

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82973; File No. SR-NYSEArca-2017-99)

March 30, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, 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 On November 21, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.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 On January 18, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by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> On January 26, 2018, the Commission published notice of Amendment No. 2 and instituted proceedings under 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.<sup>8</sup> Thereafter, on January 26, 2018, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment Nos. 1 and 2.<sup>9</sup>

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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> See Securities Exchange Act Release No. 82592, 83 FR 4704 (February 1, 2018).

<sup>9</sup> Amendment No. 3 includes the changes made by Amendment No. 2. In addition, in Amendment No. 3, the Exchange: (1) removed as permitted investments of the Fund non-exchange-traded securities of other registered investment companies (i.e., mutual funds), as well as convertible and non-convertible preferred stocks traded over-the-counter (“OTC”) or on U.S. and non-U.S. exchanges; (2) clarified that the Fund may hold fixed

The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 3<sup>10</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 the Hartford Funds Exchange-Traded Trust (“Trust”), which is registered with the Commission as an open-end management investment company.<sup>11</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>12</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.

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income restricted securities as part of its non-principal investments; (3) supplemented the description of the surveillance relating to the Shares; and (4) made other clarifications, corrections, and technical changes. Amendment No. 3 is available at <https://www.sec.gov/comments/sr-nysearca-2017-99/nysearca201799-2965793-161858.pdf>.

<sup>10</sup> For more information regarding the Fund and the Shares, see Amendment No. 3, supra note 9.

<sup>11</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). The Exchange states that 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). In addition, 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>12</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

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>13</sup>

A. Principal Investments

Under normal market conditions,<sup>14</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>15</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.

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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>13</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, primarily in the form of current income and price appreciation, by balancing investment considerations and tax considerations.

<sup>14</sup> The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

<sup>15</sup> For purposes of the 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 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.

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>16</sup>

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

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<sup>16</sup> For purposes of the 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.

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 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.

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>17</sup>

The Fund may enter into forward rate agreements.

The Fund may invest in inflation-protected debt securities.

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<sup>17</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.

The Fund may hold fixed income 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>18</sup>

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>19</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

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<sup>18</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.

<sup>19</sup> "Periods of high cash inflows or outflows" as used in the 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.

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
6. The Fund will be diversified among a minimum of five different sectors of the Municipal Securities market.<sup>20</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>21</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. Specifically, the Exchange states that the Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(b)(1) with respect to Municipal Securities.

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<sup>20</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>21</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.

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 represents that, other than Commentary .01(b)(1) with respect to Municipal Securities, the Fund's portfolio will meet all other requirements of NYSE Arca Rule 8.600-E.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>22</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,<sup>23</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the Fund's investments in Municipal Securities would not comply with Commentary .01(b)(1) to NYSE Arca Rule 8.600-E. The Exchange represents that the Fund

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<sup>22</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).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

would invest in various types of fixed income debt instruments, including Municipal Securities. According to the Exchange, permitting the Shares to be listed and traded on the Exchange, notwithstanding that, as a result principally of the Fund's investments in Municipal Securities, the Fund would not comply with Commentary .01(b)(1), would provide the Fund with greater ability to select from a broad range of fixed income securities that would support the Fund's investment goal.

The Commission notes that, as proposed, under normal market conditions, except for periods of high cash inflows or outflows, the Fund will satisfy the following criteria with respect to Municipal Securities: (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 (6) the Fund will be diversified among a minimum of five different sectors of the Municipal Securities market.<sup>24</sup> The Commission also notes that, other than Commentary .01(b)(1) with respect to Municipal Securities, the Fund will meet all the requirements of NYSE Arca Rule 8.600-E. The Commission believes that these proposed initial and continued listing requirements, including the requirements with respect to Municipal Securities, are designed to mitigate the potential for manipulation of the Shares.

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<sup>24</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.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>25</sup> which sets forth Congress's 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. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. The iNAV (which is the Portfolio Indicative Value, as defined in NYSE Arca Rule 8.600-E(c)(3)), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.<sup>26</sup> Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be publicly available and will be published daily in the financial section of newspapers.

Quotation and last sale information for ETFs will be available via the CTA high-speed line, and from the national securities exchanges on which they are listed. U.S. exchange-traded options quotation and last sale information is available via the Options Price Reporting Authority. Foreign exchange-traded options, U.S. and foreign exchange-traded futures contracts and options on futures contracts, U.S. and foreign exchange-traded swaps (if applicable), and exchange-traded municipal derivatives price information is available from the applicable U.S. or foreign exchange and major market data vendors. Quotation information from brokers and dealers or pricing services will be available for Municipal Securities. Price information for

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<sup>25</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>26</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

money market funds and other investment company securities (other than ETFs) will be available from the applicable investment company's website and from market data vendors. Pricing information regarding fixed income debt instruments, cash equivalents, OTC options, OTC swaps, swaptions, restricted securities, non-agency ABS, non-agency mortgage-related securities, forward rate agreements, OTC municipal derivatives, CDX, and inflation-protected debt securities will generally be available through nationally recognized data service providers through subscription agreements. One source of price information for municipal securities is the Electronic Municipal Market Access, which is administered by the Municipal Securities Rulemaking Board.

In addition, the Fund's website will include the Fund's prospectus and additional data relating to net asset value ("NAV") and other applicable quantitative information.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio (as defined in NYSE Arca Rule 8.600-E(c)(2)) will be made available to all market participants at the same time. Trading in the Shares will be halted if the circuit-breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, trading in the Shares will be subject to NYSE Arca Rule 8.600-E(d)(2)(D), which sets forth circumstances under which the Shares may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that 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.<sup>27</sup> Further, the Exchange states that, consistent with NYSE Arca Rule 8.600-E(d)(2)(B)(ii), the Manager will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio.<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 represents that:

- (1) Other than Commentary .01(b)(1) with respect to Municipal Securities, the Fund will meet all the requirements of NYSE Arca Rule 8.600-E. The Fund's investments in Municipal Securities will be subject to the requirements described in Section II.C. above.
- (2) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.
- (3) Trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, or by regulatory staff of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all

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<sup>27</sup> The Exchange also represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

<sup>28</sup> The Exchange states that the Manager will be the Reporting Authority for purposes of NYSE Arca Rule 8.600-E(d)(2)(B)(ii).

trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>29</sup>

- (4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, exchange-traded closed-end funds, exchange-traded municipal derivatives, certain exchange-traded options, and certain exchange-traded futures with other markets and other entities that are members of the Intermarket Surveillance Group, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs, exchange-traded closed-end funds, exchange-traded municipal derivatives, certain exchange-traded options, and certain exchange-traded futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, exchange-traded closed-end funds, exchange-traded municipal derivatives, certain exchange-traded options, and certain exchange-traded futures from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

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<sup>29</sup> The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

- (5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss: (a) the procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated iNAV will not be calculated or publicly disseminated; (d) how information regarding the iNAV and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.
- (6) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (7) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.<sup>30</sup>
- (8) 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.

The Exchange represents that all statements and representations made in the filing regarding: (1) the description of the portfolio or reference asset; (2) limitations on portfolio

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<sup>30</sup> See 17 CFR 240.10A-3.

holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer must notify 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<sup>31</sup> 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 Rule 5.5-E(m).

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act<sup>32</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>33</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>31</sup> The Commission notes that certain proposals for the listing and trading of exchange-traded products 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, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of 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.

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

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 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 on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the Federal Register. The Commission notes that Amendment No. 3 clarified the application of NYSE Arca Rule 8.600-E to the Fund's investments. Amendment No. 3 also provided other clarifications and additional information to the proposed rule change. The changes and additional information in Amendment No. 3 assisted the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

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<sup>34</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> that the proposed rule change (SR-NYSEArca-2017-99), as modified by Amendment No. 3 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>35</sup> Id.  
<sup>36</sup> 17 CFR 200.30-3(a)(12).