

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88031; File No. SR-NYSEArca-2020-07)

January 24, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the SPDR SSGA Responsible Reserves ESG ETF under NYSE Arca Rule 8.600-E

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 14, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 SPDR SSGA Responsible Reserves ESG ETF (the “Fund”), under NYSE Arca Rule 8.600-E (“Managed Fund Shares”). The proposed 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 received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 SPDR SSGA Responsible Reserves ESG ETF under NYSE Arca Rule 8.600-E (the “Fund”), a series of the SSGA Active Trust (“Trust”)⁴, under NYSE Arca Rule 8.600-E, which governs the listing and trading of Managed Fund Shares⁵ on the Exchange.

SSGA Funds Management, Inc. (“Adviser”) will be the investment adviser to the Fund. The Adviser is a wholly-owned subsidiary of State Street Global Advisors, Inc. (“SSGA”), which itself is a wholly-owned subsidiary of State Street Corporation. State Street Global Advisors Funds Distributors, LLC (“Distributor”) will be the distributor of the Fund’s Shares.

⁴ The Trust is registered under the 1940 Act. On December 20, 2019, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and the 1940 Act relating to the Fund (File Nos. 333-173276 and 811-22542) (the “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 under the 1940 Act to the Trust. See Investment Company Act Release No. 29524, December 13, 2010) (File No. 812-13487) (“Exemptive Order”). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

⁵ 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.

State Street Bank and Trust Company will be the custodian (“Custodian”) and 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.⁶ In addition, Commentary .06 further requires that 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 and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a

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 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.

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 its broker-dealer affiliate 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.

SPDR SSGA Responsible Reserves ESG ETF

According to the Registration Statement, the investment objective of the Fund will be to seek to maximize current income while giving consideration to environmental, social and governance (“ESG”) criteria, consistent with the preservation of capital and liquidity by investing in a portfolio of high-quality, short-term debt obligations.

The Fund will follow a disciplined investment process in which the Adviser bases its decisions on the relative attractiveness of different short-term debt instruments (“Short-Term Fixed Income Securities”) while considering ESG criteria at the time of purchase.

Under normal market conditions⁷, with respect to the Fund’s investments in Short-Term Fixed Income Securities, the Fund will target to invest only in short-term debt obligations to maintain a maximum dollar-weighted average maturity of sixty days or less and dollar-weighted average life of 120 days or less. The Fund will invest in Short-Term Fixed Income Securities that have remaining maturities of 397 calendar days or less.

The Adviser intends to consider ESG criteria at the time of purchase by using ESG-related metrics for each Fund investment. The potential investment universe will first be screened to remove issuers involved in, and/or which derive significant revenue (as determined by data sourced from “Third Party Providers” (defined below)) from, certain practices, industries

⁷ The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

or product lines, including: extreme event controversies, controversial weapons, civilian firearms, thermal coal extraction, tobacco, and UN global compact violations. Issuers in the financial services sector are excluded from this initial screening process; however, the Adviser will consider other scoring criteria to assign an ESG rating to issuers in the financial services sector.

Principal Investments

According to the Registration Statement, the Fund will attempt to meet its investment objective by investing in a broad range of Short-Term Fixed Income Securities, as described below.

The Fund may invest in the following Short-Term Fixed Income Securities:

- short-term obligations of the U.S. Government, its agencies, instrumentalities, authorities or political subdivisions (other than cash equivalents)⁸;
- mortgage pass-through securities;⁹
- corporate bonds, floating rate bonds or variable rate bonds (including “inverse floaters”);
- bank obligations, including negotiable certificates of deposit, time deposits and bankers’ acceptances¹⁰ (other than cash equivalents);
- zero coupon securities;

⁸ The term “cash equivalents” is defined in Commentary .01(c) to NYSE Arca Rule 8.600-E.

⁹ The Fund will seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of “to-be-announced” or “TBA transactions.”

¹⁰ Under normal market conditions, the Fund intends to invest more than 25% of its total assets in bank obligations.

- Eurodollar Certificates of Deposit (“ECDs”), Eurodollar Time Deposits (“ETDs”) and Yankee Certificates of Deposit (“YCDs”);¹¹
- inflation-protected public obligations (“TIPS”) of the U.S. Treasury, as well as TIPS of major governments and emerging market countries, excluding the United States;
- repurchase and reverse repurchase agreements (other than repurchase and reverse repurchase agreements that are cash equivalents);
- sovereign debt obligations issued or guaranteed by foreign governments or their agencies;
- commercial paper (other than cash equivalents);
- private placements, restricted securities and Rule 144A securities.

The Fund may hold cash and cash equivalents.

Other Investments

While the Fund, under normal market conditions, will invest principally in the securities described above in “Principal Investments,” the Fund may invest its remaining assets in the securities described below.

The Fund may invest in exchange traded funds (“ETFs”).¹²

¹¹ ECDs and ETDs are U.S. dollar denominated certificates of deposit and time deposits, respectively, issued by non-U.S. branches of domestic banks and non-U.S. banks. YCDs are U.S. dollar denominated certificates of deposit issued by U.S. branches of non-U.S. banks.

¹² For purposes of this filing, “ETFs” are 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.

The Fund may invest in the securities of non-exchange-traded investment company securities, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

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 Creation Units

The Fund will issue and redeem its Shares on a continuous basis, at net asset value (“NAV”), only in a large specified number of Shares (a “Creation Unit”). Creation Unit sizes are 50,000 Shares per Creation Unit. The Creation Unit size for the Fund may change.

The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor at their NAV per Share next determined after receipt of an order, on any Business Day (as defined below), in proper form pursuant to the terms of the Authorized Participant Agreement (“Participant Agreement”). A “Business Day” with respect to the Fund is, generally, any day on which the NYSE is open for business.

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and the “Cash Component” (defined below), computed as described below or (ii) the cash value of the Deposit Securities (“Deposit Cash”) and Cash Component, computed as described below.

Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The “Cash Component”, is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities or Deposit Cash, as applicable.

The Custodian, through the National Securities Clearing Corporation (“NSCC”), will make available on each Business Day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for the Fund.

To be eligible to place orders to purchase a Creation Unit of the Fund, an entity must be (i) a “Participating Party”, i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the “Clearing Process”), a clearing agency that is registered with the SEC; or (ii) a Depository Trust Company participant.

Redemption of Shares

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund and only on a Business Day. With respect to the Fund, the Custodian, through the NSCC, will make available prior to the opening of business on the Exchange on each Business Day, the list of the names and share quantities of the Fund’s portfolio securities that will be applicable on that day (“Fund Securities”). Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities, as announced by the Custodian prior to the opening of business on the Business Day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the

value of the Fund Securities (the “Cash Redemption Amount”), less a fixed redemption transaction fee and any applicable additional variable charge. Notwithstanding the foregoing, at the Trust’s discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of the in-kind securities value representing one or more Fund Securities.¹³

Investment Restrictions

The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund’s primary broad-based securities benchmark index (as defined in Form N-1A).¹⁴

Disclosed Portfolio

The Fund’s disclosure of derivative positions in the applicable Disclosed Portfolio includes information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600-E (c)(2) to the extent applicable. The Fund’s website information will be publicly available at no charge.

¹³ The Adviser 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.

¹⁴ The Fund’s broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund’s first full calendar year of performance.

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 would meet all such requirements except for those set forth in Commentary .01(a)(1)(A) through (E) (with respect to the Fund’s investments in non-exchange-traded investment company securities) and Commentary .01(b)(3) to NYSE Arca Rule 8.600-E with respect to the Fund’s investments in Short-Term Fixed Income Securities.¹⁵

The Fund’s Short-Term Fixed Income Securities may not comply with the requirements set forth in Commentary .01(b)(3) to NYSE Arca Rule 8.600-E. While the requirements set forth in Commentary .01(b)(3) is intended to ensure that the Short-Term Fixed Income Securities included in the Fund’s portfolio are sufficiently diversified among non-affiliated issuers, the Exchange believes that any concerns related to non-compliance are mitigated by the types of instruments that the Fund would hold. The Fund’s Short-Term Fixed Income Securities to a significant extent will include those instruments that are included in the definition of cash and cash equivalents, but are not considered cash and cash equivalents because they have maturities of three months or longer. The Exchange believes, however, that Short-Term Fixed Income Securities are less susceptible than other types of fixed income instruments both to price manipulation and volatility and that the holdings as

¹⁵ Commentary .01(b)(3) to NYSE Arca Rule 8.600-E provides as follows:

“An underlying portfolio (excluding exempted securities) that includes fixed income securities shall include a minimum of 13 non-affiliated issuers, provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in Commentary .01(a) above”.

proposed are generally consistent with the policy concerns which Commentary .01(b)(3) is intended to address. Because the Short-Term Fixed Income Securities will consist generally of high-quality Short-Term Fixed Income Securities described above, the Exchange believes that the policy concerns that Commentary .01(b)(3) is intended to address are otherwise mitigated and that the Fund should be permitted to hold these securities in a manner that may not comply with such provision.

The Adviser represents that the Fund is not a money market fund but its investment strategy follows certain guidelines applicable to such funds. Specifically, the Fund will only invest in Short-Term Fixed Income Securities to maintain a maximum dollar-weighted average maturity of sixty days or less and dollar-weighted average life of 120 days or less. The Fund will invest in securities that have remaining maturities of 397 calendar days or less. While the Fund will have portfolio holdings that meet the definition of cash and cash equivalents under NYSE Arca Rule 8.600-E, Commentary .01(c), the remaining assets may at times be invested in longer dated securities, including U.S. and foreign government securities, and corporate bonds. The exemption from the 13 non-affiliated issuer requirement for the fixed income portion of the Fund's portfolio will allow the Fund to invest in a limited number of Short-Term Fixed Income Securities without having to allocate a small percentage of assets under management to the required minimum 13 issuers.

The Fund may invest in shares of investment company securities (other than ETFs), which are equity securities. Therefore, to the extent the Fund invests in shares of other non-exchange-traded open-end management investment company securities, the Fund will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600-E (U.S. Component Stocks) with respect to its equity securities holdings.

However, it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund’s holdings in such securities would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600-E. Investments in other non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. The Fund will invest in such securities only to the extent that those investments would be consistent with the requirements of Section 12(d)(1) of the 1940 Act and the rules thereunder.¹⁶ Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial assets the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600-E exclude certain “Derivative Securities Products” that are exchange-traded investment company securities, including 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

¹⁶ The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder. See, e.g., Securities Exchange Act Release No. 86362 (July 12, 2019), 84 FR 34457 (July 18, 2019) (SR-NYSEArca-2019-36 (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 JPMorgan Income Builder Blend ETF under NYSE Arca Rule 8.600-E).

described in NYSE Arca Rule 8.600-E)).¹⁷ In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) to exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600-E), the Commission stated that “based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.” The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio criteria) in Commentary .01(a)(1) (A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months are tailored to exchange-

¹⁷ The Commission initially approved the Exchange’s proposed rule change to exclude “Derivative Securities Products” (i.e., Investment Company Units and securities described in Section 2 of Rule 8) and “Index-Linked Securities (as described in Rule 5.2-E(j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2-E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units)(“2008 Approval Order”). See also Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Rule 8.600-E To Adopt Generic Listing Standards for Managed Fund Shares). See also Amendment No. 7 to SR-NYSEArca-2015-110, available at <https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf>.

traded securities (i.e., U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act, and application of Commentary .01(a)(1)(A) through (D) would not serve the purposes served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600-E with respect to such fund's investments in such securities.¹⁸ Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

The Exchange notes that, other than Commentary .01(a)(1)(A) through (E) Commentary .01(b)(3) to Rule 8.600-E, the Fund will meet all other requirements of Rule 8.600-E.

¹⁸ See Securities Exchange Act Release No. 83319 (May 24, 2018) (SR-NYSEArca-2018-15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600-E).

Availability of Information

The Fund's website (www.spdrs.com) will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior Business Day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁹ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on the Fund's website the Disclosed Portfolio for the Fund as defined in NYSE Arca Rule 8.600-E(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.²⁰

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

¹⁹ 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.

²⁰ Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

Quotation and last sale information for the Shares and ETFs will be available via the CTA high speed line. Quotation and last sale information for such U.S. exchange-listed securities will be available from the exchange on which they are listed and from major market data vendors. Information regarding market price and trading volume for 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 information for Short-Term Fixed Income Securities and cash equivalents may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services.

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.²¹ The dissemination of the PIV, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

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.²² Trading in Shares of the

²¹ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

²² See NYSE Arca Rule 7.12-E.

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 of the Fund 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.

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 4:00 a.m. to 8:00 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.

Except as described herein, the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3²³ under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

²³ 17 CFR 240 10A-3.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁴ 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 applicable federal securities laws.

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 and ETFs 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 Shares and ETFs from such markets and other entities. In addition, the Exchange may obtain information regarding trading in Shares and ETFs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁵

²⁴ 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.

²⁵ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that

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 ("TRACE").

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 holdings 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 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 ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to

are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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 ETP 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 of the Fund 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)²⁶ 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 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 and/or changes to the portfolio. The Exchange

²⁶ 15 U.S.C. 78f(b)(5).

represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. 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 applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares 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 such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities from markets and other entities that are members of ISG or 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 TRACE.

The 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.

Except as described herein, the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund 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. The Fund's portfolio holdings will be disclosed on its 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 regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600-E (c)(2) to the extent applicable. The Fund's website information will be publicly available at no charge.

Investors can also obtain the Fund's Statement of Additional Information ("SAI"), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. The Fund's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. Quotation and last sale information for the Shares and ETFs will be available via the CTA high speed line.

With respect to the Fund's non-compliance with Commentary .01(b)(3) (with respect to Short-Term Fixed Income Securities),²⁷ the requirement set forth in Commentary .01(b)(3) is intended to ensure that the Short-Term Fixed Income Securities included in the Fund's portfolio are sufficiently diversified among non-affiliated issuers, and the Exchange believes that any concerns related to non-compliance are mitigated by the types of instruments that the Fund would hold. The Fund's Short-Term Fixed Income Securities to a significant extent will include those instruments that are included in the definition of cash and cash equivalents, but are not considered cash and cash equivalents because they have maturities of

²⁷ See note 15, *supra*.

three months or longer. The Exchange believes, however, that Short-Term Fixed Income Securities are less susceptible than other types of fixed income instruments both to price manipulation and volatility and that the holdings as proposed are generally consistent with the policy concerns which Commentary .01(b)(3) is intended to address. Because the Short-Term Fixed Income Securities will consist generally of high-quality Short-Term Fixed Income Securities described above, the Exchange believes that the policy concerns that Commentary .01(b)(3) is intended to address are otherwise mitigated and that the Fund should be permitted to hold these securities in a manner that may not comply with such provision.

As noted above, the Fund's portfolio will not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600-E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities. 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(a)(1)(A) through (E) to Rule 8.600-E with respect to the Fund's investments in non-exchange-traded securities of open-end investment company securities. Investments in non-exchange-traded securities of open-end investment company securities will not be principal investments of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.

The website for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin

of the special characteristics and risks associated with trading the Shares of the Fund. 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, and 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 PIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).²⁸

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 actively-managed exchange-traded product and 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 have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio for the Fund, and quotation and last sale information for the Shares.

²⁸ See note 14, supra.

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 holds fixed income securities, equity securities and derivatives 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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2020-07 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-2020-07. 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, D.C. 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-2020-07 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

J. Matthew DeLesDernier
Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12).