

designates the proposed rule change operative upon filing.¹¹

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 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. Please include File Number SR-ISEGemini-2017-13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISEGemini-2017-13. 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 such 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-ISEGemini-2017-13, and should be submitted on or before April 11, 2017.

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

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80254; File No. SR-NYSEArca-2016-96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Arca Equities Rule 8.700 and To List and Trade Shares of the Managed Emerging Markets Trust Under Proposed Amended NYSE Arca Equities Rule 8.700

March 15, 2017.

I. Introduction

On July 1, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Equities Rule 8.700, which governs the listing and trading of Managed Trust Securities on the Exchange, and to list and trade shares ("Shares") of the Managed Emerging Markets Trust ("Trust") under NYSE Arca Equities Rule 8.700, as proposed to be amended. The proposed rule change was published for comment in the **Federal Register** on July 21, 2016.³ On August 30, 2016, 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 approve or disapprove the proposed rule change.⁴ On October 18, 2016, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁵ On November 4, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original proposal.⁶ On January 9, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which again replaced and superseded the original proposal. On January 13, 2017, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.⁷ On February 10, 2017, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposal as modified by Amendment No. 2.⁸ The Commission

⁴ See Securities Exchange Act Release No. 78727, 81 FR 61268 (September 6, 2016).

⁵ See Securities Exchange Act Release No. 79111, 81 FR 73179 (October 24, 2016).

⁶ The Exchange subsequently withdrew Amendment No. 1.

⁷ See Securities Exchange Act Release No. 79802, 82 FR 7884 (January 23, 2017). The Commission designated March 18, 2017 as the date by which the Commission shall either approve or disapprove the proposed rule change.

⁸ In Amendment No. 3, the Exchange: (1) Further revised NYSE Arca Equities Rule 8.700 to (a) expand the permissible holdings for trusts that issue Managed Fund Securities, (b) clarify that the trusts will not be registered or required to be registered as investment companies, and (c) provide that the intraday indicative value ("IIV") for Managed Trust Securities will be disseminated during the Exchange's Core Trading Session; (2) amended the description of the Trust's permitted investments; (3) clarified that a 20% limit is applicable to the Trust's holdings of over-the-counter ("OTC") derivatives, and it would be measured according to aggregate gross notional value; (4) clarified the circumstances in which the Trust would invest in swaps; (5) expanded the information that will be included in the Disclosed Portfolio for the Shares, as well as other information that will be made publicly available; (6) discussed whether arbitrage in the Shares would be impacted by the Trust's use of derivatives; (7) stated that no more than 10% of the net assets of the Trust invested in futures and listed swaps, calculated using the aggregate gross notional value of those derivatives, would consist of futures and listed swaps whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement ("CSSA"); (8) stated that the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, is able to access, as needed, trade information for certain cash equivalents held by the Trust reported to FINRA's Trade Reporting and Compliance Engine; (9) amended the description of the creation and redemption of Shares; (10) provided additional justifications for the proposal; and (11) made conforming, clarifying, and technical changes. All of the amendments to the proposed rule change, including Amendment No. 3, are available at: <https://www.sec.gov/comments/sr-nysearca-2016-96/nysearca201696.shtml>.

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 17 CFR 200.30-3(a)(12).

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ 17 CFR 240.19b-4.

¹⁵ See Securities Exchange Act Release No. 78345 (July 15, 2016), 81 FR 47447.

received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 3⁹

A. Proposed Amendments to NYSE Arca Equities Rule 8.700

NYSE Arca Equities Rule 8.700(c)(1) currently defines “Managed Trust Securities” to mean a security that is registered under the Securities Act of 1933, as amended, (i) is issued by a trust that (1) is a commodity pool as defined in the Commodity Exchange Act (“CEA”) and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission (“CFTC”) and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the trust’s advisor consistent with the trust’s investment objectives, which will only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, each as disclosed in the trust’s prospectus as such may be amended from time to time; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value (“NAV”).

The Exchange proposes to amend the definition of “Managed Trust Securities” to permit trusts that issue Managed Trust Securities to hold exchange-traded futures contracts on commodity indices and currency indices, as well as swaps on stock indices, fixed income indices, commodity indices, commodities, currencies, currency indices, and interest rates.¹⁰ The Exchange also proposes to specify that trusts that issue Managed Trust Securities may hold cash and cash equivalents.¹¹ In addition, the Exchange proposes to amend the definition of “Managed Trust Securities” to provide that any trust (or

any series thereof) that issues Managed Trust Securities is not registered or required to be registered as an investment company under the Investment Company Act of 1940 (“1940 Act”).

Moreover, the Exchange proposes to amend NYSE Arca Equities Rule 8.700(e)(2)(A) to provide that the IIV for Managed Trust Securities will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session (rather than during the time when Managed Trust Securities trade on the Exchange).

B. Proposal to List and Trade the Shares

The Exchange proposes to list and trade Shares of the Trust under NYSE Arca Equities Rule 8.700, as proposed to be amended. The Trust is a Delaware statutory trust that will issue Shares representing fractional undivided beneficial interests in the Trust.¹² The Trust is a commodity pool as defined in the CEA and the regulations of the CFTC.¹³ The Trust will be operated by Artivist Advisors LLC, a Delaware limited liability company that is also the Trust’s advisor (“Adviser”) and will be registered under the CEA as a commodity pool operator. The Adviser is the commodity trading advisor of the Trust and will at all times be either registered as a commodity trading advisor or properly exempt from such registration under the CEA. The Adviser is not a broker-dealer and is not affiliated with a broker-dealer.¹⁴

The Bank of New York Mellon, a New York banking corporation, is the trustee of the Trust. The Bank of New York Mellon also is the administrator of the Trust, the custodian of the Trust, the processing agent of the Trust, and the settlement agent of the Trust. The Trust has engaged Foreside Fund Services, LLC to act as a distributor on its behalf.

¹² See Pre-Effective Amendment No. 5, dated August 18, 2015, to the Trust’s Registration Statement on Form S-1 (File No. 333-182772) under the Securities Act of 1933.

¹³ The Trust will not be an investment company registered under the 1940 Act and will not be required to register under the 1940 Act.

¹⁴ In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is or becomes affiliated with a broker-dealer, such broker-dealer will erect and maintain a fire wall around the personnel of the Adviser who have access to information concerning changes and adjustments to the Disclosed Portfolio (as defined in NYSE Arca Equities Rule 8.700(c)(2)). Personnel of the Adviser who make decisions regarding the composition of the Disclosed Portfolio must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Disclosed Portfolio.

Operation of the Trust

According to the Exchange, the Trust will pursue long-term total returns by seeking to provide both (1) a long-only exposure to one or more emerging markets stock indices (“index exposure”)¹⁵ and (2) “alpha” returns that are additive to, and are not correlated with, the index exposure (measured over rolling 5-year periods),¹⁶ while seeking to control overall downside risk and volatility.¹⁷

Index Exposure Portfolio Construction

According to the Exchange, the Trust will seek to maintain constant exposure to one or more emerging markets stock indices by holding long positions in emerging markets index futures contracts. Initially, the Trust will hold long MSCI Emerging Markets Index futures contracts to achieve its index exposure.¹⁸ The Adviser may in the future invest in additional or different emerging markets index futures contracts.

Alpha Portfolio Construction

According to the Exchange, the alpha portfolio primarily will be composed of futures contracts on emerging market stock indices and foreign currency forward contracts.¹⁹ The alpha portfolio will also be composed of commodity futures contracts and financial futures contracts.²⁰ According to the Exchange, the Adviser anticipates that as the Trust grows larger, it may also, in certain limited circumstances, invest in exchange-traded swaps, swaps accepted for central clearing (“cleared swaps”), and swaps that are not accepted for central clearing (“uncleared swaps”).

¹⁵ The index exposure is generally expected to be maintained at a level equal to 100% of the Trusts’ net assets.

¹⁶ The alpha exposure generally will not exceed a level equal to 300% of the Trust’s net assets.

¹⁷ The Trust will not use any particular index or benchmark to construct the alpha portfolio.

¹⁸ ICE Futures U.S. has been licensed to create futures contracts on the MSCI Emerging Markets Index. ICE Futures U.S. is a member of the ISG.

¹⁹ The Trust will only enter into foreign currency forward contracts related to foreign currencies that have significant foreign exchange turnover and are included in the most recent Bank for International Settlements Triennial Central Bank Survey (“BIS Survey”). Specifically, the Trust may enter into foreign currency forward contracts that provide exposure to such currencies selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

²⁰ The Trust expects to trade in commodity futures contracts, including metals, agricultural, energies, and softs. The Trust expects to trade in a wide variety of financial futures contracts, namely, interest rates, currencies and currency indices, U.S. and non-U.S. stock indices and government bond futures contracts.

⁹ For a more detailed description of the Trust and the Shares, see Amendment No. 3, *supra* note 8.

¹⁰ See proposed changes to NYSE Arca Equities Rule 8.700(c)(1). The Exchange also proposes to make a conforming change in NYSE Arca Equities Rule 8.700(d).

¹¹ See proposed changes to NYSE Arca Equities Rule 8.700(c)(1).

These limited circumstances are only the following:

- When futures contracts or forward contracts are not available or market conditions do not permit investing in futures contracts or forward contracts (for example, a particular futures contract or forward contract may not exist or may trade only on an exchange that has not yet been approved by the Trust); and
- When there are position limits, price limits or accountability limits on futures contracts.

According to the Exchange, swaps would only be used by the Trust as a substitute for futures contracts or forward contracts in the limited circumstances described above when the Adviser has determined that it is necessary to use swaps in order for the Trust to remain consistent with the Trust's investment objective. Further, the Adviser expects that the Trust's use of swaps, if any, will be of a de minimis nature. Moreover, to the extent that the Trust invests in swaps, it would first make use of exchange-traded swaps. If an investment in exchange-traded swaps is unavailable, then the Trust would invest in cleared swaps that clear through derivatives clearing organizations that satisfy the Trust's criteria. If an investment in cleared swaps is unavailable, then the Trust would invest in uncleared swaps in the OTC market. No more than 20% of the Trust's portfolio, measured by aggregate gross notional value, may be invested, on both an initial and ongoing basis, in OTC derivatives, including swaps.

Other Trust Investments

The Trust's portfolio may contain cash, which may be used, as needed, to secure the Trust's trading obligations with respect to its trading positions. Moreover, in order to collateralize futures contracts and forward contracts, the Trust may invest in cash equivalents.²¹

²¹ "Cash equivalents" means short-term instruments with maturities of less than three months. "Short-term instruments" means: (1) 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; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements and reverse repurchase agreements; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (6) commercial paper, which are short-term unsecured promissory notes; and (7) money market funds.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,²³ which requires, among other things, that the Exchange's rules be 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 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,²⁴ which sets 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.

According to the Exchange, quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Also, 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. In addition, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).²⁵ On a daily basis, the Trust will disclose on its Web site for each futures contract, forward contract, swap or other financial instrument in the Disclosed Portfolio the following information: Name; ticker symbol (if applicable); CUSIP or other identifier (if applicable);

²² 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).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁵ The Exchange notes that several major market data vendors widely disseminate IIVs taken from the CTA high-speed line or other data feeds.

description of the holding; with respect to derivatives, the identity of the security, commodity, index or other underlying asset; the quantity or aggregate amount of the holding as measured by par value, notional value or amount, number of contracts or number of units (if applicable); maturity date; coupon rate (if applicable); effective date or issue date (if applicable); market value; percentage weighting in the Disclosed Portfolio; and expiration date (if applicable). The Adviser's Web site will also include the current prospectus of the Trust and additional data relating to NAV and other applicable quantitative information.²⁶ Price information for the futures contracts, forward contracts, swaps and other financial instruments held by the Trust will be available through major market data vendors and/or the exchange on which they are listed and traded, as applicable.

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 Trust that the NAV and the NAV per Share will be calculated daily and that the NAV, the NAV per Share, and the composition of the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to NYSE Arca Equities Rules 7.12 and 8.700(e)(2)(D), which set forth circumstances under which trading in the Shares may be halted. 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.²⁷ The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Portfolio.²⁸ The Exchange represents

²⁶ The Trust's NAV and the NAV per Share will be calculated and disseminated daily. The Exchange will disseminate for the Trust on a daily basis by means of the CTA high-speed line information with respect to the most recent NAV per Share and the number of Shares outstanding, among other things. The Exchange will also make available on its Web site daily trading volume, closing prices, and the NAV per Share.

²⁷ These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, forward contracts, or swaps; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

²⁸ See NYSE Arca Equities Rule 8.700(e)(2)(B)(ii).

that it has a general policy prohibiting the distribution of material, non-public information by its employees.

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 Trust will be subject to the criteria in NYSE Arca Equities Rule 8.700 for initial and continued listing of the Shares.

(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 administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, and 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.²⁹

(4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain futures contracts with other markets or other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and certain futures contracts from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain futures contracts from markets or other entities that are members of ISG or with which the Exchange has in place a CSSA. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain cash equivalents held by the Trust reported to FINRA's Trade Reporting and Compliance Engine.

(5) No more than 10% of the investments in futures contracts and listed swaps (calculated using the aggregate gross notional value of such futures and swaps) shall consist of futures contracts and listed swaps whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

(6) No more than 20% of the Trust's portfolio, measured by aggregate gross notional value, may be invested, on both

an initial and an ongoing basis, in OTC derivatives.

(7) Prior to the commencement of trading, the Exchange will inform its ETP Holders (as defined in NYSE Arca Equities Rule 1.1(n)) in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (i) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (ii) 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; (iii) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (iv) how information regarding the IIV and the Disclosed Portfolio is disseminated; (v) the risks involved in trading the Shares during the opening and late trading sessions when an updated IIV will not be calculated or publicly disseminated; and (iv) trading information.

(8) For the initial and continued listing of the Shares, the Trust must be in compliance with Rule 10A-3 under the Act.³⁰

(9) A minimum of 100,000 Shares will be outstanding at the start 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 Trust has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor³¹ for compliance with the continued listing requirements. If the Trust is not in

compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

With respect to the proposed amendments to NYSE Arca Equities Rule 8.700, the Commission notes that the proposal to permit the holding of additional types of futures contracts and swaps is consistent with the permissible holdings for other types of exchange-traded products.³² Moreover, the Commission notes that, even though the amended definition of "Managed Trust Securities" would expand the scope of permissible holdings for a trust, the Exchange must file a proposal under Section 19(b) of the Act before listing and trading separate and distinct Managed Trust Securities.³³ Finally, the Commission notes that the amended IIV dissemination requirement under NYSE Arca Equities Rule 8.700(e)(2)(A) is consistent with the current IIV dissemination requirement for other types of exchange-traded products.³⁴

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act³⁵ and Section 11A(a)(1)(C)(iii) of the Act³⁶ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 to 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

³² See, e.g., NYSE Arca Equities Rule 8.600, Commentary .01(d)-(e). The Commission notes that the proposal to specify a trust's ability to hold cash and cash equivalents is also consistent with the permissible holdings of other types of exchange-traded products. See, e.g., NYSE Arca Equities Rule 8.600, Commentary .01(c).

³³ See NYSE Arca Equities Rule 8.700(h).

³⁴ See, e.g., NYSE Arca Equities Rule 8.600(d)(2)(A). The Commission also believes that the proposed clarifying and conforming changes in NYSE Arca Equities Rule 8.700 are consistent with the Act.

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁰ See 17 CFR 240.10A-3.

³¹ The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of 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.

²⁹ The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2016–96 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–2016–96. 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 such filing will also 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–2016–96 and should be submitted on or before April 11, 2017.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of Amendment No. 3 in the **Federal Register**. The modifications and additional information in Amendment No. 3, such as clarifications regarding how the various limits on the Trust's permitted holdings would be calculated and expansion of the information provided regarding the Trust's Disclosed Portfolio, assisted the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause for

approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.³⁷

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR–NYSEArca–2016–96), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80252; File No. SR–NYSEArca–2017–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

March 15, 2017.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b–4 thereunder,³ notice is hereby given that, on March 10, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, 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 the NYSE Arca Options Fee Schedule (“Fee Schedule”). The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

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 purpose of this filing is to amend the Fee Schedule. Specifically, the Exchange proposes to modify the criteria for achieving various credits, including by broadening qualifying order flow and trading activity, to make the credits more achievable to a variety of market participants.

Currently, the Exchange provides a number of incentives for OTP Holders and OTP Firms (collectively, “OTPs”) designed to encourage OTPs to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. Among these incentives are enhanced posted liquidity credits based on achieving certain percentages of NYSE Arca Equity daily activity, also known as “cross-asset pricing.” In addition, certain of the qualifications for achieving these incentives are more tailored to specific activity (*i.e.*, posting in Penny Pilot issues only, or cross-asset pricing based only on levels of Retail Orders on the NYSE Arca Equity Market). In an effort to increase the opportunities for OTP Holders to achieve the incentives offered, the Exchange proposes a number of modifications as set forth below.

First, the Exchange proposes to modify the alternative qualification to Tier 7 of the Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues (“Tier 7”). Currently, OTPs are eligible to achieve a per contract credit of \$0.50 associated with Tier 7 provided the OTP has (i) at least 1.00% of Total Industry Customer equity and ETF option average daily volume (“TCADV”) from Customer and Professional Customer Posted Orders in all Issues; or (ii) at least 0.80% of TCADV from Customer and Professional Customer Posted Orders in all Issues