

*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-NYSE-2016-73 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-NYSE-2016-73. 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-NYSE-2016-73, and should be submitted on or before December 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-27596 Filed 11-16-16; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79293; File No. SR-NYSEArca-2016-107]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to, and Order Granting Accelerated Approval of, a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating To Listing and Trading of Shares of Cumberland Municipal Bond ETF under NYSE Arca Equities Rule 8.600**

**DATE:** November 10, 2016.

**I. Introduction**

On July 26, 2016, NYSE Arca, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the Cumberland Municipal Bond ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on August 15, 2016.<sup>3</sup> On September 15, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On September 27, 2016, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> On November 8, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>7</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 78523 (Aug. 9, 2016), 81 FR 54155 ("Notice").

<sup>4</sup> In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange: (1) Described additional diversification requirements that would apply to the Fund's holdings in municipal bonds; (2) clarified the Fund's holdings in non-exchange-traded investment company securities; and (3) corrected certain references to the regular trading session of the Exchange. Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2016-107/nysearca2016107-1.pdf>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 78949, 81 FR 68078 (Oct. 3, 2016). The Commission designated November 13, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>7</sup> In Amendment No. 2, which amended and replaced the proposed rule change, as modified by Amendment No. 1 thereto, in its entirety, the Exchange: (1) Described additional diversification criteria that would apply to the Fund's holdings in municipal bonds; and (2) clarified the Fund's

The Commission has not received any comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment No. 2 thereto, on an accelerated basis.

**II. The Exchange's Description of the Proposed Rule Change**

In its filing with the Commission, the Exchange 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 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 Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:<sup>8</sup> Cumberland Municipal Bond ETF (the "Fund"),<sup>9</sup> a

holdings in non-exchange-traded or other investment company securities. Amendment No. 2 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2016-107/nysearca2016107.shtml>.

<sup>8</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 a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>9</sup> The Securities and Exchange Commission ("Commission") has 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. 69591 (May 16, 2013), 78 FR 30372 (May 22, 2013) (SR-NYSEArca-2013-33) (order approving Exchange listing and trading of International Bear ETF); 69061 (March 7, 2013), 78 FR 15990 (March 13, 2013) (SR-NYSEArca-2013-01) (order approving Exchange listing and trading of Newfleet Multi-Sector Income ETF). The Commission has approved for Exchange listing and trading shares of two actively managed funds of the PIMCO ETF Trust that principally hold municipal bonds. See Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund). The Commission also has approved listing and trading on the Exchange of shares of the SPDR

Continued

<sup>16</sup> 17 CFR 200.30-3(a)(12).

series of the ETFs Series Trust I (“Trust”).<sup>10</sup>

The investment adviser to the Fund will be Virtus ETF Advisers LLC (the “Adviser”). The Fund’s sub-adviser will be Cumberland Advisors Inc. (“Sub-Adviser”). Virtus ETF Solutions LLC will serve as the Fund’s operational administrator. ETF Distributors LLC will serve as the distributor (the “Distributor”) of Fund Shares on an agency basis. The Bank of New York Mellon (the “Administrator”) will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

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.<sup>11</sup> In addition,

Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No.63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR–NYSEArca–2010–120).

<sup>10</sup>The Trust is registered under the 1940 Act. On May 20, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333–187668 and 811–22819) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30607 (July 23, 2013) (File No. 812–14080) (“Exemptive Order”). This Amendment No. 2 to SR–NYSEArca–2016–107 replaces SR–NYSEArca–2016–107 as originally filed and Amendment No. 1 thereto and supersedes such filings in their entirety.

<sup>11</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

Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser (but not the Sub-Adviser) is affiliated with one or more broker-dealers and the Adviser has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or Sub-Adviser become registered broker-dealers or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition 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.

#### Description of the Fund

##### Principal Investments

According to the Registration Statement, the Fund will seek to provide a competitive level of current income exempt from federal income tax, while preserving capital. The Fund, under normal market conditions,<sup>12</sup> will invest at least eighty percent (80%) of the Fund’s net assets in debt securities whose interest is, in the opinion of bond counsel for the issuer at the time of issuance, exempt from U.S. federal income tax (“Municipal Bonds”). The Sub-Adviser will invest the Fund’s assets using a barbell strategy, which means that the Sub-Adviser will overweight the Fund’s investments in Municipal Bonds with maturities on the short and long ends of the fixed income yield curve, while underweighting exposure to Municipal Bonds with intermediate maturities.

According to the Registration Statement, Municipal Bonds in which the Fund may invest include one or more of the following:

- General obligation bonds, which are typically backed by the full faith, credit, and taxing power of the issuer;

(who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>12</sup>The term “normal market conditions” is defined in NYSE Arca Equities Rule 8.600(c)(5).

- revenue bonds, which are typically secured by revenues generated by the issuer;

- discount bonds, which may be originally issued at a discount to par value or sold at market price below par value;

- premium bonds, which are sold at a premium to par value;

- zero coupon bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity; and

- private activity bonds, which are typically issued by or on behalf of local or state government for the purpose of financing the project of a private user.

The Fund will have no target duration for its investment portfolio, and the Sub-Adviser may target a shorter or longer average portfolio duration based on the Sub-Adviser’s forecast of interest rates and view of fixed-income markets generally.<sup>13</sup> The Sub-Adviser will generally apply a heavier weight toward Municipal Bonds with shorter maturities during periods of high interest rates and longer maturities during periods of lower interest rates. At least 80% of the weight of the Fund’s assets will be in Municipal Bonds with a modified duration of 15 years or less.

With respect to credit quality, under normal market conditions, at least 90% of the Fund’s assets invested in Municipal Bonds will be in Municipal Bonds rated “A” or better by at least one major credit rating agency or, if unrated, deemed to be of comparable quality in the Adviser’s opinion. From time to time, the Fund may concentrate in particular sectors; however, the Fund’s investments will be diversified among a minimum of ten distinct Municipal Bond sectors.<sup>14</sup> In addition, the Fund will limit its investments in Municipal Bonds in any single sector to 25% of the Fund’s assets. The Fund may sell investments for a variety of reasons, such as to adjust the portfolio’s average maturity, duration, or overall credit quality, or to shift assets into and out of higher-yielding or lower-yielding securities or certain sectors.

Under normal market conditions, each Municipal Bond held by the Fund

<sup>13</sup>Duration measures the interest rate sensitivity of a debt security by assessing and weighting the present value of the security’s payment pattern. Generally, the longer the maturity, the greater the duration and, therefore, the greater effect interest rate changes have on the price of the security.

<sup>14</sup>The Fund’s investments in Municipal Bonds will include investments in state and local (e.g., county, city, town) Municipal Bonds relating to such sectors as the following: Dedicated tax; public power; tax increment; toll road; port revenue; airport revenue; water revenue; sewer revenue; higher education (colleges and universities); wastewater revenue; school districts; sales tax revenue; and pre-refunded bonds.

must be a constituent of a deal where the deal's original offering amount was at least \$100 million. The Fund will hold a minimum of 75 different Municipal Bonds. No Municipal Bond held by the Fund will exceed 4% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 10% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 40 non-affiliated issuers diversified among issuers in at least 20 different states, with no more than 30% of the Fund's assets comprised of Municipal Bonds that provide exposure to any single state.<sup>15</sup>

According to the Registration Statement, under normal market conditions, at least 80% of the Fund's income will be exempt from federal income taxes. However, a significant portion of the Fund's income could be derived from securities subject to the alternative minimum tax.

#### Other Investments

While the Fund, under normal market conditions, will invest at least eighty percent (80%) of its assets in Municipal Bonds, as described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in equity securities, both directly and indirectly through investment in shares of exchange-traded funds ("ETFs"),<sup>16</sup> money market funds, and other types of securities and instruments described below. The equity portion of the Fund's portfolio may include common stocks traded on securities exchanges or in the over-the-counter ("OTC") market. In addition to common stocks, the equity portion of the Fund's portfolio may also include exchange-traded and OTC preferred stocks, and exchange-traded and OTC warrants.<sup>17</sup>

<sup>15</sup> For purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, will be treated as separate issuers of Municipal Bonds.

<sup>16</sup> The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

<sup>17</sup> With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group ("ISG") or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the

The Fund may purchase taxable municipal bonds when the Sub-Adviser believes they offer opportunities for the Fund, or variable rate demand notes (VRDNs) that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates.

The Fund may invest in exchange-traded and OTC securities convertible into common stock. Such securities are the following: Convertible bonds and convertible preferred stocks.<sup>18</sup>

The Fund may invest directly and indirectly in cash equivalents, namely, money market instruments that are the following: U.S. Government obligations or corporate debt obligations (including those subject to repurchase agreements); banker's acceptances<sup>19</sup> and certificates of deposit<sup>20</sup> of domestic branches of banks, commercial paper,<sup>21</sup> and master notes.<sup>22</sup>

In order to maintain sufficient liquidity, to implement investment strategies or for temporary defensive purposes, the Fund may invest a significant portion of its assets in shares of one or more money market funds. Generally, money market mutual funds are registered investment companies that seek to earn income consistent with the preservation of capital and maintenance of liquidity by investing primarily in high quality money market instruments.

aggregate invested in equity securities (except for money market funds) will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement. See note 34, *infra*.

<sup>18</sup> The criteria in note 16 above also will apply to exchange-traded convertible preferred stocks and exchange-traded stocks into which convertible bonds may be converted.

<sup>19</sup> Banker's acceptances are time drafts drawn on and "accepted" by a bank. When a bank "accepts" such a time draft, it assumes liability for its payment. When the Fund acquires a banker's acceptance, the bank that "accepted" the time draft is liable for payment of interest and principal when due. The banker's acceptance carries the full faith and credit of such bank.

<sup>20</sup> A certificate of deposit is an unsecured, interest bearing debt obligation of a bank.

<sup>21</sup> Commercial paper is an unsecured, short-term debt obligation of a bank, corporation, or other borrower. Commercial paper maturity generally ranges from two to 270 days and is usually sold on a discounted basis rather than as an interest-bearing instrument. The Fund will invest directly in commercial paper only if it is rated in one of the top two rating categories by Moody's, S&P or Fitch or, if not rated, is of equivalent quality in the Adviser's opinion. Commercial paper may include master notes of the same quality. Master notes are unsecured obligations which are redeemable upon demand of the holder and which permit the investment of fluctuating amounts at varying rates of interest.

<sup>22</sup> Master notes may be acquired by the Fund through the master note program of the Fund's custodian bank.

The Fund may invest in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.<sup>23</sup>

The Fund may write U.S. exchange-traded call and put options on securities, ETFs or security indexes to seek income or may purchase or write U.S. exchange-traded put or call options for hedging purposes.

The Fund may purchase securities on a when-issued basis or for settlement at a future date (forward commitment) if the Fund holds sufficient liquid assets to meet the purchase price.

Additionally, the Trust, on behalf of the Fund, has claimed an exclusion from the definition of the term "commodity pool operator" pursuant to Rule 4.5 under the Commodity Exchange Act, as amended (the "CEA"). Therefore, the Fund is not subject to regulation or registration as a commodity pool operator under the CEA.

#### Investment Restrictions

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. 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 assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>24</sup>

<sup>23</sup> 15 U.S.C. 80a-12(d)(1)(E), (F) and (G).

<sup>24</sup> 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

The Fund will seek to qualify for treatment as a regulated investment company under the Internal Revenue Code of 1986.<sup>25</sup>

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in "Creation Units" on a continuous basis through the Distributor, at their net asset value ("NAV") next determined after receipt, on any business day, for an order received in proper form. All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of Shares (50,000 Shares per Creation Unit). The Creation Unit size is subject to change. Cash creations will be the default mechanism for creation of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for creation of Shares, upon approval of the Distributor. In such case, the consideration for purchase of a Creation Unit of the Fund generally will consist of an in-kind deposit of "Deposit Securities" for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and a "Cash Component" computed as described below. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit", which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.*, the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component will be such negative amount, and the creator will be entitled to receive cash from the

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 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 1933 Act).

<sup>25</sup> 26 U.S.C. 851.

Fund in an amount equal to the Cash Component. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

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., Eastern Time), 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. Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

The identity and number of Shares of the Deposit Securities required for the Fund Deposit for the Fund will change as rebalancing adjustments and corporate action events occur from time to time. In addition, 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 that may not be available in sufficient quantity for delivery, that may not be eligible for transfer or that may not be eligible for trading by an "Authorized Participant" (as described below) or the investor for which it is acting.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through NSCC, also will make available on each business day the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

#### Procedures for Creation of Creation Units

To be eligible to place orders to create a Creation Unit of the Fund, an entity must be (i) a "Participating Party", *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of NSCC (the "Clearing Process") or a clearing agency that is registered with the Commission, or (ii) a Depositary Trust Company ("DTC") Participant and, in each case, must have executed an agreement with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units ("Participant Agreement"). A Participating Party and

DTC Participant are collectively referred to as an "Authorized Participant".

All orders to create Creation Units must be received by the Distributor no later than the close of the Core Trading Session on the Exchange (ordinarily 4:00 p.m., Eastern Time), 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.

#### Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. Cash redemptions will be the default mechanism for redemptions of Shares.

However, the Fund will retain the ability to utilize an in-kind mechanism for redemption of Shares, upon approval of the Distributor. In such case, the redemption proceeds for a Creation Unit generally consist of Deposit Securities, as announced by the Administrator on the business day of the request for redemption received in proper form, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Deposit Securities (the "Cash Redemption Amount"), less a redemption transaction fee. In the event that the Deposit Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

With respect to the Fund, the Administrator, through NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Deposit Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Deposit Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

If it is not possible to effect deliveries of the Deposit Securities, the Trust may in its discretion exercise its option to redeem such shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in

cash which the Fund may, in its sole discretion, permit.<sup>26</sup> In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, to offset the Trust's brokerage and other transaction costs associated with the disposition of Deposit Securities).

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the Exchange is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the Exchange is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares' NAV is not reasonably practicable; or (4) in such other circumstance as is permitted by the Commission.

#### Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be determined as of the close of the Core Trading Session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each day that the Exchange is open. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The pricing and valuation of portfolio securities will be determined in good faith in accordance with procedures approved by, and under the direction of, the Trust's Board of Trustees ("Board"). In determining the value of the Fund's assets, equity securities will be generally valued at market using quotations from the primary market in which they are traded. Debt securities (other than short-term investments) will be valued on the basis of broker quotes or valuations provided by a pricing

service, which in determining value will utilize information regarding recent sales, market transactions in comparable securities, quotations from dealers, and various relationships between securities. Other assets, such as accrued interest, accrued dividends and cash also will be included in determining the NAV. The Fund normally will use third party pricing services to obtain portfolio security prices.

Municipal Bonds, money market instruments, convertible bonds, taxable municipal bonds, and VRDNs will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in fixed-income instruments in the respective market.

Exchange-traded equity securities, including common stocks, ETFs, preferred stocks, convertible preferred stocks and warrants, will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. If market prices are unavailable or the Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Trust's Board.

Equity securities traded in the OTC market, including common stocks, preferred stocks, and warrants, will be valued at the last reported sale price on the valuation date. OTC traded convertible preferred stocks will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Securities of money market funds will be valued at NAV.

Option contracts will be valued at their most recent sale price on the applicable exchange. If no such sales are reported, these contracts will be valued at their most recent bid price.

To the extent the assets of the Fund are invested in other open-end investment companies that are registered under the 1940 Act, the Fund's NAV will be calculated based upon the NAVs reported by such registered open-end investment companies.

Securities and assets for which market quotations are not readily available or which cannot be accurately valued

using the Fund's normal pricing procedures will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. Fair value pricing may be used, for example, in situations where (i) portfolio securities, such as securities with small capitalizations, are so thinly traded that there have been no transactions for that security over an extended period of time; (ii) an event occurs after the close of the exchange on which a portfolio security is principally traded that is likely to change the value of the portfolio security prior to the Fund's NAV calculation; (iii) the exchange on which the portfolio security is principally traded closes early; or (iv) trading of the particular portfolio security is halted during the day and does not resume prior to the Fund's NAV calculation. The Board will monitor and evaluate the Fund's use of fair value pricing, and periodically reviews the results of any fair valuation under the Trust's policies.

#### Availability of Information

The Fund's Web site ([www.cumberetfs.com](http://www.cumberetfs.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 Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>27</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 on the Exchange (ordinarily 9:30 a.m., Eastern Time), the Fund's Web site will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>28</sup>

<sup>27</sup> The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>28</sup> Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business

<sup>26</sup> The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

The Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of Shares of the Fund will normally be determined as of the close of the Core Trading Session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each business day. Authorized Participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise the Fund's basket on a given day.

The approximate value of the Fund's investments on a per-Share basis, the Indicative Intra-Day Value ("IIV"), will be disseminated every 15 seconds during the Exchange Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time). The IIV should not be viewed as a "real-time" update of NAV because the IIV will be calculated by an independent third party and may not be calculated in the exact same manner as NAV, which will be computed daily.

The IIV for the Fund will be calculated by dividing the "Estimated Fund Value" as of the time of the calculation by the total number of outstanding Shares. "Estimated Fund Value" is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owing to the Fund and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund's Web site. In

day the portfolio that will form the basis for the NAV calculation at the end of the business day.

determining the estimated value for each of the component securities, the IIV will use last sale, market prices or other methods that would be considered appropriate for pricing securities held by registered investment companies.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's shareholder reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be 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 for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the Consolidated Tape Association ("CTA") high-speed line, and from the national securities exchange on which they are listed. Price information regarding non-U.S. exchange-traded equity securities held by the Fund will be available from the exchanges trading such assets.

Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds, taxable municipal bonds, convertible bonds, OTC traded convertible preferred stocks, corporate debt obligations, VRDNs, and cash equivalents. Price information for money market funds will be available from the applicable investment company's Web site and from market data vendors. Intra-day and closing price information for OTC equity securities will be available from major market data vendors. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Quotation and last sale information for exchange-traded options will be available via the Options Price Reporting Authority and from the applicable U.S. options exchange. In addition, the IIV, (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market

data vendors.<sup>29</sup> The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>30</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. 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 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., Eastern Time 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.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the

<sup>29</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

<sup>30</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>31</sup> under the 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<sup>32</sup> as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

#### 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, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>33</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.<sup>34</sup>

FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity

securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options and certain exchange-traded equity securities 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 FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board ("MSRB") relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca 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 IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

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

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>35</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 and traded 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 trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in

<sup>35</sup> 15 U.S.C. 78f(b)(5).

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

<sup>32</sup> The term "Disclosed Portfolio" is defined in NYSE Arca Equities Rule 8.600(c)(2).

<sup>33</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>34</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 may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

the Shares, options and certain exchange-traded equity securities 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. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Fund may not purchase or hold illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid assets. The Adviser and Sub-Adviser are not registered as broker-dealers but the Adviser is affiliated with one or more broker-dealers and has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Fund's investments in Municipal Bonds will be well-diversified in that, under normal market conditions, the Fund will hold a minimum of 75 different Municipal Bonds; no Municipal Bond held by the Fund will exceed 4% of the weight of the Fund's portfolio; no single Municipal Bond issuer will account for more than 10% of the weight of the Fund's portfolio; and the Fund will hold Municipal Bonds of a minimum of 40 non-affiliated issuers, diversified among issuers in at least 20 different states, with no more than 30% of the Fund's assets comprised of Municipal Bonds that provide exposure to any single state. In addition, each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least \$100 million. The Fund's investments will be diversified among a minimum of ten distinct Municipal Bond sectors and the Fund will limit its investments in Municipal Bonds in any single sector to 25% of the Fund's assets.

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 and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last

sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the CTA high-speed line, and from the national securities exchange on which they are listed. The Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Moreover, prior to the commencement of trading, the Exchange will inform its Equity 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 Equities 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. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, 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 additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed

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

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that principally holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Discussion and Commission Findings**

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>36</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>37</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>38</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares and the underlying U.S. exchange-traded equity securities will be available via the CTA high-speed line, and from the

<sup>36</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>37</sup> 15 U.S.C. 78f(b)(5).

<sup>38</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

national securities exchange on which they are listed.

The approximate value of the Fund's investments on a per-Share basis, the IIV (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be disseminated every 15 seconds during the Exchange Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time) by one or more major market data vendors.<sup>39</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange (ordinarily 9:30 a.m., Eastern Time), the Fund's Web site will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>40</sup> In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of Shares of the Fund will normally be determined as of the close of the Core Trading Session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each business day. Authorized Participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise the Fund's basket on a given day.

Information regarding market price and trading volume of the Shares will be

continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, price information regarding non-U.S. exchange-traded equity securities held by the Fund will be available from the exchanges trading such assets. Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds, taxable municipal bonds, convertible bonds, OTC traded convertible preferred stocks, corporate debt obligations, VRDNs, and cash equivalents. Price information for money market funds will be available from the applicable investment company's Web site and from market data vendors. Intra-day and closing price information for OTC equity securities will be available from major market data vendors. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Quotation and last-sale information for exchange-traded options will be available via the Options Price Reporting Authority and from the applicable U.S. options exchange. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities 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,<sup>41</sup> and trading in

the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted.

The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, Commentary .06 to NYSE Arca Equities Rule 8.600 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, non-public information regarding the open-end fund's portfolio. The Exchange represents that the Adviser and Sub-Adviser are not registered as broker-dealers; however, the Adviser (but not the Sub-Adviser) is affiliated with one or more broker-dealers, and the Adviser has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition of, or changes to, the portfolio.<sup>42</sup>

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>43</sup> The Commission believes that the Exchange's initial and continued listing requirements, combined with the Fund's investment criteria that would apply to Municipal Bonds in the portfolio, are designed to mitigate the potential for price manipulation of the Shares.

The Exchange represents that it deems the Shares to be equity securities, thus rendering the trading of 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 additional representations:

may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

<sup>39</sup> See *supra* note 11.

<sup>40</sup> The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement. See *supra* note 33.

<sup>39</sup> The Exchange represents that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds. According to the Exchange, the IIV for the Fund will be calculated by dividing the "Estimated Fund Value" as of the time of the calculation by the total number of outstanding Shares. "Estimated Fund Value" is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owing to the Fund, and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund's Web site. In determining the estimated value for each of the component securities, the IIV will use last sale, market prices, or other methods that would be considered appropriate for pricing securities held by registered investment companies.

<sup>40</sup> The Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

<sup>41</sup> These reasons may include: (1) The extent to which trading is not occurring in the securities or 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. With respect to trading halts, the Exchange

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

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

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. These surveillances 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.

(4) FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options, and certain exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or regulatory staff of the Exchange, may obtain trading information regarding trading in the Shares, options, and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, options, and certain exchange-traded equity securities 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 FINRA's Trade Reporting and Compliance Engine. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The

procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV and the Disclosed Portfolio is disseminated; (e) 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 (f) trading information. The Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

(6) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>44</sup>

(7) At least 80% of the weight of the Fund's assets will be in Municipal Bonds with a modified duration of 15 years or less. With respect to credit quality, under normal market conditions, at least 90% of the Fund's assets invested in Municipal Bonds will be in Municipal Bonds rated "A" or better by at least one major credit rating agency or, if unrated, deemed to be of comparable quality in the Adviser's opinion.

(8) The Fund's Municipal Bond investments will be diversified among a minimum of ten distinct Municipal Bond sectors.<sup>45</sup> In addition, the Fund will limit its investments in Municipal Bonds in any single sector to 25% of the Fund's assets.

(9) Under normal market conditions, each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least \$100 million. The Fund will hold a minimum of 75 different Municipal Bonds. No Municipal Bond held by the Fund will exceed 4% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 10% of the weight of the Fund's portfolio. The

<sup>44</sup> See 17 CFR 240.10A-3.

<sup>45</sup> The Fund's investments in Municipal Bonds will include investments in state and local (e.g., county, city, town) Municipal Bonds relating to such sectors as the following: Dedicated tax; public power; tax increment; toll road; port revenue; airport revenue; water revenue; sewer revenue; higher education (colleges and universities); wastewater revenue; school districts; sales tax revenue; and pre-refunded bonds.

Fund will hold Municipal Bonds of a minimum of 40 non-affiliated issuers diversified among issuers in at least 20 different states, with no more than 30% of the Fund's assets comprised of Municipal Bonds that provide exposure to any single state.<sup>46</sup>

(10) The ETFs in which the Fund may invest will be registered under the 1940 Act and will be listed and traded in the U.S. on registered exchanges. With respect to its exchange-traded equity securities investments (including exchange-traded convertible preferred stocks and exchange-traded stocks into which convertible bonds may be converted), the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (except for money market funds) will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(11) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. 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 assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

(12) The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

The Exchange also represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules

<sup>46</sup> For purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, will be treated as separate issuers of Municipal Bonds.

and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>47</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>48</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-107 on the subject line.

<sup>47</sup> The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>48</sup> 15 U.S.C. 78f(b)(5).

##### *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-2016-107. 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-2016-107 and should be submitted on or before December 8, 2016.

#### V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 2 Thereto

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2 thereto, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. Amendment No. 2 supplements the proposed rule change by, among other things, incorporating additional diversification criteria to the Fund's investments in Municipal Bonds. Specifically, the Exchange represents that the Fund would adhere to certain investment restrictions, including but not limited to, the following:

- (1) The Fund's Municipal Bond investments will be diversified among a

minimum of ten distinct Municipal Bond sectors.

- (2) The Fund will limit its investments in Municipal Bonds in any single sector to 25% of the Fund's assets.

- (3) Each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least \$100 million.

- (4) The Fund will hold a minimum of 75 different Municipal Bonds.

- (5) No Municipal Bond held by the Fund will exceed 4% of the weight of the Fund's portfolio, and no single Municipal Bond issuer will account for more than 10% of the weight of the Fund's portfolio.

- (6) The Fund will hold Municipal Bonds of a minimum of 40 non-affiliated issuers diversified among issuers in at least 20 different states, with no more than 30% of the Fund's assets comprised of Municipal Bonds that provide exposure to any single state.

The Commission believes that the addition of these investment restrictions helps to ensure that the proposed listing and trading of the Shares is consistent with the portion of Section 6(b)(5) of the Act,<sup>49</sup> which requires that the rules of a national securities exchange must be designed to, among other things, prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>50</sup> to approve the proposed rule change, as modified by Amendment No. 2 thereto, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>51</sup> that the proposed rule change (SR-NYSEArca-2016-107), as modified by Amendment No. 2 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

**Brent J. Fields,**  
*Secretary.*

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<sup>49</sup> 15 U.S.C. 78f(b)(5).

<sup>50</sup> 15 U.S.C. 78s(b)(2).

<sup>51</sup> *Id.*

<sup>52</sup> 17 CFR 200.30-3(a)(12).