

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84379; File No. SR-NYSEArca-2018-73)

October 5, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the First Trust Short Duration Managed Municipal ETF under NYSE Arca Rule 8.600-E

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 3, 2018, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of the First Trust Short Duration Managed Municipal ETF under NYSE Arca Rule 8.600-E (“Managed Fund Shares”). The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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

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

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

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

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

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the First Trust Short Duration Managed Municipal ETF (“Fund”) under NYSE Arca Rule 8.600-E,<sup>4</sup> which governs the listing and trading of Managed Fund Shares.<sup>5</sup> The Shares will be offered by First Trust Exchange-Traded Fund III (the “Trust”), which is registered with the Commission as an open-end management investment company.<sup>6</sup> The Fund is a series of the Trust.

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<sup>4</sup> The Securities and Exchange Commission (“Commission”) has approved Exchange listing and trading shares of actively managed funds that principally hold municipal bonds. See, e.g., Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund); 79293 (November 10, 2016), 81 FR 81189 (November 17, 2016) (SR-NYSEArca-2016-107) (order approving listing and trading of shares of Cumberland Municipal Bond ETF under Rule 8.600); 80865 (June 6, 2017), 82 FR 26970 (June 12, 2017) (order approving listing and trading of shares of the Franklin Liberty Intermediate Municipal Opportunities ETF and Franklin Liberty Municipal Bond ETF under NYSE Arca Equities Rule 8.600); 80885 (June 8, 2017), 82 FR 27302 (June 14, 2017) (order approving listing and trading of shares of the IQ Municipal Insured ETF, IQ Municipal Short Duration ETF, and IQ Municipal Intermediate ETF under NYSE Arca Equities Rule 8.600); 82166 (November 29, 2017), 82 FR 57497 (December 5, 2017) (SR-NYSEArca-2017-90) (order approving listing and trading of shares of the Hartford Municipal Opportunities ETF Under NYSE Arca Rule 8.600–E). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No.63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR-NYSEArca-2010-120).

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2-E(j)(3),

First Trust Advisors L.P. will be the Fund’s investment adviser (“Adviser”). First Trust Portfolios L.P. will be the Fund’s distributor. Brown Brothers Harriman & Co. will serve as custodian (“Custodian”) and transfer agent (“Transfer Agent”) for the Fund.

Commentary .06 to Rule 8.600-E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, Commentary .06 further requires that

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seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>6</sup> The Trust is registered under the 1940 Act. On August 17, 2018, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333-176976 and 811-22245) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795) (“Exemptive Order”).

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

personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer, and 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 Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable 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 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.

First Trust Short Duration Managed Municipal ETF

According to the Registration Statement, the Fund will seek to provide federally tax-

exempt income consistent with capital preservation. Under normal market conditions<sup>8</sup>, the Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in municipal debt securities that pay interest that is exempt from regular federal income taxes (collectively, “Municipal Securities”).<sup>9</sup>

According to the Registration Statement, the Fund may invest in the following Municipal Securities:

- municipal lease obligations (and certificates of participation in such obligations),
- municipal general obligation bonds,
- municipal revenue bonds,
- municipal notes,
- municipal cash equivalents,
- alternative minimum tax bonds,
- private activity bonds (including without limitation industrial development bonds),

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<sup>8</sup> The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5). The Exchange represents that, on a temporary basis, including for defensive purposes, during the initial invest-up period (for purposes of this filing, *i.e.*, the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (for purposes of this filing, *i.e.* 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), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objectives. According to the Exchange, the Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

<sup>9</sup> Municipal Securities are generally issued by or on behalf of states, territories or possessions of the U.S. and the District of Columbia and their political subdivisions, agencies, authorities and other instrumentalities.

- securities issued by custodial receipt trusts,<sup>10</sup> and
- pre-refunded and escrowed to maturity bonds.

The Fund may purchase new issues of Municipal Securities on a when-issued or forward commitment basis.

The Municipal Securities in which the Fund invests may be fixed, variable or floating rate securities.

#### Other Investments

While the Fund, under normal market conditions, will invest at least 80% of its net assets in Municipal Securities as described above, the Fund may, under normal market conditions, invest up to 20% of its net assets in the aggregate in the securities and financial instruments described below.

The Fund may hold cash and cash equivalents.<sup>11</sup> In addition, the Fund may hold the following fixed income securities with maturities of three months or more: fixed rate and floating rate U.S. government securities; certificates of deposit; bankers' acceptances; repurchase agreements; bank time deposits; and commercial paper.

The Fund may hold the following derivative instruments: U.S. Treasury futures contracts; interest rate futures; futures on fixed income securities or fixed income securities indexes; and exchange-traded and over-the-counter ("OTC") credit default swaps, interest rate swaps, swaps on fixed income securities and swaps on fixed income securities indexes.

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<sup>10</sup> According to the Registration Statement, custodial receipts are financial instruments that are underwritten by securities dealers or banks and evidence ownership of future interest payments, principal payments or both on certain municipal securities.

<sup>11</sup> For purposes of this filing, the term "cash equivalents" has the meaning specified in Commentary .01(c) to NYSE Arca Rule 8.600-E.

The Fund may invest in exchange-traded funds (“ETFs”), or acquire short positions in such ETFs.<sup>12</sup>

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

#### Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV<sup>13</sup> only in large blocks of Shares (“Creation Units”) in transactions with authorized participants, generally including broker-dealers and large institutional investors (“Authorized Participants”). Creation Units generally will consist of 50,000 Shares. The size of a Creation Unit is subject to change. As described in the Registration Statement, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the “Creation Basket”).<sup>14</sup> In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the “Cash Component”).

Creations and redemptions must be made by or through an Authorized Participant that

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<sup>12</sup> For purposes of this filing, the term “ETFs” includes 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). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

<sup>13</sup> The NAV of the Fund’s Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (“NYSE”), generally 4:00 p.m., Eastern Time (“E.T.”). NAV per Share will be calculated by dividing the Fund’s net assets by the number of Fund Shares outstanding.

<sup>14</sup> It is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, the Fund may issue and redeem Creation Units on an in-kind (or partially in-kind) (or partially cash) basis.

has executed an agreement that has been agreed to by the Distributor and the Transfer Agent with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Transfer Agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the “Closing Time”) in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Custodian, through the National Securities Clearing Corporation (“NSCC”), will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

#### Availability of Information

The Fund will disclose on the Fund’s website ([www.ftportfolios.com](http://www.ftportfolios.com)) at the start of each business day the identities and quantities of the securities and other assets held by the Fund that will form the basis of the Fund’s calculation of its NAV on that business day. The portfolio holdings so disclosed will be based on information as of the close of business on the prior business day and/or trades that have been completed prior to the opening of business on that business day and that are expected to settle on the business day.

The website for the Fund will contain the following information, on a per-Share basis, for the Fund: (1) the prior business day’s NAV; (2) the market closing price or midpoint of the bid-

ask spread at the time of NAV calculation (the “Bid-Ask Price”); and (3) a calculation of the premium or discount of the Bid-Ask Price against such NAV.

The Fund’s portfolio holdings will be disclosed on the Fund’s website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. On a daily basis, the Fund will disclose the information required under NYSE Arca Rule 8.600-E (c)(2) to the extent applicable. The website information will be publicly available at no charge.

The approximate value of the Fund’s investments on a per-Share basis, the indicative optimized portfolio value (“IOPV”), will be disseminated every 15 seconds during the Exchange Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., E.T.).

Investors can also obtain the Fund’s Statement of Additional Information (“SAI”) and shareholder reports. The Fund’s SAI and shareholder reports will be available free upon request from the Trust, and those documents and Form N-CSR may be viewed on-screen or downloaded from the Commission’s website at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line, and from the Exchange. Quotation information from brokers and dealers or pricing services will be available for Municipal Securities. Price information for money market funds is available from the applicable investment company’s website and from market data vendors. Price information for ETFs and exchange-traded futures

and swaps held by the Fund is available from the applicable exchange. Price information for certain fixed income securities held by the Fund is available through the Financial Industry Regulatory Authority's (FINRA) Trade Reporting and Compliance Engine ("TRACE"). Price information for certain Municipal Securities held by the Fund is available through the Electronic Municipal Market Access ("EMMA") of the Municipal Securities Rulemaking Board ("MSRB"). Price information for cash equivalents; fixed income securities with maturities of three months or more (as described above), and OTC swaps will be available from one or more major market data vendors. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. In addition, the IOPV (which is the Portfolio Indicative Value, as defined in NYSE Arca Rule 8.600-E(c)(3)), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors or other information providers.<sup>15</sup>

#### Investment Restrictions

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.

Under normal market conditions, except for periods of high cash inflows or outflows,<sup>16</sup> the Fund will satisfy the following criteria:

- i. The Fund will have a minimum of 20 non-affiliated issuers<sup>17</sup>;

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<sup>15</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 CTA or other data feeds.

<sup>16</sup> See note 8, supra.

- ii. No single Municipal Securities issuer will account for more than 10% of the weight of the Fund's portfolio<sup>18</sup>;
- iii. No individual bond will account for more than 5% of the weight of the Fund's portfolio;
- iv. The Fund will limit its investments in Municipal Securities of any one state to 20% of the Fund's total assets and will be diversified among issuers in at least 10 states;
- v. The Fund will be diversified among a minimum of five different sectors of the municipal bond market.<sup>19</sup>

Pre-refunded bonds will be excluded from the above limits. The Adviser represents that, with respect to pre-refunded bonds (also known as refunded or escrow-secured bonds, the issuer "prerefunds" 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. The escrow

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<sup>17</sup> For the avoidance of doubt, in the case of Municipal Securities that are issued by entities whose underlying assets are municipal bonds, the underlying municipal bonds will be taken into account. Additionally, for purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, would be treated as separate, non-affiliated issuers of Municipal Securities.

<sup>18</sup> See note 17, *supra*.

<sup>19</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 industries or 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.

would be sufficient to satisfy principal and interest on the call or maturity date and one would not look to the issuer for repayment. Because pre-refunded bonds' pricing would be valued based on the applicable escrow (generally U.S. government securities), such pre-refunded securities would not be readily susceptible to market manipulation and it would be unnecessary to apply the diversification and weighting criteria set forth above.

#### Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the "generic" listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E applicable to the listing of Managed Fund Shares. The Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(b)(1).<sup>20</sup>

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(b)(1) to Rule 8.600-E in that the Fund's investments in municipal securities will be well-diversified.

The Exchange believes that permitting Fund Shares to be listed and traded on the Exchange notwithstanding that less than 75% of the weight of the Fund's portfolio may consist of components with \$100 million minimum original principal amount outstanding would provide the Fund with greater ability to select from a broad range of Municipal Securities, as described above, that would support the Fund's investment goal.

The Exchange believes that, notwithstanding that the Fund's portfolio may not satisfy Commentary .01(b)(1) to Rule 8.600-E, the Fund's portfolio will not be susceptible to

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<sup>20</sup> Commentary .01(b)(1) to NYSE Arca Rule 8.600-E provides that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

manipulation. As noted above, the Fund's investments, excluding pre-refunded bonds, as described above, will be diversified among a minimum of 20 non-affiliated municipal issuers; no single Municipal Securities issuer will account for more than 10% of the weight of the Fund's portfolio; no individual bond will account for more than 5% of the weight of the Fund's portfolio; the Fund will limit its investments in Municipal Securities of any one state to 20% of the Fund's total assets and will be diversified among municipal issuers in at least 10 states; and the Fund will be diversified among a minimum of five different sectors of the municipal bond market.

The Exchange notes that the Commission has previously approved an exception from requirements set forth in Commentary .01(b) relating to municipal securities similar to those proposed with respect to the Fund.<sup>21</sup>

The Exchange notes that, other than Commentary .01(b)(1) to Rule 8.600-E, the Fund's portfolio will meet all other requirements of Rule 8.600-E.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>22</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached.

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<sup>21</sup> See Securities Exchange Act Release Nos. 82974 (March 30, 2018), 83 FR 14698 (April 5, 2018) (SR-NYSEArca-2017-99) (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 Schroders Tax-Aware Bond ETF Under NYSE Arca Rule 8.600-E); 82166 (November 29, 2017), 82 FR 57497 (December 5, 2017) (SR-NYSEArca-2017-90) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Hartford Municipal Opportunities ETF Under NYSE Arca Rule 8.600-E). See also, Securities Exchange Act Release 83982 (August 29, 2018) (SR-NYSEArca-2018-62) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the American Century Diversified Municipal Bond ETF under NYSE Arca Rule 8.600-E).

<sup>22</sup> See NYSE Arca Rule 7.12-E.

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.

### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on NYSE Arca from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on NYSE Arca is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E. Consistent with NYSE Arca Rule 8.600-E(d)(2)(B)(ii), the Adviser 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. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>23</sup> under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. The Fund's investments will be consistent with the Fund's investment goal and will not be used to enhance leverage.

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<sup>23</sup> 17 CFR 240.10A-3.

## Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>24</sup>

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs and certain futures with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs and certain futures from such markets and other entities.<sup>25</sup> In addition, the Exchange may obtain information regarding trading in the Shares, ETFs and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange,

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<sup>24</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>25</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

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

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) the risks involved in trading the Shares during the Early

and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (4) how information regarding the IOPV and the Disclosed Portfolio is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>26</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate

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

as needed regarding trading in the Shares, ETFs and certain futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, 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 TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer. The Adviser 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.

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(b)(1) to Rule 8.600-E in that the Fund’s investments in municipal securities will be well-diversified. As noted above, the Fund’s investments will be well-diversified in that the Fund, excluding pre-refunded bonds, as described above, will have a minimum of 20 non-affiliated municipal issuers; no single municipal issuer will account for more than 10% of the weight of the Fund’s portfolio; no individual bond will account for more than 5% of the weight of the Fund’s portfolio; the Fund will limit its investments in Municipal Securities of any one state to 20% of the Fund’s total assets and will be diversified among municipal issuers in at least 10 states; and the Fund will be diversified among a minimum of five

different industries or sectors of the municipal bond market. With respect to the proposed exclusion for pre-refunded bonds described above, 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. The escrow would be sufficient to satisfy principal and interest on the call or maturity date and one would not look to the issuer for repayment. Because pre-refunded bonds' pricing would be valued based on the applicable escrow (generally U.S. government securities), such pre-refunded securities would not be readily susceptible to market manipulation and it would be unnecessary to apply the diversification and weighting criteria set forth above in "Investment Restrictions."

The Exchange believes that permitting Fund Shares to be listed and traded on the Exchange notwithstanding that less than 75% of the weight of the Fund's portfolio may consist of components with \$100 million minimum original principal amount outstanding would provide the Fund with greater ability to select from a broad range of municipal securities, as described above, that would support the Fund's investment objective.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line, and from the Exchange. Quotation information from brokers and dealers or pricing services will be

available for Municipal Securities. Price information for money market funds is available from the applicable investment company's website and from market data vendors. Price information for ETFs and exchange-traded futures and swaps held by the Fund is available from the applicable exchange. Price information for certain fixed income securities held by the Fund is available FINRA's TRACE. Price information for certain Municipal Securities held by the Fund is available through the EMMA of the MSRB. Price information for cash equivalents, fixed income securities with maturities of three months or more (as described above), and OTC swaps will be available from one or more major market data vendors. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements.

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. Trading in Shares of the 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. Trading in the Shares will be subject to NYSE Arca Rule 8.600-E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, IOPV, Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>27</sup> and Rule 19b-4(f)(6) thereunder.<sup>28</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>29</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>30</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>31</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the waiver of the 30-day delayed operative date is consistent with the protection of investors and the public interest because the Commission has previously approved an exception from requirements set forth in Commentary .01(b) relating to municipal

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

<sup>29</sup> 17 CFR 240.19b-4(f)(6) (iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 17 CFR 240.19b-4(f)(6)(iii).

securities similar to those proposed with respect to the Fund.<sup>32</sup> Additionally, the Exchange asserts that waiver will permit the prompt listing and trading of an additional issue of Managed Fund Shares that principally holds municipal securities, which will enhance competition among issuers, investment advisers and other market participants with respect to listing and trading of issues of Managed Fund Shares that hold municipal securities. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed continuing listing standards for the Shares are substantially similar to those applicable to others approved by the Commission for similar funds. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>33</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>34</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>32</sup> See note 21, *supra*.

<sup>33</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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-2018-73 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-2018-73. 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-2018-73, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

Eduardo A. Aleman  
Assistant Secretary

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