares. According to the Exchange, the Fund's portfolio will not meet all of the generic listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E. Commentary .01(b)(1) to NYSE Arca Rule 8.600-E requires that, on both an initial and continuing basis, components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of \$100 million or more. The Exchange states that the Fund would not meet this requirement, as a result principally of the Fund's investments in Municipal Securities. The Exchange represents that the Fund's investments in Municipal Securities would be subject to the requirements described in Section II.C. above. The Exchange notes that the Manager represents that the fixed income weight of the Fund's portfolio, other than

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<sup>18</sup> The Fund's investments in Municipal Securities will include investments in state and local (e.g., county, city, town) Municipal Securities relating to such sectors as the following: airports; bridges and highways; hospitals; housing; jails; mass transportation; nursing homes; parks; public buildings; recreational facilities; school facilities; streets; and water and sewer works.

<sup>19</sup> The Exchange states that pre-refunded bonds (also known as refunded or escrow-secured bonds) have a high level of credit quality and liquidity because the issuer "pre-refunds" the bond by setting aside in advance all or a portion of the amount to be paid to the bondholders when the bond is called. Generally, an issuer uses the proceeds from a new bond issue to buy high grade, interest bearing debt securities, including direct obligations of the U.S. government, which are then deposited in an irrevocable escrow account held by a trustee bank to secure all future payments of principal and interest on the pre-refunded bonds.

holdings in Municipal Securities, will meet the generic listing requirements of Commentary .01(b). The Exchange also represents that, other than Commentary .01(b)(1), the Fund's portfolio will meet all other requirements of NYSE Arca Rule 8.600-E.

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2017-99, as Modified by Amendment No. 2, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>20</sup> to determine whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 2.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>21</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."<sup>22</sup> As discussed above, the Exchange notes that, other than Commentary .01(b)(1), the Fund's portfolio will meet all other requirements of NYSE Arca Rule 8.600-E. The Commission notes that Commentary .01(a)(1)(E) to NYSE Arca Rule 8.600-E requires that, on both an initial and continuing basis,

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<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>21</sup> Id.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

the component stocks of the equity portion of a portfolio that are U.S. Component Stocks (as described in NYSE Arca Rule 5.2-E(j)(3)) be listed on a national securities exchange and be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.<sup>23</sup> Commentary .01(a)(2)(E) to NYSE Arca Rule 8.600-E requires that, on both an initial and continuing basis, the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks (as described in NYSE Arca Rule 5.2-E(j)(3)) be listed and traded on an exchange that has last-sale reporting. In the proposal, the Exchange states that the Fund may invest in non-exchange-traded securities of other registered investment companies (i.e., mutual funds) and OTC convertible and nonconvertible preferred stocks, but does not explain the application of Commentary .01(a)(1)(E) or Commentary .01(a)(2)(E) (or both) to these investments, and why these investments are consistent with the Act. The Commission seeks commenters' views on these aspects of the proposal, and whether the Exchange's statements and representations support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act.

#### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to

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<sup>23</sup> Commentary .01(a)(1)(F) to NYSE Arca Rule 8.600-E provides that American Depositary Receipts (“ADRs”) in a portfolio may be exchange-traded or non-exchange-traded, but no more than 10% of the equity weight of a portfolio may consist of non-exchange-traded ADRs.

approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>24</sup> any request for an opportunity to make an oral presentation.<sup>25</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 2, should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

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-2017-99 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-2017-99. 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

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<sup>24</sup> 17 CFR 240.19b-4.

<sup>25</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-99 and should be submitted by [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Robert W. Errett  
Deputy Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).