

Laws in line with current best practices for Delaware corporations as well as clarifying certain of those provisions furthers OCC's goal of maintaining written policies and procedures that provide for a well-founded, transparent and enforceable legal framework for its activities and therefore is consistent with Rule 17Ad-22(d)(1).<sup>8</sup> The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

*(B) Clearing Agency's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition. Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency, their customers and the markets that the clearing agency serves. This proposed rule change affects current and future OCC directors and officers, and OCC believes that the proposed modifications would not disadvantage or favor any particular user in relationship to another user because the proposed modifications relate to internal corporate matters at OCC and would not impose any burdens on users and prospective users.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section

19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>11</sup> to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2014-08 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-OCC-2014-08. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). Notwithstanding the foregoing, OCC stated in its filing that implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation § 40.6.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site (<http://www.theocc.com/about/publications/bylaws.jsp>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2014-08 and should be submitted on or before May 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-71894; File No. SR-NYSEArca-2014-30]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading Shares of Hull Tactical US ETF Under NYSE Arca Equities Rule 8.600**

April 7, 2014.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 24, 2014, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): Hull Tactical US ETF. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the

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

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

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

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

<sup>8</sup> 17 CFR 240.17Ad-22(d)(1).

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 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 the shares ("Shares") of Hull Tactical US ETF (the "Fund") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange.<sup>5</sup> The Shares will be offered by the Exchange Traded Concepts Trust ("Trust"), a Delaware statutory trust. The Trust is registered with the Commission as an investment company.<sup>6</sup>

<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of specific foreign or domestic stock index, fixed income securities index, or combination thereof.

<sup>5</sup> The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 61842 (April 5, 2010), 75 FR 18554 (April 12, 2010) (SR-NYSEArca-2012-10) (order approving Exchange listing and trading of Mars Hill Global Relative Value ETF (f/k/a HTE Global Relative Value ETF)); 67559 (Aug. 1, 2012), 77 FR 47482 (Aug. 8, 2012) (SR-NYSEArca-2012-57) (order approving Exchange listing and trading of QAM Equity Hedge ETF); and 67552 (Aug. 1, 2012), 77 FR 47131 (Aug. 7, 2012) (SR-NYSEArca-2012-55) (notice of filing of proposed rule change to list and trade shares of STAR Global Buy-Write ETF).

<sup>6</sup> The Trust is registered under the 1940 Act. On July 26, 2013, the Trust filed with the Commission a post-effective amendment to its registration statement on Form N-1A relating to the Fund (File Nos. 333-156529 and 811-22263) (the "Registration

Statement"). The descriptions of the operation of the Trust and the Shares contained herein are based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30445 (April 2, 2013) (File No. 812-13969) ("Exemptive Order").

Exchange Traded Concepts, LLC will be the investment adviser ("Adviser") to the Fund. HTAA, LLC will be the sub-adviser to the Fund (the "Sub-Adviser"). SEI Investments Co. will serve as the administrator of the Fund ("Administrator"). JP Morgan Chase Bank N.A. will serve as the custodian, transfer agent and dividend disbursing agent of the Fund. SEI Investments Distribution Co. will serve as the distributor ("Distributor") for the Trust. Commentary .06 to Rule 8.600 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 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. 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.<sup>7</sup> Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects

Statement"). The descriptions of the operation of the Trust and the Shares contained herein are based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30445 (April 2, 2013) (File No. 812-13969) ("Exemptive Order").

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

the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer. In the event (a) the Adviser or Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new manager, adviser, or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

According to the Registration Statement, the investment objective of the Fund will be to seek long-term capital appreciation. The Fund will be actively managed.

According to the Registration Statement, under normal market conditions<sup>8</sup> the Fund will seek to achieve its investment objective by taking long and short positions<sup>9</sup> in one or more exchange traded funds ("ETFs")<sup>10</sup> that seek to track the performance of the S&P 500 Index (each, an "S&P 500-related ETF"). The ETFs the Fund invests in all will be listed and traded in the U.S. on registered exchanges. Under normal market conditions, substantially all of the Fund's assets will be invested in one or more S&P 500-related ETFs, ETFs that provide leveraged or inverse exposure to the S&P 500 Index and, to seek the desired exposure to the S&P 500 Index,

<sup>8</sup> The term "under normal market conditions" includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>9</sup> According to the Registration Statement, short sales are transactions in which the Fund sells a security it does not own. To complete the transaction, the Fund must borrow or otherwise obtain the security to make delivery to the buyer. The Fund is then obligated to replace the security borrowed by purchasing the security at the market price at the time of replacement. The Fund may use repurchase agreements to satisfy delivery obligations in short sales transactions. The Fund may use up to 100% of its net assets to engage in short sales transactions and collateralize its open short positions.

<sup>10</sup> ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depositary Receipts) and 8.600 (Managed Fund Shares).

futures contracts, as well as, as described below, cash instruments.

According to the Registration Statement, the Sub-Adviser will utilize a proprietary, analytical investment model that examines current and historical market data to attempt to predict the performance of the S&P 500 Index. The model will deliver investment signals that the Sub-Adviser will use to make investment decisions for the Fund. Depending on the investment signal delivered by the model, the Sub-Adviser will take certain long or short positions in one or more S&P 500-related ETFs: (1) If the model indicates bull-market conditions, the Sub-Adviser will take long positions; or (2) if the model indicates bear-market conditions, the Sub-Adviser will take short positions. When the Fund takes long positions, it may maintain long exposure of up to 200% of net assets; exposure to short positions will be limited to no more than 100% of net assets. The Sub-Adviser will adjust the Fund's long and short positions when necessary to take into account new data from the model that reflects changing market conditions. Positions may be adjusted as the model predictions fluctuate.

According to the Registration Statement, the Fund will enter into futures contracts to seek the desired exposure to the S&P 500 Index.<sup>11</sup> The Fund will limit its investment in futures contracts such that either (1) the aggregate net notional value of its futures investments will not exceed the value of the Fund's net assets, after taking into account unrealized profits and unrealized losses on the futures positions it has entered into; or (2) the aggregate initial margin and premiums required to establish positions in its futures investments will not exceed 5% of the Fund's net assets, after taking into account unrealized profits and unrealized losses on any such positions. The Fund will only enter into futures contracts traded on a national futures

exchange regulated by the CFTC. The Fund will trade futures when the Sub-Adviser determines that doing so may provide an efficient means of seeking exposure to the S&P 500 Index that is complimentary to its investment in shares of one or more S&P 500-related ETFs.

According to the Registration Statement, in addition to investments in the S&P 500-related ETFs and futures contracts, the Fund may invest up to 10% of its total assets in leveraged ETFs or inverse ETFs that seek to deliver multiples, or the inverse, of the performance of the S&P 500 Index, respectively (collectively with S&P 500-related ETFs, the "Underlying ETFs"). Such investments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies, and will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2× or 3×) of any securities market index. The inverse and leveraged ETFs held by the Fund may utilize leverage (*i.e.* borrowing) to acquire their underlying portfolio investments.<sup>12</sup>

According to the Registration Statement, the Fund may invest in Underlying ETFs that are primarily index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Fund also may invest in Underlying ETFs that are actively managed.

According to the Registration Statement, the Underlying ETFs in which the Fund may invest may invest in equity securities. Equity securities consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock,<sup>13</sup> investments in master limited partnerships ("MLPs")<sup>14</sup> and rights.<sup>15</sup>

According to the Registration Statement, the Underlying ETFs in which the Fund may invest may engage in futures and options transactions. The

Fund will only invest in Underlying ETFs that engage in futures contracts if such futures contracts are traded on a national futures exchange regulated by the CFTC. Underlying ETFs in which the Fund may invest may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes. When an Underlying ETF purchases or sells a futures contract, or sells an option thereon, it is required to cover its position in order to limit leveraging and related risks.

According to the Registration Statement, the Underlying ETFs in which the Fund may invest may buy and sell index futures contracts with respect to any index that is traded on a recognized exchange or board of trade.

According to the Registration Statement, the Underlying ETFs in which the Fund may invest may purchase and write (sell) put and call options on indices and enter into related closing transactions.<sup>16</sup> All such options written on indices or securities must be covered by the Underlying ETF.

According to the Registration Statement, an Underlying ETF in which the Fund may invest may trade put and call options on securities, securities indices and currencies, as the Underlying ETF's investment adviser determines is appropriate in seeking the ETF's investment objective, and except as restricted by the Underlying ETF's investment limitations. An Underlying ETF 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 the Fund may seek to purchase in the future. An Underlying ETF may write covered call options on securities as a means of increasing the yield on its assets and as a means of providing limited protection against decreases in its market value. An Underlying ETF may purchase and write options on an exchange or over-the-counter.

<sup>11</sup> To the extent the Fund enters into futures contracts or invests in underlying ETFs that invest in futures, options on futures or other instruments subject to regulation by the U.S. Commodity Futures Trading Commission ("CFTC"), it will do so in reliance upon and in accordance with CFTC Rule 4.5. The Trust has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" in accordance with CFTC Rule 4.5. Therefore, neither the Trust nor any of its series is deemed to be a "commodity pool" or "commodity pool operator" under the Commodity Exchange Act ("CEA"), and they are not subject to registration or regulation as such under the CEA. In addition, neither the Adviser nor the Sub-Adviser is deemed to be a "commodity pool operator" or "commodity trading adviser" with respect to the advisory services it provides to the Fund.

<sup>12</sup> The use of leverage may exaggerate changes in an ETF's share price and the return on its investments. Inverse and leveraged ETFs are designed to achieve their objectives for a single day only.

<sup>13</sup> According to the Registration Statement, convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio.

<sup>14</sup> According to the Registration Statement, MLPs are limited partnerships in which the ownership units are publicly traded. MLP units are registered with the SEC and are freely traded on a securities exchange or in the over-the-counter market.

<sup>15</sup> According to the Registration Statement, a right is a privilege granted to existing shareholders of a corporation to subscribe to shares of a new issue of common stock before it is issued. Rights normally have a short life of usually two to four weeks.

<sup>16</sup> According to the Registration Statement, a put option on a security gives the purchaser of the option the right to sell, and the writer of the option the obligation to buy, the underlying security. A call option on a security gives the purchaser of the option the right to buy, and the writer of the option the obligation to sell, the underlying security. Put and call options on indices are similar to options on securities except that options on an index give the holder the right to receive, upon exercise of the option, an amount of cash if the closing level of the underlying index is greater than (or less than, in the case of puts) the exercise price of the option.

According to the Registration Statement, the Underlying ETFs in which the Fund may invest may enter into swaps, including, but not limited to, total return swaps, index swaps, and interest rate swaps. An Underlying ETF may utilize swaps in an attempt to gain exposure to the securities in a market without actually purchasing those securities, or to hedge a position.<sup>17</sup> The Underlying ETFs in which the Fund may invest may enter into swaps to invest in a market without owning or taking physical custody of the underlying securities in circumstances in which direct investment is restricted for legal reasons or is otherwise impracticable.

During periods when the Fund's assets (or portion thereof) are not fully invested in one or more S&P 500-related ETFs or otherwise exposed to the S&P 500 Index, all or a portion of the Fund may be invested in cash instruments ("Cash Instruments"), which include U.S. Treasury obligations; cash and cash equivalents including commercial paper, certificates of deposit and bankers' acceptances; repurchase agreements;<sup>18</sup> shares of money market mutual funds; and high-quality, short-term debt instruments including, in addition to U.S. Treasury obligations, other U.S. government securities.<sup>19</sup>

<sup>17</sup> Forms of swaps include interest rate caps, under which, in return for a premium, one party agrees to make payments to the other to the extent that interest rates exceed a specified rate, or "cap," interest rate floors, under which, in return for a premium, one party agrees to make payments to the other to the extent that interest rates fall below a specified level, or "floor," and interest rate collars, under which a party sells a cap and purchases a floor or vice versa in an attempt to protect itself against interest rate movements exceeding given minimum or maximum levels.

<sup>18</sup> According to the Registration Statement, the Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund will effect repurchase transactions only with large, well-capitalized and well established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement.

<sup>19</sup> Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance. Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Government National Mortgage Association ("Ginnie Mae"), the Federal Home Loan Banks and other agencies or instrumentalities. Some obligations issued or guaranteed by U.S. government agencies and instrumentalities, including, for example, Ginnie Mae pass-through

#### Other Investments

According to the Registration Statement, in addition to the investments described above, the Fund may invest in other investments, as described below.

According to the Registration Statement, in the absence of normal market conditions<sup>20</sup> the Fund may invest 100% of its assets, without limitation, in Cash Instruments. The Fund may be invested in this manner for extended periods, depending on the Sub-Adviser's assessment of market conditions.

According to the Registration Statement, in addition to the Underlying ETFs discussed above, which are primary investments of the Fund, the Fund will invest in money market mutual 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 SEC or interpretation thereof.

#### Restrictions on Investment

According to the Registration Statement, the Fund may not purchase or sell commodities or commodity contracts unless acquired as a result of ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts; but this shall not prevent the Fund from entering into futures contracts.

The Fund will not directly enter into swaps or engage in options transactions.

According to the Registration Statement, the Fund may not, with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer.

According to the Registration Statement, the Fund may not acquire more than 10% of the outstanding voting securities of any one issuer.

According to the Registration Statement, the Fund may not invest

certificates, are supported by the full faith and credit of the U.S. Treasury. Other obligations issued by or guaranteed by federal agencies, such as those securities issued by Fannie Mae, are supported by the discretionary authority of the U.S. government to purchase certain obligations of the federal agency, while other obligations issued by or guaranteed by federal agencies, such as those of the Federal Home Loan Banks, are supported by the right of the issuer to borrow from the U.S. Treasury. The Fund may invest in U.S. Treasury zero-coupon bonds.

<sup>20</sup> See note 8, *supra*.

25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries.<sup>21</sup> This limitation does not apply to investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or shares of investment companies.

According to the Registration Statement, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including securities deemed illiquid by the Adviser or Sub-Adviser consistent with Commission guidance<sup>22</sup> and repurchase agreements that do not mature within seven days. The 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 the Fund's net assets are held in illiquid securities. Illiquid securities 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.<sup>23</sup>

<sup>21</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

<sup>22</sup> In reaching liquidity decisions, the Adviser and Sub-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 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>23</sup> See Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A) (stating that Guide 4 "permit[s] a fund to invest up to 15% of its assets in illiquid securities"). The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to

According to the Registration Statement, the Fund intends to qualify each year as a regulated investment company (a "RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>24</sup>

#### Creations and Redemptions of Shares

According to the Registration Statement, the Fund will offer and issue Shares at net asset value ("NAV") only in aggregated lots initially of 25,000 (each, a "Creation Unit"), on a continuous basis through the Distributor, at their NAV next determined after receipt, on any business day, of an order received in proper form.

The consideration for purchase of a Creation Unit of the Fund will generally consist of an in kind deposit of a designated portfolio of securities (the "Deposit Securities") per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash (the "Cash Component") computed as described below.<sup>25</sup> Together, the Deposit Securities and the Cash Component will constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

All orders to create Creation Units must be received by the Distributor no later than 3:00 p.m., Eastern Time ("E.T."), an hour earlier than the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., E.T.), in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next

determined on such date after receipt of the order in proper form.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit will generally consist of an in-kind transfer of a designated portfolio of securities ("Fund Securities") plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"), less a redemption transaction fee. Cash redemptions will only be made available in accordance with the Exemptive Order.

An order to redeem Creation Units is deemed received on the transmittal date if (i) such order is received by the Administrator not later than 3:00 p.m., E.T. on such transmittal date; and (ii) all other procedures set forth in the participant agreement are properly followed; such order will be effected based on the NAV of the Fund as next determined.

The Administrator, through the National Securities Clearing Corporation ("NSCC"), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., E.T.), (a) the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund, and (b) the Fund Securities that will be applicable to redemption requests received in proper form on that day. In addition, the Administrator, through the NSCC, will also make available on each business day, the estimated Cash Component and Cash Redemption Amount, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

#### Net Asset Value

According to the Registration Statement, the Fund will calculate NAV by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders. The Fund will calculate NAV once each business day as of the regularly scheduled close of normal trading on the Exchange (normally, 4:00 p.m., E.T.). The value of the Fund's Shares bought and sold in the secondary market will be driven by market price.

The price of these Shares, like the price of all traded securities, will be subject to factors such as supply and demand, as well as the current value of the portfolio securities held by the Fund. Secondary market Shares, available for purchase or sale on an intraday basis, do not have a fixed relationship either to the previous day's NAV nor the current day's NAV. Prices in the secondary market, therefore, may be below, at, or above the most recently calculated NAV of such Shares.

In calculating NAV, the Fund will generally value its portfolio investments at market prices or, in the absence of market value with respect to any investment, at fair value in accordance with valuation procedures adopted by the Board of Trustees of the Trust (the "Board") and in accordance with the 1940 Act.

The Underlying ETFs will be valued at the official closing price, if available, or the last reported sale price or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded.

Futures contracts will be valued at the settlement or closing price determined by the applicable exchange.

The Cash Instruments may be valued at market values, as furnished by recognized dealers in such securities or assets. Cash Instruments also may be 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.

Short-term debt securities with remaining maturities of sixty days or less for which market quotations and information furnished by an independent pricing service are not readily available will be valued at amortized cost, which approximates current value. The reliability of valuations provided by independent pricing agents is subject to certain review procedures.

Shares of money market mutual funds held by the Fund will be valued at their respective NAVs. Prices described above will be obtained from independent pricing services that have been approved by the Administrator. A number of independent pricing services are available and the Fund may use more than one of these services. The Fund may also discontinue the use of any pricing service at any time. The Sub-Adviser engages in oversight activities with respect to the Fund's independent pricing services, which includes, among other things, testing the prices provided by pricing services prior to calculation of the Fund's NAV,

Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

<sup>24</sup> 26 U.S.C. 851.

<sup>25</sup> According to the Registration Statement, the Trust reserves the right to permit or require the substitution of an amount of cash—i.e., a "cash in lieu" amount—to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for transfer through the clearing process, or which may not be eligible for trading by an authorized participant or the investor for which it is acting. The Trust also reserves the right to offer an "all cash" option for creations of Creation Units for the Fund.

conducting periodic due diligence meetings, and periodically reviewing the methodologies and inputs used by these services.

Other portfolio securities and assets for which market quotations, official closing prices, or information furnished by an independent pricing service are not readily available or, in the opinion of the Fund, are deemed unreliable will be fair valued in good faith by the Fund in accordance with applicable fair value pricing policies and in accordance with the 1940 Act. For example, if, in the opinion of the Fund, a security's value has been materially affected by events occurring before the Fund's pricing time but after the close of the exchange or market on which the security is principally traded, that security will be fair valued in good faith by the Fund in accordance with applicable fair value pricing policies approved by the Board. In fair valuing a security, the Fund may consider factors including price movements in futures contracts, market and trading trends, the bid/ask quotes of brokers, and off-exchange institutional trading.

#### Availability of Information

The Fund's Web site ([www.hulltacticalfunds.com](http://www.hulltacticalfunds.com)), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>26</sup> 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<sup>27</sup> on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio")<sup>28</sup> held

by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>29</sup>

The Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities and financial instruments held in the Fund, and percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be comprised of the estimates of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>30</sup> The Portfolio Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Portfolio Indicative Value and the market price may occur. This should not be viewed as a "real-time" update of the NAV per Share of the Fund, which is calculated once per day. All asset classes in which the Fund will invest will be included in the calculation of the Portfolio Indicative Value.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder

procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

<sup>29</sup> 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"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. 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.

<sup>30</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and underlying U.S. exchange-traded equities, including the Underlying ETFs, will be available via the Consolidated Tape Association ("CTA") high-speed line and from the national securities exchange on which they are listed. Quotations and last sale information for the Fund's futures will be available from the futures exchange on which the futures are listed. Quotation information from brokers and dealers or pricing services will be available for Cash Instruments and non-exchange traded securities of money market mutual funds held by the Fund. Pricing information regarding each asset class in which the Fund will invest is generally available through nationally recognized data service providers through subscription arrangements.

The dissemination of the Portfolio Indicative Value, 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 to provide a close estimate of that value throughout the trading day. The intra-day, closing and settlement prices of the Fund investments will also be readily available from the exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holding disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in this proposed rule change, are defined in the Registration Statement.

#### Initial and Continued Listing

The Shares will be subject to Rule 8.600, which sets forth the initial and

<sup>26</sup> The Bid/Ask Price of the Fund 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.

<sup>27</sup> The Core Trading Session is 9:30 a.m. to 4:00 p.m. E.T.

<sup>28</sup> The Exchange notes that NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) provides that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to,

continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A-3<sup>31</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

#### 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. Shares of the Fund will be halted if the “circuit breaker” parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in 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 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, 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 Equities Rule 7.6, Commentary .03, 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.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, 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.<sup>32</sup>

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

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”) and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>33</sup> In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

In addition, the Exchange also has a general policy prohibiting the

<sup>32</sup> 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.

<sup>33</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

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

#### 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>34</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all

<sup>31</sup> See 17 CFR 240.10A-3.

<sup>34</sup> 15 U.S.C. 78f(b)(5).



trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer. In the event (a) the Adviser or a Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new manager, adviser, or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts with other markets and other entities that are members of ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>35</sup> In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE.

The ETFs the Fund invests in all will be listed and traded in the U.S. on registered exchanges. The Fund will only enter into futures contracts traded on a national futures exchange regulated by the CFTC. The Fund will limit its investment in futures contracts such that either (1) the aggregate net notional value of its futures investments will not exceed the value of the Fund's net assets, after taking into account unrealized profits and unrealized losses on the futures positions it has entered into; or (2) the aggregate initial margin and premiums required to establish positions in its futures investments will not exceed 5% of the Fund's net assets, after taking into account unrealized profits and unrealized losses on any such positions. The Fund may invest up to 10% of its total assets in leveraged

ETFs or inverse ETFs that seek to deliver multiples, or the inverse, of the performance of the S&P 500 Index, respectively. Such investments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies, and will not be used to seek performance that is the multiple or inverse multiple (e.g., 2x or 3x) of any securities market index. The Fund will not directly enter into swaps or engage in options transactions. The Fund may not, with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer. The Fund may not acquire more than 10% of the outstanding voting securities of any one issuer. The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including securities deemed illiquid by the Adviser or Sub-Adviser consistent with Commission guidance and repurchase agreements that do not mature within seven days.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day the NYSE is open, and that the NAV and Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and underlying U.S. exchange-traded equities, including the Underlying ETFs, will be available via the CTA high-speed line and from the national securities exchange on which they are listed. Quotations and last sale information for the Fund's futures will be available from the futures exchange on which the futures are listed. Quotation information from brokers and dealers or pricing services will be available for Cash Instruments and non-exchange traded securities of money market mutual funds held by the Fund. Pricing information regarding each asset

class in which the Fund will invest is generally available through nationally recognized data service providers through subscription arrangements. Pricing information regarding the Fund's futures asset class will be available from the relevant exchange on which the futures are listed.

The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.600 are intended to protect investors and the public interest. The Fund's portfolio holdings that will form the basis for the Fund's calculation of NAV will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading of Shares in the Core Trading Session on the Exchange the following day. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by the CTA or by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high speed line. In addition, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares. The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to the NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Exchange Trading Permit holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12 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 Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in 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 Portfolio Indicative Value,

<sup>35</sup> See note 33, *supra*.



the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts with other markets and other entities that are members of ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without limitation, ETFs) and futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE.

#### *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 Exchange Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional actively-managed exchange-traded product 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 within such longer period up to 90 days after publication (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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-30 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-2014-30. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-NYSEArca-2014-30 and should be submitted on or before May 2, 2014.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2014-08129 Filed 4-10-14; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71889; File No. SR-NYSEMKT-2014-29]

### **Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List for Certain Executions at the Opening**

April 7, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 26, 2014, NYSE MKT LLC ("Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("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 amend its Price List for certain executions at the opening. The Exchange proposes to implement the fee change effective April 1, 2014. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

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

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

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