

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87556; File No. SR-NYSEArca-2019-82)

November 18, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Permitting the Listing and Trading of Shares of the Nationwide Risk-Managed Income ETF under NYSE Arca Rule 8.600-E

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 5, 2019, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“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 permit the listing and trading of shares under NYSE Arca Rule 8.600-E of the Nationwide Risk-Managed Income ETF, a series of ETF Series Solutions, notwithstanding that the fund does not meet the requirements of Commentary .01(d)(2) to Rule 8.600-E. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places 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 permit the listing and trading under NYSE Arca Rule 8.600-E (“Managed Fund Shares”)⁴ of shares (“Shares”) of the Nationwide Risk-Managed Income ETF (the “Fund”), a series of ETF Series Solutions (the “Trust”), notwithstanding that the Fund does not meet not meet the requirements of Commentary .01(d)(2) to Rule 8.600-E.

The Shares are offered by the Trust, which is registered with the Commission as an open-end management investment company consisting of multiple investment series.⁵ The Fund is a series of the Trust. Nationwide Fund Advisors (the “Adviser”) is the investment adviser to the

⁴ 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), 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.

⁵ The Trust is registered under the 1940 Act. On September 9, 2019, the Trust filed with the Securities and Exchange Commission (“SEC” or Commission”) a post-effective amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-179562 and 811-22668) with respect to Shares of the Fund (“Registration Statement”). The description of the operation of the Trust and of the Fund and Shares herein is based, in part, on the Registration Statement. There are no permissible holdings for the Fund that are not described in this proposal. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 33065 (April 3, 2018).

Fund. Harvest Volatility Management, LLC (“Sub-Adviser”) is the sub-adviser for the Fund and is responsible for the day-to-day management of the Fund. U.S. Bank National Association is the custodian of the Trust (the “Custodian”). U.S. Bancorp Fund Services, LLC will serve as administrator and transfer agent for the Fund. Quasar Distributors, LLC, will serve as the Fund’s distributor.

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.⁶ In addition, Commentary .06 further requires that personnel who make decisions on the investment company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Neither the Adviser nor the Sub-Adviser is a registered broker-dealer. The Sub-Adviser is not affiliated with a broker-dealer,

⁶ 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, Sub-Adviser and their 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.

but the Adviser is affiliated with a broker-dealer. In addition, Adviser and Sub-Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. The Adviser has implemented and will maintain a fire wall with respect to its relevant personnel and such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and is subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Principal Investments of the Fund

According to the Registration Statement, the investment objective of the Fund is current income with downside protection. The Fund is an actively-managed exchange-traded fund ("ETF")⁷ that will seek, under normal market conditions,⁸ to achieve its objective principally by investing in (1) a portfolio of the stocks included in the Nasdaq-100 Index (the "Nasdaq-100" or

⁷ For purposes of this filing, the term "ETFs" means 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. The Fund will not invest in inverse or leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

⁸ The term "normal market conditions" is defined in NYSE Arca Rule 8.600-E(c)(5).

the “Reference Index”), and (2) a mix of written call options and long put options on the Nasdaq-100 (the “Options Collar”) intended to reduce the Fund’s volatility and provide a measure of downside protection (the “Options Collar Strategy”, described more fully below).

The Nasdaq-100 is a market capitalization weighted index comprised of the securities of 100 of the largest non-financial companies listed on The Nasdaq Stock Market LLC based on market capitalization. Such securities may include companies domiciled domestically or internationally (including in emerging markets), and may include common stocks, ordinary shares, depositary receipts representing interests in non-U.S. companies, and tracking stocks, which instruments, along with the Options Collar, will constitute the principal investments of the Fund.

The Fund may hold cash and cash equivalents.⁹

The Options Collar Strategy

According to the Registration Statement, the Fund’s Options Collar strategy consists of two components: (1) selling call options on the Nasdaq-100 on up to 100% of the value of the equity securities held by the Fund to generate premium from such options, while (2) simultaneously reinvesting a portion of such premium to buy put options on the same reference asset to “hedge” or mitigate the downside risk associated with owning equity securities.

The Fund will use a portion of the premium received from writing call options to purchase put options. Both the Fund’s call and put options will be traded on a national securities exchange and settled in cash.

Non-Principal Investments

⁹ For purposes of this filing, cash equivalents mean the securities described in Commentary .01(c) to NYSE Arca Rule 8.600-E.

In addition to the principal investments described above, the Fund may invest in U.S. exchange-listed options on reference assets other than the Nasdaq-100 that will comply with Commentary .01(d)(2) to Rule 8.600-E, including but not limited to the NASDAQ-100 Equal Weight Index, Invesco QQQ Trust, Series 1, S&P 500 Index, and the individual equity securities comprising the Nasdaq-100 or S&P 500 Index.

The Fund may also invest in U.S. exchange-listed common stocks, ordinary shares, and American Depositary Receipts representing interests in non-U.S. companies, and tracking stocks that are not included in the Nasdaq-100. The Fund may also invest in the securities of other investment companies registered under the 1940 Act, including money market funds, exchange traded funds (“ETFs”), and Real Estate Investment Trusts (“REITS”). The Fund may also invest in exchange-traded rights and warrants.

The Fund may also invest in U.S. Government securities, including bills, notes and bonds, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities, with maturities 3 months or longer.

Application of Generic Listing Requirements

The Exchange submits this proposal in order to list and trade Shares of the Fund and to allow the Fund to hold listed derivatives, in particular put and call options on the Nasdaq-100 Index, in a manner that may not comply with Commentary .01(d)(2) to Rule 8.600-E.¹⁰

¹⁰ Commentary .01(d)(2) to Rule 8.600-E provides that “the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).” The Fund would not meet the generic listing standards because it would fail to meet the requirement of Commentary .01(d)(2) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures)

Otherwise, the Fund will comply with all other listing requirements of the Generic Listing Standards¹¹ for Managed Fund Shares on an initial and continued listing basis under Commentary .01 to Rule 8.600-E.¹²

The market for options contracts on the Nasdaq-100 Index (“Nasdaq-100 Index Options”) is deep and liquid. In 2018, more than 15,000 options contracts on the Nasdaq-100 Index were traded per day, which is more than \$10 billion in notional volume traded on a daily basis. The Exchange believes that the liquidity in Nasdaq-100 Index Options markets mitigates the concerns that Commentary .01(d)(2) to Rule 8.600-E is intended to address and that such liquidity would discourage manipulation of the Shares.

In addition, the Exchange believes that sufficient protections are in place to protect against market manipulation of the Shares and Nasdaq-100 Index Options for several reasons:

and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

¹¹ For purposes of this proposal, the term “Generic Listing Standards” means the generic listing rules for Managed Fund Shares under Commentary .01 to Rule 8.600-E.

¹² The Exchange notes that this proposed rule change is similar to previous rule changes involving Managed Fund Shares with similar exposures to one or more underlying reference asset and U.S. exchange-listed equity securities. See Securities Exchange Act Release No. 87108 (September 25, 2019), 84 FR 52152 (October 1, 2019) (SR-CboeBZX-2019-067). See generally Securities Exchange Act Release No. 82906 (March 20, 2018), 83 FR 12992 (March 26, 2018) (SR-CboeBZX-2017-012) (order approving the listing and trading of the LHA Market State Tactical U.S. Equity ETF); Securities Exchange Act Release No. 83679 (July 20, 2018), 83 FR 35505 (July 26, 2018) (SR-BatsBZX-2017-72) (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, to List and Trade Shares of the Innovator S&P 500 Buffer ETF Series, Innovator S&P 500 Power Buffer ETF Series, and Innovator S&P 500 Ultra Buffer ETF Series Under Rule 14.11(i)); Securities Exchange Act Release No. 86773 (August 27, 2019), 84 FR 46051 (September 3, 2019) (SR-CboeBZX-2019-077); Securities Exchange Act Release No. 83146 (May 1, 2018), 83 FR 20103 (May 2, 2017) (SR-CboeBZX-2018-29); Securities Exchange Act Release No. 80529 (April 26, 2017), 82 FR 20506 (May 2, 2017) (SR-BatsBZX-2017-14).

(i) the diversity, liquidity, and market cap of the securities underlying the Nasdaq-100 Index; and

(ii) surveillance by the Exchange, other options exchanges,¹³ and the Financial Industry Regulatory Authority (“FINRA”) designed to detect violations of the federal securities laws and self-regulatory organization (“SRO”) rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses. Further, the Exchange believes that because the Nasdaq-100 Index Options in the Fund’s portfolio will be acquired in liquid and highly regulated markets,¹⁴ the Exchange believes that manipulation of Nasdaq-100 Index Options would be discouraged and that any potential manipulation would be more easily identified.

As noted above, options on the Nasdaq-100 Index are among the most liquid options in the world and derive their value from the actively traded Nasdaq-100 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the Nasdaq-100 Index make securities that derive their value from that index would discourage market manipulation in view of market capitalization and liquidity of the Nasdaq-100 Index components, price and quote transparency, and arbitrage opportunities, and that any potential manipulation would be more easily identified.

¹³ The Exchange and all nine [sic] U.S. options exchanges are members of the Options Regulatory Surveillance Authority, which was established in 2006 to provide efficiencies in looking for insider trading and serves as a central organization to facilitate collaboration in investigations for the U.S. options exchanges.

¹⁴ All exchange-listed securities that the Fund may hold will trade on a market that is a member of the Intermarket Surveillance Group (“ISG”) and the Fund will not hold any non-exchange-listed equities or options; however, not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. For a list of the current members of ISG, see www.isgportal.org.

The Exchange believes that the liquidity of the markets for securities in the Nasdaq-100 Index, Nasdaq-100 Index Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Fund's Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Shares would present manipulation concerns.

Availability of Information

The Fund's website (www.etf.nationwide.com) will include the prospectus for the Fund that may be downloaded. The Fund's website will include ticker, CUSIP and exchange information, along with additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's net asset value ("NAV") per share and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV per share (the "Bid/Ask Price"),¹⁵ and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV per share; and (2) a table showing the number of days of such premium or discount for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of Fund, if shorter). On each business day, before commencement of trading in Shares in the Core Trading Session¹⁶ on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Rule

¹⁵ The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

¹⁶ The Core Trading Session begins for each security at 9:30 a.m. Eastern time and ends at the conclusion of Core Trading Hours or the Core Closing Auction, whichever comes later. See NYSE Arca Rule 7.34-E. "Core Trading Hours" is defined as the hours of 9:30 am Eastern time through 4:00 pm (Eastern Time) or such other hours as may be determined by the Exchange from time to time. See Rule 1.1(j).

8.600-E(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business 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.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and the Fund's Forms N-CSR and Forms N-CEN. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR, Form N-PX, Form N-PORT and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

The intra-day, closing and settlement prices of exchange-traded options will be readily available from the Options Price Reporting Authority ("OPRA"), the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters.

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, the stocks included in the Nasdaq-100, and for portfolio holdings that are U.S. exchange-listed, including common stocks, rights, warrants, ETFs, REITS and ADRs will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value ("PIV"), 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 Core Trading Session. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance.

Price information regarding U.S. government securities and other cash equivalents may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

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.¹⁷ Trading in Shares of the Fund 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. Trading in the Fund's Shares also will be subject to Rule 8.600-E(d)(2)(D) ("Trading Halts").

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca 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 the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

¹⁷ See NYSE Arca Rule 7.12-E.

With the exception of the requirements of Commentary .01(d)(2) (with respect to listed derivatives) as described above, the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E. Consistent with Commentary .06 of NYSE Arca Rule 8.600-E, the Adviser or Sub-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 continued listing, the Fund will be in compliance with Rule 10A-3¹⁸ under the Act, as provided by NYSE Arca Rule 5.3-E. 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.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The 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.¹⁹

¹⁸ 17 CFR 240.10A-3.

¹⁹ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The 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, options and ETFs 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 such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments 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, 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 or reference assets, (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 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 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 PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV 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 are 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., Eastern time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²⁰ 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,

²⁰ 15 U.S.C. 78f(b)(5).

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, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 in that the Shares will meet each of the initial and continued listing criteria in Commentary .01 to NYSE Arca Rule 8.600-E,, with the exception of Commentary .01(d)(2) to NYSE Arca Rule 8.600-E, which requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).²¹ Commentary .01(d)(2) to NYSE Arca Rule 8.600-E, is intended to ensure that a fund is not subject to manipulation by virtue of significant exposure to a manipulable underlying reference asset by establishing concentration limits among the underlying reference assets for listed derivatives held by a particular fund. The Exchange notes that this proposed rule change is similar to previous rule changes involving Managed Fund

²¹ As noted above, the Exchange is submitting this proposal because the Fund does not meet the requirements of Rule 14.11(i)(4)(C)(iv)(b) [sic] which prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures).

Shares with similar exposure to one or more underlying reference asset and U.S. exchange-listed equity securities.²²

The market for Nasdaq-100 Index Options is deep and liquid. In 2018, more than 15,000 options contracts on the Nasdaq-100 Price Index were traded per day, which is more than \$10 billion in notional volume traded on a daily basis. The Exchange believes that the liquidity in the Nasdaq-100 Index Options markets mitigates the concerns that Commentary .01(d)(2) to Rule 8.600-E is intended to address and that such liquidity would discourage manipulation of the Shares.

In addition, the Exchange believes that sufficient protections are in place to protect against market manipulation of the Shares and Nasdaq-100 Index Options for several reasons: (i) the diversity, liquidity, and market cap of the securities underlying the Nasdaq-100 Index; and (ii) surveillance by the Exchange, other options exchanges, and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses. Further, the Exchange believes that because the Nasdaq-100 Index Options in the Fund's portfolio will be acquired in highly regulated markets, manipulation of Nasdaq-100 Index Options would be discouraged and that any potential manipulation would be more easily identified.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, options and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both,

²² See note 12, supra.

may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.

The Exchange may obtain information regarding trading in such securities and financial instruments 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, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, Nasdaq-100 Index Options are liquid and derive their value from the actively traded Nasdaq-100 Index components. The Exchange believes the highly regulated options markets and the broad base and scope of the Nasdaq-100 Index make securities that derive their value from the Nasdaq-100 Index would discourage market manipulation in view of market capitalization and liquidity of the Nasdaq-100 Index components, price and quote transparency, and arbitrage opportunities, and that any potential manipulation would be more easily identified.

The Exchange believes that the liquidity of the markets for securities in the Nasdaq-100 Index Options and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Fund's Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Fund's Shares would present manipulation concerns.

All of the options contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange represents that, except as described above, the Fund will meet and be subject to all other requirements of the Generic Listing Standards and other applicable continued listing requirements for Managed Fund Shares under Rule 8.600-E, including those requirements regarding the Disclosed Portfolio, Portfolio Indicative Value, suspension of trading or removal, trading halts, disclosure, and firewalls. The Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares of the Fund.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 permit the listing and trading of an additional type of Managed Fund Shares that holds U.S. exchange-traded options 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 Act²³ and Rule 19b-4(f)(6) thereunder.²⁴ 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

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 17 CFR 240.19b-4(f)(6).

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.

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ 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 Fund is seeking an exception from the generic listing requirements of Commentary .01(d)(2) to Rule 8.600-E similar to exceptions sought by other exchange-traded funds with exposure to a single underlying reference asset, and which have been approved by the Commission.²⁷ The Exchange also notes that the underlying Nasdaq-100 Index Options will be acquired in liquid and highly regulated markets, which may protect against market manipulation of such options. Therefore, the Commission believes that the proposal does not raise new or novel issues, and that waiver of the 30-day operative delay would permit the Fund to list and trade without undue delay. For these reasons, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.²⁸

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

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ See supra note 12.

²⁸ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2019-82 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-2019-82. 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-2019-82 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.²⁹

Jill M. Peterson
Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12).