

section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>3</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the

limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016-31684 Filed 12-29-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79683; File No. SR-NYSEArca-2016-82]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To List and Trade Shares of the JPMorgan Diversified Event Driven ETF Under NYSE Arca Equities Rule 8.600

December 23, 2016.

#### I. Introduction

On June 20, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and

Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the JPMorgan Diversified Event Driven ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on July 7, 2016.<sup>3</sup> On August 18, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On the same day, 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 September 1, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>7</sup> On

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

<sup>3</sup> See Securities Exchange Act Release No. 78218 (Jul. 1, 2016), 81 FR 44339 ("Notice").

<sup>4</sup> In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange clarified: (a) Certain aspects relating to the Fund's investment strategy, including descriptions of (i) certain return factors that the Fund seeks to utilize to achieve its investment objective, (ii) the Fund's total net long market exposure, (iii) the Fund's use of derivative instruments and its market exposure to such instruments, and (iv) the Fund's investments in mutual funds; (b) that the common stock into which convertible securities held by the Fund can be converted will be exchange-traded; (c) that the Fund may invest no more than 5% of its assets, in the aggregate, in over-the-counter ("OTC") common stocks, preferred stocks, warrants, rights, and contingent value rights ("CVRs") of U.S. and foreign corporations (including emerging market securities); (d) the redemption order submission cut-off time; (e) that no more than 10% of the net assets of the Fund will be invested in *Depository Receipts (as defined herein)* that are not exchange-listed; and (f) the use of certain defined terms. Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2016-82/nysearca201682-1.pdf>. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

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

<sup>6</sup> See Securities Exchange Act Release No. 78610, 81 FR 57960 (Aug. 24, 2016). The Commission designated October 5, 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 partially amended the proposed rule change, as modified by Amendment No. 1 thereto, the Exchange clarified (a) the Fund's holdings in mutual fund shares as the only non-exchange-traded investment company securities the Fund may hold, and (b) that Depository Receipts (as defined herein) are included as equity securities subject to the 10% limitation on equity securities 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. Amendment No. 2 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2016-82/nysearca201682-2.pdf>. Because Amendment No. 2 to the proposed rule change does not materially alter the substance of the proposed rule change or

<sup>3</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

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

September 2, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>8</sup> On October 5, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>9</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto.<sup>10</sup> The Commission has received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto.

## II. Exchange's Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Fund is a series of J.P. Morgan Exchange-Traded Fund Trust ("Trust"), a Delaware statutory trust.<sup>11</sup> J.P. Morgan Investment Management Inc. ("Adviser") will be the investment adviser to the Fund. The Adviser will also provide administrative services for, and will oversee the other service providers of, the Fund. SEI Investments Distribution Co. will be the distributor of the Fund's Shares. The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer and has

raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

<sup>8</sup>In Amendment No. 3, which partially amended the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, the Exchange (a) made conforming changes to the Statutory Basis section of the filing to reflect the same changes made by Amendment No. 2 to the proposed rule change, and (b) clarified a reference to the term "advisor" to mean "Adviser." Amendment No. 3 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2016-82/nysearca201682-3.pdf>. Because Amendment No. 3 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment.

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>10</sup> See Securities Exchange Act Release No. 79052, 81 FR 70455 (Oct. 12, 2016). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." See *id.*, 81 FR at 70459.

<sup>11</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). The Exchange states that, on April 22, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 ("Securities Act") and the 1940 Act relating to the Fund (File Nos. 333-191837 and 811-22903) ("Registration Statement"). The Exchange also notes that an exemptive order ("Exemptive Order") was issued under the 1940 Act on February 19, 2016. The Exchange represents that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.<sup>12</sup>

The Fund will seek to provide long-term total return and will seek to achieve its investment objective by employing an event-driven investment strategy, primarily investing in companies that the Adviser believes will be impacted by pending or anticipated corporate or special situation events. Under normal market conditions,<sup>13</sup> the Fund will seek to achieve its investment objective by employing its investment strategy to access certain "return factors." The Fund will invest its assets globally to gain exposure to equity securities (across market capitalizations) in developed markets. The Fund may use both long and short positions (achieved primarily through the use of derivative instruments as described below). The Fund generally will maintain a total net long market exposure, meaning that the Fund's aggregate exposure will be greater to instruments that the Adviser expects to outperform. However, the Fund may have net long or net short exposure to one or more industry sectors, individual markets, and/or currencies based on the return factors.

The Adviser will make use of derivatives (as described below) in implementing its strategies. Under normal market conditions, the Adviser currently expects that a significant portion of the Fund's exposure will be attained through the use of derivatives in addition to its exposure through direct investments. Derivatives will primarily be used as an efficient means of implementing a particular strategy in order to gain exposure to a desired return factor. For example, the Fund

<sup>12</sup> The Exchange further represents that, in the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of, and 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.

<sup>13</sup> The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as cyber-attacks, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

may use a total return swap to establish both long and short positions in order to gain the desired exposure rather than physically purchasing and selling short each instrument. Derivatives may also be used to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments, and/or for risk management. As a result of the Fund's use of derivatives and to serve as collateral, the Fund may hold significant amounts of U.S. Treasury obligations, including Treasury bills, bonds and notes and other obligations issued or guaranteed by the U.S. Treasury, other short-term investments, including money market funds, and foreign currencies, in which certain derivatives are denominated.

The amount that may be invested in any one instrument will vary and generally depend on the return factors employed by the Adviser at that time. However, with the exception of specified investment limitations for certain assets described below, there are no stated percentage limitations on the amount that can be invested in any one type of instrument, and the Adviser may, at times, focus on a smaller number of instruments. Moreover, the Fund will generally be unconstrained by any particular capitalization, style, or sector, and may invest in any developed region or country. The Adviser will make use of quantitative models and information and data supplied by third parties to, among other things, help determine the portfolio's weightings among various investments and construct sets of transactions and investments.

In addition to its main return factors, the Fund may utilize return factors that use debt securities. The Fund may invest, either directly or through financial derivative instruments, debt securities that are subject to a downgrade from investment grade to non-investment grade (also known as high yield/junk bond) status. For example, the Fund may invest in the bonds that have been downgraded while hedging credit risk more broadly by using credit default swaps indices in order to attempt to keep the Fund's exposure market neutral.

The Exchange has made the following representations and statements in describing the Fund.<sup>14</sup>

<sup>14</sup> The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value ("NAV"), fees, distributions, and taxes, among other things, can be found in the Notice, Amendment Nos. 1, 2, and 3, and the Registration Statement, as applicable. See *supra* notes 3, 4, 7, 8, and 11, respectively, and accompanying text.

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

Under normal market conditions, the Fund will invest principally (*i.e.*, more than 50% of the Fund's assets) in the securities and financial instruments described below, which may be represented by derivatives, as discussed below.

The Fund may invest in exchange-listed and traded common stocks, preferred stocks, warrants and rights of U.S. and foreign corporations (including emerging market securities), and U.S. and non-U.S. real estate investment trusts ("REITs"). Exchange-listed and traded common stocks, preferred stocks, warrants and rights of U.S. corporations, and U.S. REITs will be traded on U.S. national securities exchanges.

The Fund may invest in exchange-listed and OTC "Depository Receipts"<sup>15</sup> as described below.

The Fund may invest in the following cash and cash equivalents: Investments in money market funds (for which the Adviser and/or its affiliates serve as investment adviser or administrator), bank obligations,<sup>16</sup> commercial paper, repurchase agreements, and short-term funding agreements.<sup>17</sup>

The Fund may invest in corporate debt.<sup>18</sup>

In addition to money market funds referenced above, the Fund may invest in shares of non-exchange-traded investment company securities, that is, mutual fund shares, including mutual fund shares for which the Adviser and/or its affiliates may serve as investment adviser or administrator, to the extent permitted by Section 12(d)(1)<sup>19</sup> of the 1940 Act and the rules thereunder.

In addition, the Fund may invest in exchange traded funds ("ETFs"),<sup>20</sup>

<sup>15</sup> Depository Receipts include American Depository Receipts ("ADRs"), Global Depository Receipts ("GDRs") and European Depository Receipts ("EDRs"). No more than 10% of the net assets of the Fund will be invested in Depository Receipts that are not exchange-listed.

<sup>16</sup> Bank obligations include the following: Bankers' acceptances, certificates of deposit, and time deposits.

<sup>17</sup> Short-term funding agreements are agreements issued by banks and highly rated U.S. insurance companies such as Guaranteed Investment Contracts and Bank Investment Contracts.

<sup>18</sup> The Adviser expects that, under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least \$100,000,000 par amount outstanding in developed countries, or at least \$200,000,000 par amount outstanding in emerging market countries.

<sup>19</sup> 15 U.S.C. 80a-12(d)(1).

<sup>20</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

purchase and sell futures contracts on indexes of securities, invest in swaps (credit default swaps ("CDSs"), CDS indices, and total return swaps on equity securities, equity indexes, fixed income securities, and fixed income futures), invest in forward and spot currency transactions<sup>21</sup> (such investments consist of non-deliverable forwards ("NDFs"), foreign forward currency contracts, and spot currency transactions), and invest in OTC and exchange-traded call and put options on equities, fixed income securities, and currencies or options on indexes of equities, fixed income securities, and currencies.

The Fund may invest in U.S. Government obligations, which may include direct obligations of the U.S. Treasury, including Treasury bills, notes and bonds, all of which are backed as to principal and interest payments by the full faith and credit of the United States, and separately traded principal and interest component parts of such obligations that are transferable through the Federal book-entry system known as Separate Trading of Registered Interest and Principal of Securities and Coupons Under Book Entry Safekeeping.

### B. Exchange's Description of the Fund's Other Investments

While the Fund, under normal market conditions, will invest at least fifty percent (50%) of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in U.S. and non-U.S. convertible securities, which are bonds or preferred stock that can convert to common stock. The common stock into which convertible securities can be converted will be exchange-traded.

The Fund may invest in reverse repurchase agreements.

The Fund may invest in sovereign obligations, which are investments in debt obligations issued or guaranteed by a foreign sovereign government or its agencies, authorities, or political subdivisions.

The Fund may invest no more than 5% of its assets in equity and debt securities that are restricted securities

be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.*, 2X, -2X, 3X, or -3X) ETFs.

<sup>21</sup> The Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD \$1 billion as determined by the Bank for International Settlements ("BIS") Triennial Central Bank Survey.

(Rule 144A securities), in addition to Rule 144A securities deemed illiquid by the Adviser, as referenced below.

Under normal market conditions, the Fund may invest no more than 5% of its assets, in the aggregate, in OTC common stocks, preferred stocks, warrants, rights, and CVRs of U.S. and foreign corporations (including emerging market securities).<sup>22</sup>

### C. Exchange's Description of the Fund's Investment Restrictions

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

The Fund may invest in other investment companies to the extent permitted by Section 12(d)(1) of the 1940 Act and rules thereunder and/or any applicable exemption or exemptive order under the 1940 Act with respect to such investments.

The Fund may invest in securities denominated in U.S. dollars, major reserve currencies, and currencies of other countries in which the Fund may invest.

The Fund may invest in both investment grade and high yield debt securities.

The Fund intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M of the Internal Revenue Code. Furthermore, the Fund may not concentrate investments in a particular industry or group of industries, as concentration is defined under the 1940 Act, the rules or regulations thereunder,

<sup>22</sup> The Exchange further represents that not more than 10% of the net assets of the Fund, in the aggregate, invested in equity securities (other than mutual fund shares) shall consist of equity securities, including common stock into which convertible securities can be converted and Depository Receipts, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. *See* Amendment No. 2 to the proposed rule change, *supra* note 7.

or any exemption therefrom, as such statute, rules, or regulations may be amended or interpreted from time to time.

The Fund is a diversified series of the Trust. The Fund intends to meet the diversification requirements of the 1940 Act.

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).<sup>23</sup>

#### *D. Exchange's Description of the Fund's Use of Derivatives*

The Fund proposes to seek certain exposures through transactions in the specific derivative instruments described above. The derivatives to be used are futures, swaps, NDFs, foreign forward currency contracts, and call and put options. Derivatives, which are instruments that have a value based on another instrument, exchange rate, or index, may also be used as substitutes for securities in which the Fund can invest. The Fund may use these derivative instruments to increase gain, to effectively gain targeted exposure from its cash positions, to hedge various investments, and/or for risk management.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or "earmark" assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the

risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>24</sup> Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

#### *E. Exchange's Description of the Impact on the Arbitrage Mechanism*

The Exchange states that, according to the Adviser, there will be minimal impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

In addition, the Exchange states that, according to the Adviser, there will not be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a "cash in lieu" amount when the Fund processes purchases or redemptions of creation units in-kind.

### **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>25</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>26</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>27</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 for portfolio holdings of the Fund that are U.S. exchange listed, including common stocks, preferred stocks, warrants, rights, ETFs, REITs, and U.S. exchange-traded ADRs will be available via the Consolidated Tape Association ("CTA") high speed line. Quotation and last-sale information for such U.S. exchange-listed securities, as well as futures, also will be available from the exchange on which they are listed. Quotation and last-sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority, and quotation and last-sale information for non-U.S. equity securities (including GDRs and EDRs) will be available from the exchanges on which they trade and from major market data vendors, as applicable.

In addition, the Intra-day Indicative Value ("IIV"), which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>28</sup> According to the Exchange, a third party market data provider will calculate the IIV for the Fund. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- NDFs and foreign forward currency contracts may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- CDS and CDS indices swaps may be valued using intraday data from market

<sup>23</sup> The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

<sup>24</sup> To mitigate leveraging risk, the Adviser will segregate or "earmark" liquid assets or otherwise cover the transactions that may give rise to such risk.

<sup>25</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>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>28</sup> According to the Exchange, several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange-listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options may be valued intraday through option valuation models (e.g., Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

On each business day, before commencement of trading in Shares in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., Eastern Time or "E.T.") on the Exchange, the Adviser will disclose on the Fund's Web site the Disclosed Portfolio for the Fund as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>29</sup> According to the Exchange, the Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser 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, such as the type of swap); 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.

The NAV of Shares, under normal market conditions, will be calculated each business day as of the close of the Exchange, which is typically 4:00 p.m.

<sup>29</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

E.T. On occasion, the Exchange will close before 4:00 p.m. E.T. When that happens, NAV will be calculated as of the time the Exchange closes.<sup>30</sup>

Price information for OTC common stocks (including certain OTC ADRs), preferred stocks, warrants, rights, and CVRs will be available from one or more major market data vendors or broker-dealers in the securities. Quotation information for OTC options, cash equivalents, swaps, money market funds, non-exchange-listed investment company securities (other than money market funds), Rule 144A securities, U.S. Government obligations, U.S. Government agency obligations, sovereign obligations, corporate debt, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments, and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Forwards and spot currency price information will be available from major market data vendors. 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 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

<sup>30</sup> Securities for which market quotations are readily available will generally be valued at their current market value. Other securities and assets, including securities for which market quotations are not readily available or market quotations are determined not to be reliable; or, if their value has been materially affected by events occurring after the close of trading on the exchange or market on which the security is principally traded but before the Fund's NAV is calculated, may be valued at fair value in accordance with policies and procedures adopted by the Trust's Board of Trustees. Fair value represents a good faith determination of the value of a security or other asset based upon specifically applied procedures. Fair valuation may require subjective determinations. See Notice, *supra* note 3, 81 FR at 44344 (describing additional details with respect to the Fund's NAV valuation methodology).

been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,<sup>31</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 is not registered as a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.<sup>32</sup> The Commission also notes that, pursuant to NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the "Reporting Authority" that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to

<sup>31</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 may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

<sup>32</sup> See *supra* note 12. The Exchange further notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>33</sup>

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. The Exchange represents that that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>34</sup>

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:

(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) The Exchange's surveillance 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.

(4) The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-listed equity securities (including Depositary Receipts, ETFs, REITs, common and preferred stocks, common stock into which convertible securities can be converted, warrants, rights, certain futures, and certain exchange-traded options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial

instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>35</sup> 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.

(5) Not more than 10% of the net assets of the Fund, in the aggregate, invested in equity securities (other than mutual fund shares) shall consist of equity securities, including common stock into which convertible securities can be converted and Depositary Receipts, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. In addition, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options shall consist of futures contracts or options whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(6) 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.

(7) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>36</sup>

(8) Exchange-listed and traded common stocks, preferred stocks, warrants and rights of U.S. corporations, and U.S. REITs will be traded on U.S. national securities exchanges. In addition, no more than 10% of the net assets of the Fund will be invested in Depositary Receipts that are not exchange-listed, and the common stock into which convertible securities holdings can be converted will be exchange-traded.

(9) 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 Depositary 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. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X, or -3X) ETFs.

(10) The Adviser expects that, under normal market conditions, the Fund will invest at least 75% of its corporate debt securities in issuances that have at least \$100,000,000 par amount outstanding in developed countries, or at least \$200,000,000 par amount outstanding in emerging market countries.

(11) The Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD \$1 billion as determined by the BIS Triennial Central Bank Survey.

(12) The Fund may invest no more than 5% of its assets in equity and debt securities that are restricted securities (Rule 144A securities), in addition to Rule 144A securities deemed illiquid by the Adviser. In addition, under normal market conditions, the Fund may invest no more than 5% of its assets, in the aggregate, in OTC common stocks, preferred stocks, warrants, rights, and CVRs of U.S. and foreign corporations (including emerging market securities).

(13) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

<sup>33</sup> "Reporting Authority" is defined in NYSE Arca Equities Rule (c)(4).

<sup>34</sup> The Exchange represents that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and the Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>35</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>36</sup> See 17 CFR 240.10A-3.

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.

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

(15) Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or "earmark" assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>37</sup>

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

<sup>37</sup>To mitigate leveraging risk, the Adviser will segregate or "earmark" liquid assets or otherwise cover the transactions that may give rise to such risk.

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>38</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,<sup>39</sup> Amendment Nos. 1, 2 and 3 to the proposed rule change,<sup>40</sup> 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 on an initial and continued basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, is consistent with Section 6(b)(5) of the Act<sup>41</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change (SR-NYSEArca-2016-82), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved.

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

**Robert W. Errett,**

*Deputy Secretary.*

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<sup>38</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>39</sup> *See supra* note 3.

<sup>40</sup> *See supra* notes 4, 7, and 8.

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> *Id.*

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79687; File No. SR-NASDAQ-2016-183]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Shorten the Settlement Cycle From T+3 to T+2

December 23, 2016.

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> notice is hereby given that on December 22, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Nasdaq Rules 11140 (Transactions in Securities "Ex-Dividend," "Ex-Rights" or "Ex-Warrants"), 11150 (Transactions "Ex-Interest" in Bonds Which Are Dealt in "Flat"), 11210 (Sent by Each Party), 11320 (Dates of Delivery), 11620 (Computation of Interest), and IM-11810 (Sample Buy-In Forms), to conform to the Commission's proposed amendment to SEA Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date ("T+3") to two business days after the trade date ("T+2") and the industry-led initiative to shorten the settlement cycle from T+3 to T+2.<sup>3</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements

<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. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016) (Amendment to Securities Transaction Settlement Cycle) (File No. S7-22-16) ("SEC Proposing Release").