

a national securities exchange.<sup>62</sup> In particular, the Commission finds that the proposals are consistent with Section 6(b)(1) of the Act,<sup>63</sup> which require a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with the provisions of the Act.

The Commission notes that the Exchanges have represented that the proposed rule changes relate solely to the certificate of the incorporation and bylaws of the Corporation and that each Exchange will continue to be governed by its respective existing certificate of incorporation and bylaws.<sup>64</sup> BATS and BYX have represented that BATS Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation will continue to directly and solely hold the stock in, and voting power of, BATS and BYX, and BATS and BYX will continue to operate pursuant to its existing governance structure.<sup>65</sup> EDGA and EDGX have similarly represented that Direct Edge LLC, an intermediate holding company wholly-owned by the Corporation will continue to directly and solely hold the stock in, and voting power of, EDGX and EDGA and, EDGX and EDGA will continue to operate pursuant to its existing governance structure.<sup>66</sup>

The Commission further notes that each Exchange has represented that the proposed rule change will maintain the existing ownership and voting limitations in the Current Certificate of Incorporation.<sup>67</sup> As a result, the Commission believes that the proposed rule changes should effectively maintain the ownership and voting limits currently in place for the Corporation consistent with Section 6(b)(1) of the Exchange Act. In addition, the Commission notes that each Exchange has represented that it would continue to operate pursuant to its existing governance structure.<sup>68</sup> The

Commission also notes that the Exchanges do not propose any substantive changes to the provision of the Corporation's bylaws relating to SRO functions of the Exchanges.<sup>69</sup>

The Commission, therefore, believes that the proposed rule changes are consistent with Section 6(b)(1) of the Exchange Act, which requires each Exchange to have the ability to be so organized as to have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the Act, the rules and regulations thereunder, and the rules of such Exchange.<sup>70</sup>

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>71</sup> that the proposed rule changes (SR-BATS-2016-10, SR-BYX-2016-02, SR-EDGX-2016-04, SR-EDGA-2016-01) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>72</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-07512 Filed 4-1-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77463; File No. SR-NYSEArca-2015-107]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, and 4 Thereto, To List and Trade Shares of the REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF Under NYSE Arca Equities Rule 8.600

March 29, 2016.

#### I. Introduction

On December 10, 2015, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the

note 3, at 9008; and BYX Notice, *supra* note 3, at 9053.

<sup>69</sup> See proposed Article XII of the New Bylaws.

<sup>70</sup> 15 U.S.C. 78f(b)(1).

<sup>71</sup> 15 U.S.C. 78s(b)(2).

<sup>72</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF (individually, a "Fund," and collectively, "Funds"), which will be offered by Exchange Traded Concepts Trust ("Trust"). The proposed rule change was published for comment in the **Federal Register** on December 30, 2015.<sup>3</sup> On January 15, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> On January 27, 2016, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> On February 11, 2016, the Exchange submitted Amendment No. 3 to the proposed rule change.<sup>6</sup> On February 12, 2016, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>8</sup> On March 24, 2016, the Exchange submitted Amendment No. 4 to the proposed rule change.<sup>9</sup> The Commission

<sup>3</sup> See Securities Exchange Act Release No. 76761 (December 23, 2015), 80 FR 81564 ("Notice").

<sup>4</sup> In Amendment No. 1, which replaced and superseded the original filing in its entirety, the Exchange clarified the Funds' direct and indirect principal and other investments; the determination of the value of certain underlying assets for purposes of the Funds' net asset value ("NAV") calculation; and the availability of price information for certain underlying assets. Because Amendment No. 1 adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment (Amendment No. 1 to the proposed rule change is available at: <http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-1.pdf>).

<sup>5</sup> In Amendment No. 2, the Exchange made additional clarifying changes regarding the Funds' other investments; the availability of price information for certain underlying assets; and the dissemination of the Portfolio Indicative Value (as defined herein). Because Amendment No. 2 adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment (Amendment No. 2 to the proposed rule change is available at: <http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-2.pdf>).

<sup>6</sup> In Amendment No. 3, the Exchange expanded the application of the criteria for non-U.S. equity securities in the REX Gold Hedged FTSE Emerging Markets ETF portfolio so that they will apply on a continual basis. Because Amendment No. 3 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment (Amendment No. 3 to the proposed rule change is available at: <http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-3.pdf>).

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

<sup>8</sup> See Securities Exchange Act Release No. 77128, 81 FR 8557 (February 19, 2016).

<sup>9</sup> In Amendment No. 4, the Exchange clarified that: (a) all statements and representations made in the proposal regarding the description of the

Continued

<sup>62</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>63</sup> 15 U.S.C. 78f(b)(1).

<sup>64</sup> See EDGX Notice, *supra* note 3, at 8767; EDGA Notice, *supra* note 3, at 8788; BATS Notice, *supra* note 3, at 9008; and BYX Notice, *supra* note 3, at 9053.

<sup>65</sup> See BATS Notice, *supra* note 3, at 9008; and BYX Notice, *supra* note 3, at 9053.

<sup>66</sup> See EDGX Notice, *supra* note 3, at 8767; EDGA Notice, *supra* note 3, at 8788.

<sup>67</sup> See *supra* note 18 (discussing the limitations of ownership of capital stock of the Corporation to 40% for any Person and 20% for any member and voting power of capital stock of the Corporation to 20% for any Person).

<sup>68</sup> See EDGX Notice, *supra* note 3, at 8767; EDGA Notice, *supra* note 3, at 8788; BATS Notice, *supra*

received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4 thereto.

## II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust,<sup>10</sup> which is registered with the Commission as an investment company and has filed a registration statement on Form N-1A with the Commission.<sup>11</sup> Exchange Traded Concepts, LLC will serve as the investment adviser to the Funds ("Adviser").<sup>12</sup> Vident Investment Advisory, LLC ("Sub-Adviser") will serve as sub-adviser to the Funds.<sup>13</sup> SEI Investments Distribution Co. will be the principal underwriter and distributor of the Funds' Shares. SEI Investments

portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange; (b) the issuer will advise the Exchange of any failure by the Funds to comply with the continued listing requirements; (c) pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; and (d) if any Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). Because Amendment No. 4 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 4 is not subject to notice and comment (Amendment No. 4 to the proposed rule change is available at: <http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-4.pdf>).

<sup>10</sup>The Exchange represents that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 ("1940 Act").

<sup>11</sup>According to the Exchange, on October 9, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 and under the 1940 Act relating to the Funds (File Nos. 333-156529 and 811-22263) ("Registration Statement").

<sup>12</sup>The Exchange represents that the Funds are subject to regulation under the Commodity Exchange Act and Commodity Futures Trading Commission ("CFTC") rules as commodity pools. The Adviser is registered as a commodity pool operator, and the Funds will be operated in accordance with CFTC rules.

<sup>13</sup>The Exchange represents that the Adviser and Sub-Adviser are not registered as broker-dealers or affiliated with any broker-dealers. In the event (a) the Adviser or Sub-Adviser becomes a registered 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 a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Global Funds Services will serve as the administrator, custodian, transfer agent, and fund accounting agent for the Funds.<sup>14</sup>

### A. Exchange's Description of the Funds' Principal Investments

#### (1) REX Gold Hedged S&P 500 ETF—Principal Investments

This Fund will seek to outperform the total return performance of the S&P 500 Dynamic Gold Hedged Index ("S&P Benchmark")<sup>15</sup> by actively hedging the returns of the S&P 500 Index using gold futures. The Fund will seek to achieve its investment objective of outperforming the S&P Benchmark by providing exposure to a gold-hedged U.S. large-cap portfolio using a quantitative, rules-based strategy. The Fund will invest at least 80% of its assets (plus the amount of any borrowings for investment purposes) in (i) U.S. exchange-listed large-cap U.S. stocks; (ii) gold futures; (iii) exchange-traded funds ("ETFs")<sup>16</sup> and exchange-traded closed-end funds (together with ETFs, "Underlying Funds") that provide exposure to large-cap U.S. stocks; (iv) ETFs, commodity-related pooled vehicles,<sup>17</sup> and exchange-traded notes ("ETNs")<sup>18</sup> that provide exposure to

<sup>14</sup>The Commission notes that additional information regarding the Funds, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in the Notice, the amendments, and the Registration Statement, as applicable. See Notice, Amendment Nos. 1-4, and Registration Statement, *supra* notes 3, 4, 5, 6, 9, and 11, respectively.

<sup>15</sup>According to the Exchange, the S&P Benchmark seeks to reflect the returns of a portfolio of S&P 500 stocks, hedged with a long gold futures overlay. Specifically, the S&P Benchmark measures the total return performance of a hypothetical portfolio consisting of securities that compose the S&P 500 Index, which measures the performance of the large-capitalization sector of the U.S. equity market, and a long position in gold futures contracts, the notional value of which is comparable to the value of the S&P Benchmark's equity component.

<sup>16</sup>For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Underlying Funds in which a Fund will invest all will be listed and traded on national securities exchanges. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X, or -3X) ETFs.

<sup>17</sup>For purposes of the filing, commodity-related pooled vehicles will mean: Equity Gold Shares (as described in NYSE Arca Equities Rule 5.2(j)(5)); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

<sup>18</sup>ETNs, which will be listed on a national securities exchange, are securities such as those

gold; and (v) futures that provide exposure to the S&P 500 Index. The Fund will not invest in non-U.S. stocks. The Fund will seek to achieve a similar level of volatility as that of the S&P Benchmark, although there is no assurance it will do so. The Sub-Adviser will continuously monitor the Fund's holdings in order to enhance performance while still providing approximately equal notional exposure to equity securities and gold futures contracts.

The Fund will not directly hold gold futures contracts, commodity-related pooled vehicles, and options on commodity futures (as referenced below). Rather, the Fund expects to gain exposure to these instruments by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund's taxable year, in a wholly-owned and controlled Cayman Islands subsidiary ("Subsidiary"). The Subsidiary will be advised by the Adviser, and the Fund's investment in the Subsidiary will primarily be intended to provide the Fund with exposure to the price of gold.

#### (2) REX Gold Hedged FTSE Emerging Markets ETF—Principal Investments

This Fund will seek to outperform the total return performance of the FTSE Emerging Gold Overlay Index ("FTSE Benchmark")<sup>19</sup> by actively hedging a portfolio of emerging markets securities using gold futures. The Fund will seek to achieve its investment objective of outperforming the FTSE Benchmark by providing exposure to a gold-hedged emerging markets portfolio using a quantitative, rules-based strategy. The Fund will invest at least 80% of its assets (plus the amount of any borrowings for investment purposes) in (i) equity securities of emerging markets companies, as such companies are classified by the FTSE Benchmark ("Emerging Markets Securities");<sup>20</sup> (ii)

described in NYSE Arca Equities Rule 5.2(j)(6). While the Funds may invest in inverse ETNs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X, or -3X) ETNs.

<sup>19</sup>The FTSE Benchmark seeks to reflect the returns of a portfolio of Emerging Markets Securities (as defined below), hedged with a long gold futures overlay. Specifically, the FTSE Benchmark measures the total return performance of a hypothetical portfolio consisting of Emerging Markets Securities and a long position in gold futures, the notional value of which is comparable to the value of the FTSE Benchmark's equity component.

<sup>20</sup>The non-U.S. equity securities in this Fund's portfolio will meet the following criteria on a continual basis: (1) non-U.S. equity securities each shall have a minimum market value of at least \$100 million; (2) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the

gold futures; (iii) Underlying Funds, ADRs, Global Depository Receipts (“GDRs”), American Depository Shares (“ADS”), European Depository Receipts (“EDRs”), and International Depository Receipts (“IDRs,” and together with ADRs, GDRs, EDRs, and ADS, “Depository Receipts”)<sup>21</sup> that provide exposure to Emerging Markets Securities; (iv) ETFs,<sup>22</sup> commodity-related pooled vehicles,<sup>23</sup> and ETNs<sup>24</sup> that provide exposure to gold; and (v) futures that provide exposure to Emerging Markets Securities. The Fund will seek to achieve a similar level of volatility as that of the FTSE Benchmark, although there is no assurance it will do so. The Sub-Adviser will continuously monitor the Fund’s holdings in order to enhance performance while still providing approximately equal notional exposure to equity securities and gold futures contracts.

The Fund will not directly hold gold futures contracts, commodity-related pooled vehicles, and options on commodity futures (as referenced below). Rather, the Fund expects to gain exposure to these instruments by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund’s taxable year, in a wholly-owned and controlled Cayman Islands subsidiary (“Subsidiary”). The Subsidiary will be advised by the Adviser, and the Fund’s investment in the Subsidiary will primarily be intended to provide the Fund with exposure to the price of gold.

#### *B. Exchange’s Description of the Funds’ Other Investments*

While each Fund will invest at least 80% of its net assets in the securities and financial instruments described above, each Fund may invest its remaining assets in the securities and financial instruments described below.

last six months; (3) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund’s entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund’s entire portfolio; and (4) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting. For purposes of this filing, the term “non-U.S. equity securities” includes the following: Common stocks and preferred securities of foreign corporations; warrants; convertible securities; master limited partnerships (“MLPs”); rights; and Depository Receipts (as defined below, excluding Depository Receipts that are registered under the Act and non-exchange-listed American Depository Receipts (“ADRs”)).

<sup>21</sup> Non-exchange-listed ADRs will not exceed 10% of the Fund’s net assets.

<sup>22</sup> See *supra* note 16.

<sup>23</sup> See *supra* note 17.

<sup>24</sup> See *supra* note 18.

In addition to the exchange-traded equity securities described above for the Funds, the Funds may invest in the following exchange-traded equity securities: exchange-traded common stock (other than large-cap U.S. stocks or Emerging Markets Securities, respectively, for the respective Funds); exchange-traded preferred stock; exchange-traded warrants; exchange-traded MLPs; exchange-traded rights; and exchange-traded convertible securities.

In addition to the futures transactions described above, the Funds may engage in other index, commodity, and currency futures transactions, and may engage in exchange-traded options transactions on such futures. The Funds may use futures contracts and related options for bona fide hedging; to offset changes in the value of securities held or expected to be acquired or be disposed of; to gain exposure to a particular market, index, or instrument; or for other risk management purposes. The Funds also may purchase and write exchange-traded and over-the-counter put and call options on securities, securities indices, and currencies. A Fund may purchase put and call options on securities to protect against a decline in the market value of the securities in its portfolio or to anticipate an increase in the market value of securities that a Fund may seek to purchase in the future.

The Funds may invest in restricted (Rule 144A) securities.

Each Fund will also invest in cash and cash equivalents<sup>25</sup> to collateralize its exposure to futures contracts and for investment purposes. Each Fund may enter into repurchase agreements with financial institutions, and each Fund may enter into reverse repurchase agreements as part of a Fund’s investment strategy. In addition, the Funds may invest in U.S. government securities, namely, U.S. Treasury obligations,<sup>26</sup> U.S. government agency

<sup>25</sup> For purposes of this filing, cash equivalents include short-term instruments (instruments with maturities of less than 3 months) of the following types: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers’ acceptances; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits; (vi) commercial paper; and (vii) money market funds.

<sup>26</sup> U.S. Treasury obligations consist of bills, notes, and bonds issued by the U.S. Treasury and separately traded interest and principal component parts of such obligations that are transferable through the federal book-entry system known as Separately Traded Registered Interest and Principal Securities and Treasury Receipts.

securities, and U.S. Treasury zero-coupon bonds (“Fixed Income Instruments”).

The Funds will invest in the securities of other investment companies, including the Underlying Funds, to the extent that such an investment would be consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof.

#### *C. Exchange’s Description of the Funds’ Subsidiaries*

According to the Exchange, each Fund will achieve commodities exposure through investment in its respective Subsidiary. Such investment may not exceed 25% of a Fund’s total assets, as measured at the end of every quarter of a Fund’s taxable year. Each Subsidiary will invest in gold futures contracts, commodity-related pooled vehicles, options on commodity futures, and other investments (cash, cash equivalents, and Fixed Income Instruments with less than one year to maturity) intended to serve as margin or collateral or otherwise support the Subsidiary’s derivatives positions. Unlike a Fund, the Subsidiary may invest without limitation in commodity futures and may use leveraged investment techniques. The Subsidiaries otherwise are subject to the same general investment policies and restrictions as the Funds.<sup>27</sup>

#### *D. Exchange’s Description of the Funds’ Investment Restrictions*

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser,<sup>28</sup> consistent with Commission

<sup>27</sup> According to the Exchange, the Subsidiaries are not registered under the 1940 Act. As an investor in its Subsidiary, each Fund, as the Subsidiary’s sole shareholder, would not have the protections offered to investors in registered investment companies. However, because a Fund would wholly own and control the Subsidiary, and a Fund and its Subsidiary would be managed by the Adviser, it is unlikely that the Subsidiary would take action contrary to the interests of a Fund or a Fund’s shareholders. A Fund’s Board of Trustees has oversight responsibility for the investment activities of the Fund, including its investments in its Subsidiary, and the Fund’s role as the sole shareholder of its Subsidiary. Also, in managing a Subsidiary’s portfolio, the Adviser and Sub-Adviser would be subject to the same investment restrictions and operational guidelines that apply to the management of a Fund.

<sup>28</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and

Continued

guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are invested in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each Fund will concentrate its investments (*i.e.*, hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the respective benchmark concentrates in an industry or group of industries, and each Fund will be classified as a non-diversified investment company under the 1940 Act.

Each Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code.

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>29</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4, is consistent with Section 6(b)(5) of the Act,<sup>30</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>31</sup> which sets

the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>29</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. The Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.<sup>32</sup> On each business day, before commencement of trading in the Shares in the Core Trading Session on the Exchange, the Funds' Web site will disclose the Disclosed Portfolio<sup>33</sup> that will form the basis for each Fund's NAV calculation at the end of the business day.<sup>34</sup> The Funds' Web site will also

<sup>32</sup> According to the Exchange, several major market data vendors display or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

<sup>33</sup> The term "Disclosed Portfolio" is defined in NYSE Arca Equities Rule 8.600(c)(2). On a daily basis, the Funds will also disclose on the Funds' Web site the following information regarding each portfolio holding of a Fund and its respective Subsidiary, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in a Fund's portfolio. The Web site information will be publicly available at no charge.

<sup>34</sup> The NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day. According to the Exchange, in computing a Fund's NAV, a Fund's securities holdings will be valued based on their last readily available market price. Price information on exchange-listed securities, including common stocks, preferred stocks, warrants, convertible securities, MLPs, rights, Underlying Funds, ETNs, Depositary Receipts, and commodity-related pooled vehicles in which a Fund invests, will be taken from the exchange where the security is primarily traded. Other portfolio securities and assets for which market quotations are not readily available or determined to not represent the current fair value will be valued based on fair value as determined in good faith by the Sub-Adviser in accordance with procedures adopted by the Board. Futures contracts and exchange-traded options on futures will be valued at the settlement or closing price determined by the applicable exchange. Exchange-traded options contracts will be valued at their most recent sale price. Over-the-counter options normally will be valued on the basis of quotes obtained from a third-party broker-dealer who makes markets in such securities or on the basis of quotes obtained from a third-party pricing service. Cash and cash equivalents (with the exception of money market funds) may be valued at market values, as furnished by recognized dealers in such securities or assets. Cash equivalents (with the exception of money market funds) also may be

include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. 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. Pricing information regarding each asset class in which a Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Quotation and last-sale information for the Underlying Funds, ETNs, and other U.S. exchange-traded equities, will be available via the CTA high-speed line, and, for equity securities that are U.S. exchange-listed, will be available from the national securities exchange on which they are listed. With respect to non-U.S. exchange-listed equity securities, intra-day, closing, and settlement prices of common stocks and other equity securities (including shares of preferred securities and non-U.S. Depositary Receipts) will be available from the foreign exchanges on which such securities trade, as well as from major market data vendors. Price information for money market funds will be available from the investment company's Web site and from market data vendors. Price information relating to cash, cash equivalents (other than money market funds), futures, options, options on futures, Depositary Receipts, Rule 144A securities, repurchase agreements, reverse repurchase agreements, the S&P Benchmark, and the FTSE Benchmark will be available from major market data vendors. Information relating to futures and exchange-traded options on futures also will be available from the exchange on which such instruments are traded, and information relating to U.S. exchange-traded options will be available via the Options Price Reporting Authority.

valued on the basis of information furnished by an independent pricing service that uses a valuation matrix which incorporates both dealer-supplied valuations and electronic data processing techniques. Shares of money market funds held by each Fund will be valued at their respective NAVs. Fixed Income Instruments, Rule 144A securities, repurchase agreements, and reverse repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market. Non-exchange-traded ADRs will be valued at the last quoted mid-price on the primary market on which they are traded.

Intra-day and closing price information from brokers and dealers or independent pricing services will be available for Fixed Income Instruments.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares of each 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. Trading in Shares of each Fund will be halted if the circuit-breaker parameters in NYSE Arca Equities Rule 7.12 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.<sup>35</sup> Moreover, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees, and that neither the Adviser nor the Sub-Adviser is a broker-dealer or affiliated with a broker-dealer.<sup>36</sup> The Exchange also

<sup>35</sup> These may include: (1) The extent to which trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>36</sup> See *supra* note 13 and accompanying text. According to the Exchange, an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel will be 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 violations, 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.

represents that, the Adviser, as the Reporting Authority, 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 a Fund's portfolio.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, which 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.<sup>37</sup>

(4) The regulatory staff of the Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities, certain futures, certain options on futures, and certain exchange-traded options with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, may obtain information regarding trading in such securities and financial instruments from such markets and other entities. In addition, the regulatory staff of 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. FINRA, on behalf of the Exchange, also is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine.

(5) Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange

<sup>37</sup> The Exchange states that the Financial Industry Regulatory Authority ("FINRA") surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

does not have a comprehensive surveillance sharing agreement.

(6) Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. The Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio is disseminated; (e) 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 (f) trading information.

(7) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act,<sup>38</sup> as provided by NYSE Arca Equities Rule 5.3.

(8) The REX Gold Hedged S&P 500 ETF will not invest in non-U.S. stocks.

(9) The non-U.S. equity securities in the REX Gold Hedged FTSE Emerging Markets ETF portfolio will meet the following criteria on a continual basis: (i) Non-U.S. equity securities each shall have a minimum market value of at least \$100 million; (ii) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; (iii) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund's entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund's entire portfolio; and (iv) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting. In addition, non-exchange-listed ADRs will not exceed 10% of this Fund's net assets.

(10) While a Fund may invest in inverse ETFs and ETNs, a Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs and ETNs.

<sup>38</sup> 17 CFR 240.10A-3.

(11) Each Fund will achieve commodities exposure through investment in a Subsidiary, and such investment may not exceed 25% of a Fund's total assets, as measured at the end of every quarter of a Fund's taxable year.

(12) Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.

(13) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds 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.<sup>39</sup> If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice, and in Amendment Nos. 1, 2, 3, and 4 to the proposed rule change. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600, including those set forth in this proposed rule change, to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment

<sup>39</sup> The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Amendment No. 2 to SR-BATS-2016-04, available at: <http://www.sec.gov/comments/sr-bats-2016-04/bats201604-2.pdf>. In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

Nos. 1, 2, 3, and 4 thereto, is consistent with Section 6(b)(5) of the Act<sup>40</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>41</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change (SR-NYSEArca-2015-107), as modified by Amendment Nos. 1, 2, 3, and 4 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**Robert W. Errett**,  
Deputy Secretary.

[FR Doc. 2016-07511 Filed 4-1-16; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77465; File No. SR-FINRA-2015-056]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether to Approve or Disapprove Proposed Rule Change To Adopt FINRA Rule 2030 and FINRA Rule 4580 to Establish "Pay-To-Play" and Related Rules

March 29, 2016.

#### I. Introduction

On December 16, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act," "Exchange Act" or "SEA")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities) and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) to establish "pay-to-play"<sup>3</sup> and related rules that would regulate the activities of member

firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.

The proposed rule change was published for comment in the **Federal Register** on December 30, 2015.<sup>4</sup> The Commission received ten comment letters, from nine different commenters, in response to the proposed rule change.<sup>5</sup> On February 8, 2016, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 29, 2016.<sup>6</sup> On March 28, 2016, FINRA filed a letter with the Commission stating that it has considered the comments received by the Commission, and that FINRA is not intending to make changes to the proposed rule text in response to the comments.<sup>7</sup> The Commission is publishing this order to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B)<sup>8</sup> to determine whether to approve or disapprove the proposed rule change.

Institution of proceedings does not indicate that the Commission has

<sup>4</sup> See Exchange Act Rel. No. 76767 (Dec. 24, 2015), 80 FR 81650 (Dec. 30, 2015) (File No. SR-FINRA-2015-056) ("Notice").

<sup>5</sup> See Letters from David Keating, President, Center for Competitive Politics ("CCP"), dated Jan. 20, 2016 ("CCP Letter"); Clifford Kirsch and Michael Koffler, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers ("CAI"), dated Jan. 20, 2016 ("CAI Letter No. 1"); Clifford Kirsch and Michael Koffler, Sutherland Asbill & Brennan LLP, for the CAI, dated Feb. 5, 2016 ("CAI Letter No. 2"); David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute ("FSI"), dated Jan. 20, 2016 ("FSI Letter"); Tamara K. Salmon, Assistant General Counsel, Investment Company Institute ("ICI"), dated Jan. 20, 2016 ("ICI Letter"); Patrick J. Moran, Esq., dated Dec. 29, 2015 ("Moran Letter"); Gary A. Sanders, Counsel and Vice President, National Association of Insurance and Financial Advisors ("NAIFA"), dated Jan. 20, 2016 ("NAIFA Letter"); Judith M. Shaw, President, North American Securities Administrators Association, Inc. ("NASAA"), dated Jan. 20, 2016 ("NASAA Letter"); Hugh D. Berkson, President, Public Investors Arbitration Bar Association ("PIABA"), dated Jan. 20, 2016 ("PIABA Letter"); and H. Christopher Bartolomucci and Brian J. Field, Bancroft PLLC, for the New York Republican State Committee and the Tennessee Republican Party ("State Parties"), dated Jan. 20, 2016 ("State Parties Letter").

<sup>6</sup> See Letter from Victoria Crane, Associate General Counsel, FINRA, to Lourdes Gonzalez, Assistant Director, Sales Practices, Division of Trading and Markets, Securities and Exchange Commission, dated Feb. 8, 2016.

<sup>7</sup> See Letter from Victoria Crane, Associate General Counsel, FINRA, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Mar. 28, 2016 ("FINRA Response Letter"). The FINRA Letter is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, and at the Commission's Public Reference Room.

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>40</sup> 15 U.S.C. 78f(b)(5).

<sup>41</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> "Pay-to-play" practices typically involve a person making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials or bond ballot initiatives as a quid pro quo for the receipt of government contracts.