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

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

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

The Exchange has designated this proposed rule change as non-controversial under Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiving the operative delay would be consistent with the protection of investors and the public interest because the proposed rule change would immediately align the Exchange's rules with those of the other Participants.[17] The Commission believes that synchronizing the timing for publication of Appendix B data for all Participants should enhance the consistency and usefulness of the data.[18] Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[19]

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* note 12.

[18] *See* Exemptive Relief II, *supra* note 8.

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

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSENAT–2017–03 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–NYSENAT–2017–03. 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–NYSENAT–2017–03 and should be submitted on or before August 25, 2017.

[20] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–16404 Filed 8–3–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81267; File No. SR–NYSEArca–2017–36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt NYSE Arca Equities Rule 8.900 To Permit Listing and Trading of Managed Portfolio Shares and To List and Trade Shares of the Royce Pennsylvania ETF; Royce Premier ETF; and Royce Total Return ETF Under Proposed NYSE Arca Equities Rule 8.900

July 31, 2017.

On April 14, 2017, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Adopt NYSE Arca Equities Rule 8.900 (Managed Portfolio Shares); and (2) list and trade shares (''Shares'') of the Royce Pennsylvania ETF, Royce Premier ETF, and Royce Total Return ETF under proposed NYSE Arca Equities Rule 8.900. The proposed rule change was published for comment in the **Federal Register** on May 4, 2017.[3] On June 15, 2017, pursuant to Section 19(b)(2) of the Act,[4] 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

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80553 (April 28, 2017), 82 FR 20932 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

rule change.[5] The Commission has received four comments on the proposed rule change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.

Summary of the Exchange's Description of the Proposed Rule Change [8]

The Exchange proposes to adopt new NYSE Arca Equities Rule 8.900, which would govern the listing and trading of ''Managed Portfolio Shares.'' [9] The Exchange also proposes to list and trade the Shares of the Royce Pennsylvania ETF, Royce Premier ETF, and Royce Total Return ETF under proposed NYSE Arca Equities Rule 8.900 (each a ''Fund,'' and collectively the ''Funds'').

A. Description of the Funds

The portfolio for each Fund will consist of long and/or short positions in U.S.-listed securities and shares issued by other U.S.-listed exchange-traded funds (''ETFs'').[10] All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges.

1. Royce Pennsylvania ETF

The Royce Pennsylvania ETF will invest primarily in U.S.-listed equity securities of small-cap companies with market capitalizations up to $3 billion that Royce & Associates, LP (''Royce''), the Fund's investment sub-adviser, believes are trading below the sub-adviser's estimate of their current worth. The Fund may invest in other investment companies that invest in equity securities. The Fund may sell securities to, among other things, secure gains, limit losses, re-deploy assets into what Royce deems to be more promising opportunities, and/or manage cash levels in the Fund's portfolio.

2. Royce Premier ETF

The Royce Premier ETF will invest in a limited number of U.S.-listed equity securities of primarily small-cap companies with market capitalizations from $1 billion to $3 billion at the time of investment. The Fund may invest in other investment companies that invest in equity securities. The Fund may sell securities to, among other things, secure gains, limit losses, re-deploy assets into what Royce deems to be more promising opportunities, and/or manage cash levels in the Fund's portfolio.

3. Royce Total Return ETF

The Royce Total Return ETF will invest primarily in dividend-paying U.S.-listed securities of small-cap companies with market capitalizations up to $3 billion that the sub-adviser believes are trading below its estimate of their current worth. The Fund may invest in other investment companies that invest in equity securities. The Fund may sell securities to, among other things, secure gains, limit losses, re-deploy assets into what Royce deems to be more promising opportunities, and/or manage cash levels in the Fund's portfolio.

4. Other Investments

According to the Exchange, while each Fund, under normal market conditions, will invest primarily in U.S.-listed securities, as described above, each Fund may invest its remaining assets in other securities and financial instruments as follows: (i) Repurchase agreements; [11] (ii) warrants, rights, and options (limited to 5% of total assets); (iii) cash or cash equivalents; [12] and (iv) other investment companies (including money market funds).

5. Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment),[13] consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are invested in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Funds will not invest in futures, forwards, or swaps. Further, each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs. Finally, the Funds will not invest in non-U.S.-listed securities.

[5] *See* Securities Exchange Act Release No. 80935, 82 FR 28152 (June 20, 2017). The Commission designated August 2, 2017, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] *See* Letter from Gary L. Gastineau, President, ETF Consultants.com, Inc., to Brent J. Fields, Secretary, Commission, dated May 24, 2017 (''Gastineau Letter''); Letter from Todd J. Broms, Chief Executive Officer, Broms & Company LLC, to Brent J. Fields, Secretary, Commission, dated May 25, 2017 (''Broms Letter''); Letter from James J. Angel, Associate Professor of Finance, Georgetown University, McDonough School of Business, to the Commission, dated May 25, 2017 (''Angel Letter''); and Terence W. Norman, Founder, Blue Tractor Group, LLC, to Brent J. Fields, Secretary, Commission, dated July 18, 2017 (''Norman Letter''). The comment letters are available on the Commission's Web site at: ***https://www.sec.gov/comments/sr-nysearca-2017-36/nysearca201736.htm.***

[7] 15 U.S.C. 78s(b)(2)(B).

[8] For a complete description of the Exchange's proposal, including a description of the Precidian ETFs Trust (''Trust''), *see* the Notice *supra* note 3.

[9] Proposed NYSE Arca Equities Rule 8.900(c)(1) defines the term ''Managed Portfolio Share'' as a security that (a) is issued by a registered investment company organized as an open-end management investment company (''Investment Company'') or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; and (b) when aggregated in a number of shares equal to a Redemption Unit (as defined in proposed NYSE Arca Equities Rule 8.900(c)(3)) or multiples thereof, may be redeemed at the request of an authorized participant (as defined in the Investment Company's Form N–1A filed with the Commission), which authorized participant will be paid through a confidential account (''Confidential Account'') established for its benefit a portfolio of securities and/or cash with a value equal to the next determined net asset value (''NAV'').

[10] The Exchange represents that, for purposes of the filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs in which a Fund will invest all will be listed and traded on national securities exchanges. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.,* 2X, -2X, 3X, or -3X) ETFs.

[11] The Exchange states that it will be the policy of the Trust to enter into repurchase agreements only with recognized securities dealers, banks, and the Fixed Income Clearing Corporation.

[12] The Exchange states that for purposes of the filing, cash equivalents include short-term instruments (instruments with maturities of less than 3 months) of the following types: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[13] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

B. Key Features of Managed Portfolio Shares

While Investment Companies issuing Managed Portfolio Shares would be actively-managed, and in that respect would be similar to those issuing Managed Fund Shares,[14] Managed Portfolio Shares would differ from Managed Fund Shares in the following respects.

• First, issues of Managed Fund Shares are required to disseminate their ''Disclosed Portfolio'' at least once daily.[15] By contrast, the portfolio for an issue of Managed Portfolio Shares would be disclosed only quarterly.

• Second, in connection with the redemption of shares in ''Redemption Unit'' size, the delivery of any portfolio securities in kind would be effected through a Confidential Account for the benefit of the redeeming authorized participant without disclosing the identity of the securities to the authorized participant.

• Third, for each series of Managed Portfolio Shares, a Verified Intraday Indicative Value (''VIIV'') would be disseminated by one or more major market-data vendors every second during the Exchange's Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., Eastern Time (''E.T.'')).[16] The Exchange states that dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.[17]

C. Arbitrage of Managed Portfolio Shares

The Exchange asserts that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as a VIIV is disseminated every second, market makers have knowledge of a Fund's means of achieving its investment objective, and market makers are permitted to engage in ''bona fide arbitrage,'' as described below. According to the Exchange, market makers would employ bona fide arbitrage in addition to risk-management techniques such as ''statistical arbitrage,'' [18] which the Exchange states is currently used throughout the financial services industry to make efficient markets in ETFs.

Moreover, according to the Exchange, if an authorized participant believes that Shares of a Fund are trading at a price that is higher than the value of the underlying portfolio—for example, if the market price for the Shares is higher than the VIIV—then the authorized participant may sell Shares of the Fund short and instruct its ''Trusted Agent'' [19] to buy portfolio securities for its Confidential Account. When the market price of the Shares falls in line with the value of the portfolio, the authorized participant can then close out its positions in both the Shares and the portfolio securities. According to the Exchange, the authorized participant's purchase of the portfolio securities into its Confidential Account, combined with the sale of Shares, may create downward pressure on the price of Shares and/or upward pressure on the price of the portfolio securities, bringing the market price of Shares and the value of a Fund's portfolio securities closer together.

Similarly, according to the Exchange, an authorized participant could buy Shares and instruct the Trusted Agent to sell the underlying portfolio securities from its Confidential Account in an attempt to profit when a Fund's Shares are trading at a discount to its portfolio. According to the Exchange, the authorized participant's purchase of a Fund's Shares in the secondary market, combined with the sale of the portfolio securities from its Confidential Account, may create upward pressure on the price of Shares and/or downward pressure on the price of portfolio securities, driving the market price of Shares and the value of a Fund's portfolio securities closer together. The Exchange states that, according to Precidian Funds LLC (''Adviser''), the investment adviser to the Trust, this process is identical to how many authorized participants currently arbitrage existing traditional ETFs, except for the use of the Confidential Account.

According to the Exchange, a market participant that is not an authorized participant would also be able to establish a Confidential Account and could engage in arbitrage activity without using the creation or redemption processes described above. If such a market participant believes that a Fund is overvalued relative to its underlying assets, the Exchange states, that market participant could sell Shares short and instruct its Trusted Agent to buy portfolio securities in its Confidential Account and then wait for the trading prices to move toward parity and close out the positions in both the Shares and the portfolio securities to realize a profit from the relative movement of their trading prices. Similarly, according to the Exchange, this market participant could buy Shares and instruct the Trusted Agent to sell the underlying portfolio securities in an attempt to profit when a Fund's Shares are trading at a discount to a Fund's underlying or reference assets.

D. The Creation and Redemption Procedures

The Exchange states that, generally, Shares will be purchased and redeemed on an in-kind basis, so that, except where the purchase or redemption will include cash under the circumstances described in the applicable Fund's registration statement, purchasers will be required to purchase ''Creation Units'' by making an in-kind deposit of

[14] Managed Fund Shares are shares of actively-managed Investment Companies listed and traded under NYSE Arca Equities Rule 8.600.

[15] NYSE Arca Equities Rule 8.600(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day. NYSE Arca Equities Rule 8.600(d)(2)(B)(i) requires that, for Managed Fund Shares, the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[16] Proposed NYSE Arca Equities Rule 8.900(c)(2) defines the VIIV as the estimated indicative value of a Managed Portfolio Share based on all of the issuer's holdings as of the close of business on the prior business day, priced and disseminated in one second intervals, and subject to validation by a pricing verification agent of the Investment Company that is responsible for comparing multiple independent pricing sources to establish the accuracy of the VIIV. The specific methodology for calculating the VIIV will be disclosed on each Fund's Web site.

[17] According to the Exchange, the VIIV should not be viewed as a ''real-time'' update of the NAV per Share of each Fund, because the VIIV may not be calculated in the same manner as the NAV, which will be computed once a day, generally at the end of the business day.

[18] According to the Exchange, statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing the trader to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations has been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making correction where warranted.

[19] Proposed Commentary .04 to NYSE Arca Equities Rule 8.900 requires that authorized participants and non-authorized participant market makers redeeming Managed Portfolio Shares sign an agreement with an agent (''Trusted Agent'') to establish a Confidential Account, for the benefit of such authorized participant or non-authorized participant market maker, that will receive all consideration from the issuer in a redemption. A Trusted Agent may not disclose the consideration received in a redemption except as required by law or as provided in the Investment Company's Form N–1A, as applicable.

specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments''). On any given business day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.''

In the case of a redemption, a Fund's custodian (''Custodian'') will typically deliver securities to the Confidential Account on a *pro rata* basis with a value approximately equal to the value of the Shares tendered for redemption at the order cut-off time established by the Fund. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the authorized participant's Confidential Account, subject to delivery of the Shares redeemed. The Trusted Agent of the Confidential Account will in turn liquidate, hedge, or otherwise manage the securities based on instructions from the authorized participant.[20]

If the Trusted Agent is instructed to sell all securities received at the close on the redemption date, the Trusted Agent will pay the liquidation proceeds net of expenses, plus or minus any cash balancing amount, to the authorized participant through DTC.[21] The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund *pro rata.*

E. Availability of Information

Each Fund will be required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act, and to file its complete portfolio schedules for the first and third fiscal quarters on Form N–Q under the 1940 Act, within 60 days of the end of the quarter. Form N–Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. The Trust's SAI and each Fund's shareholder reports will be available free upon request from the Trust. These documents and forms may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.*

In addition, the VIIV will be widely disseminated by one or more major market-data vendors at least every second during the Exchange's Core Trading Session through the facilities of the Consolidated Tape Association. According to the Exchange, the VIIV will include all accrued income and expenses of a Fund and will assure that any extraordinary expenses, booked during the day, that would be taken into account in calculating a Fund's NAV for that day are also taken into account in calculating the VIIV.

For purposes of the VIIV, securities held by a Fund will be valued throughout the day based on the mid-point between the disseminated current national best bid and offer. According to the Exchange, by utilizing the mid-point pricing for purposes of VIIV calculation, stale prices are eliminated and more accurate representation of the real-time value of the underlying securities is provided to the market. Specifically, according to the Exchange, quotations based on the mid-point of bid/ask spreads more accurately reflect current market sentiment by providing real time information on where market participants are willing to buy or sell securities at that point in time. The Exchange also believes that the use of quotations will dampen the impact of any momentary spikes in the price of a portfolio security.

According to the Exchange, each Fund will utilize two independent pricing sources to provide pricing information. Each Fund will also utilize a ''Pricing Verification Agent'' and establish a computer-based protocol that will permit the Pricing Verification Agent to continuously compare the two data streams from the independent pricing sources on a real time basis.[22] A single VIIV will be disseminated publicly for each Fund; however, the Pricing Verification Agent will continuously compare the public VIIV against a non-public alternative intra-day indicative value to which the Pricing Verification Agent has access. If it becomes apparent that there is a material discrepancy between the two data streams, according to the proposal, the Exchange will be notified and have the ability to halt trading in a Fund until the discrepancy is resolved.[23] Each Fund's board of directors will review the procedures used to calculate the VIIV and maintain its accuracy as appropriate, but not less than annually. The specific methodology for calculating the VIIV will be disclosed on each Fund's Web site.

F. Surveillance

The Exchange represents 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. 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.[24]

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[20] The Exchange represents that an authorized participant will issue execution instructions to the Trusted Agent and be responsible for all associated profit or losses. Like a traditional ETF, the authorized participant has the ability to sell the basket securities at any point during normal trading hours.

[21] According to the Exchange, under applicable provisions of the Internal Revenue Code, the authorized participant is expected to be deemed a ''substantial owner'' of the Confidential Account because it receives distributions from the Confidential Account. As a result, the Exchange states, all income, gain, or loss realized by the Confidential Account will be directly attributed to the authorized participant. The Exchange also states that, in a redemption, the authorized participant will have a basis in the distributed securities equal to the fair market value at the time of the distribution, and any gain or loss realized on the sale of those Shares will be taxable income to the authorized participant.

[22] A Fund's Custodian will provide, on a daily basis, the constituent basket file comprised of all securities plus any cash to the independent pricing agent(s) for purposes of pricing.

[23] Proposed Rule 8.900(d)(2)(C) provides that, upon notification to the Exchange by the Investment Company or its agent that (i) the prices from the multiple independent pricing sources to be validated by the Investment Company's Pricing Verification Agent differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV, or (ii) that the VIIV of a series of Managed Portfolio Shares is not being priced and disseminated in one-second intervals, as required, the Exchange will halt trading in the Managed Portfolio Shares as soon as practicable. The halt in trading would continue until the Investment Company or its agent notifies the Exchange that the prices from the independent pricing sources no longer differ by more than 25 basis points for 60 seconds or that the VIIV is being priced and disseminated as required. The Investment Company or its agent would be responsible for monitoring that the VIIV is being priced and disseminated as required and whether the prices to be validated from multiple independent pricing sources differ by more than 25 basis points for 60 seconds.

[24] The Exchange states that these surveillances generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. The Exchange represents that the Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding such securities from such markets and other entities. In addition, the

Continued

The Exchange represents that the Funds' Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above. In addition, the Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

II. Summary of Comment Letters

The Commission has received four comment letters on the proposed rule change, each of which express opposition to the proposed rule change.[25] As of the date of this order instituting proceedings, the Exchange has not submitted a response to the comments.

A. *Gastineau Letter.*[26] The commenter opposes approval of the proposed rule change and recommends imposition of a number of requirements in the event the proposed rule change and exemptive application are approved. As an initial matter, the commenter believes that the proposed selective disclosure of Fund portfolio holdings information to Trusted Agents trading on behalf of Confidential Account holders would constitute insider trading and would violate Federal securities laws.

In addition, the commenter asserts that market makers will face significant impediments to successfully arbitrage the Shares and predicts that this will lead to the Shares trading at wider bid-ask spreads and more variable premiums/discounts than actively-managed ETFs available today. First, the commenter questions the Exchange's assertion that the VIIV will provide an adequate basis for ensuring a Fund's ongoing price value alignment and secondary market trading efficiency. In evaluating the Exchange's statements regarding VIIVs, the commenter asserts that their utility should be compared not to the intraday indicative values (''IIVs'') of existing ETFs but rather to the independently derived, real-time estimates of underlying fund value that ETF market makers use today to identify arbitrage opportunities and manage their risks (''MM IIVs''). The commenter asserts that, because existing actively managed ETFs (and most index ETFs) provide full daily disclosure of their current portfolio, market makers of transparent funds have access to far better information about the current value of fund holdings than the proposed VIIVs would provide and, correspondingly, VIIVs will be significantly less precise than MM IIVs. The commenter also asserts that MM IIVs include significant information that would not be reflected in VIIVs, noting as follows:

- In calculating VIIVs, Fund securities would be valued based on the mid-point between the current national best bid and offer quotations. The commenter characterizes the bid-ask midpoint as a ''fairly crude valuation metric'' that does not capture important trading information incorporated into MM IIVs, such as the current bid-ask spread, the depth of the current order book on the bid and offer side of the market, and the predominance of current trading between bid-side and offer-side transactions.
- VIIVs would be calculated and disseminated every second and, while this interval may seem sufficient, MM IIVs are updated in fractions of a second (milliseconds or microseconds).
- The VIIV verification process would leave significant room for dissemination of erroneous values. For example, a Fund's Pricing Verification Agent would take no action to address observed discrepancies in VIIV input prices until the calculated Fund values differ by at least 25 bps for 60 seconds. The commenter characterizes that disparity as ''huge,'' asserting that it would be wider than the customary bid-ask spread of most domestic equity ETFs.
- The VIIV process would not address all potential intraday valuation errors. The commenter describes that corporate actions must be accurately reflected in the VIIV, which can be challenging, and market makers would not be able to verify that corporate actions are appropriately reflected in a Fund's VIIVs because of the non-transparent portfolio.
- The process for adjusting VIIVs in the event of trading halts in portfolio securities is cumbersome and likely to result in errors in disseminated VIIVs. Throughout a halt, which may be protracted, the Fund would continue to disseminate VIIVs that do not reflect fair values of the halted security, and therefore may vary significantly from the Fund's true underlying value at that time. The commenter asserts that MM IIVs would almost certainly arrive at a fair estimate of a Fund's current underlying value far faster than the VIIV specified process.

The commenter asserts that reliance on faulty VIIVs may expose market makers to unrecoverable losses, noting that: (1) Neither the Exchange nor its agents nor the Reporting Authority would be liable for disseminating erroneous VIIVs; and (2) the circumstances under which the independent pricing sources and the Pricing Verification Agent are legally liable for such errors are limited. According to the commenter, market makers' forced reliance on VIIVs to determine intraday Fund valuations is a source of significant incremental risk for them versus making markets in existing ETFs. The commenter predicts that this will result in the Shares trading at wider bid-ask spreads and more variable premiums and discounts to NAV than similar existing ETFs.

The commenter also criticizes the Confidential Accounts structure. The commenter asserts that, compared to the usual manner in which market makers in existing ETFs engage in arbitrage and buy and sell Creation Basket instruments, the Confidential Accounts arrangement exposes market makers to significant additional costs, risks, and lost opportunities, including:

- Less control over trade execution and trade order management when implementing portfolio hedging and Creation Unit transactions, which will result in more cost and risk, and less profit opportunity.
- No ability for market makers to use their market knowledge and market positions to enhance arbitrage profits and minimize costs.
- Reduced incentive for third-party service providers to trade expeditiously and with low market impact.
- Little or no ability for market makers to monitor trading in Confidential Accounts to ensure best execution or to evaluate trading performance.
- Forced *pro rata* hedging, which the commenter states is very often not the best hedge. Sub-optimal hedging results in less efficient arbitrage.
- Given the more-involved routing of trade instructions and trade orders that the Confidential Account structure would necessitate, the commenter states that hedging and Creation Unit instrument transactions through Confident Accounts will almost certainly take longer, on average, for a market maker to execute than similar transactions that the market maker executes internally. According to the commenter, slower executions may translate into less efficient arbitrage.
- Potentially significant explicit costs to establish and maintain Confidential Accounts.

Additionally, the commenter questions the Exchange's statements

Exchange may obtain information regarding trading in the Shares, underlying stocks, ETFs and exchange-listed options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[25] *See supra* note 6.

[26] The Gastineau Letter is available at: *https://www.sec.gov/comments/sr-nysearca-2017-36/nysearca201736-1773725-152542.pdf.*

regarding the efficiency and utility of statistical arbitrage. The commenter states that while market makers may be able to gain some useful information about a Fund's current composition by knowing the Fund's investment objective and tracking performance correlations over time versus a known index, the amount of portfolio information that can be gleaned using this approach is limited. The commenter states that, as a result, any portfolio hedge constructed using this information would be subject to meaningful basis risk, especially during times of market stress or volatility.

The commenter expresses concerns regarding data security, misappropriation, and misuse of a Fund's confidential portfolio information in light of the dissemination of this data across a potentially broad network of Trusted Agents, affiliated broker-dealers, and other Confidential Account service providers. The commenter also raises concerns regarding the possibility that market participants could use the VIIV to reverse-engineer the Funds' portfolio holdings, subjecting the Funds to the dilutive effects of front-running. The commenter asserts that ''it is far from a settled question that the Funds would not ever be susceptible to reverse engineering.''

B. *Broms Letter.*[27] The commenter opposes the proposed rule change. The commenter asserts that the proposed selective disclosure of confidential Fund holdings information to Trusted Agents for trading on behalf of Confidential Account holders would violate Federal securities laws. In addition, the commenter believes that the mechanism for ensuring secondary market trading efficiency in the Shares is ''unreliable'' and predicts that the Shares will likely trade at significantly wider bid-ask spreads and/or more variable premiums/discounts than existing ETFs. The commenter also expresses concerns regarding the following:

• The likelihood that the Shares' trading performance will be especially poor during periods of market stress and volatility.

• The ability of the Fund to ensure the security of confidential information disseminated to Trusted Agents.

• Potentially significant added Fund costs and risks associated with calculating, verifying, and disseminating the VIIV and associated Fund warranties.

• The potential for frequent Share trading halts.

• The likely incidence of erroneous Share trades and the absence of an Exchange program to detect and remedy such trades.

• The potential for reverse engineering of a Fund's portfolio holdings.

• The tax risk due to the Funds' distinctive in-kind redemption program.

• The costs, risk, and uncertainties to broker-dealers serving as authorized participants and non-authorized participant market makers in meeting their compliance obligations with respect to securities traded on their behalf through Confidential Accounts.

C. *Angel Letter.*[28] The commenter opposes the proposal. The commenter believes that the opaque nature of the products will make arbitrage more difficult and the added costs and risks will lead to wider deviations of the market price from the underlying asset value. In addition, the commenter raises concerns that the Funds may fare worse than traditional ETFs during times of market disruption given their opacity and the complexity of the arbitrage relationship between the Funds and the underlying securities. The commenter also expresses concern that selective disclosure of portfolio information could raise issues under Regulation FD and that the use of Confidential Accounts could raise issues under Regulation SHO.

In addition, the commenter expresses the following concerns:

• It is unclear whether a firm's risk management would have access to the contents of Confidential Accounts. If a firm's risk management does not have access to such information, the firm would be subject to too much risk, but if the firm's risk management does have access, information barriers would create compliance issues.

• Positions held in the Confidential Account not closed out by the end of the day would have to be settled, and that the settlement information would be available to settlement personnel.

• The Trusted Agents would have serious compliance burdens, and that these burdens could drive up the cost of being a Trusted Agent, which would subsequently drive up the cost of arbitrage. Higher costs and compliance risks would severely limit the number of firms willing to take on the burden of becoming Trusted Agents, and the resulting lack of competition could lead to higher fees and inferior service. In the event that there were many Trusted Agents, the likelihood of data breaches would increase.

In addition, the commenter believes that the VIIV calculations are dangerously flawed because they rely on sometimes flawed bid-ask quotes. The commenter believes that the VIIV calculations should instead be based on the last trade, and if the underlying market is closed or the underlying asset has not traded recently, then a reasonable fair value methodology should be used.

D. *Norman Letter.*[29] The commenter opposes the proposed rule change. The commenter refutes the Trust's statistical analysis that purports to demonstrate that the Funds' portfolio compositions could not be reverse engineered.[30] The commenter's analysis concludes that reverse engineering of a Fund's portfolio is in fact ''achievable with a substantial degree of accuracy.''[31] The commenter also asserts that, without knowledge of a Fund's underlying stocks, market makers may be unable to hedge their risks, which would result in wider and more persistent spreads or the market maker choosing not to make a market in the Shares. In addition, the commenter questions the sufficiency of disseminating the VIIV at one-second intervals, given that high frequency trading takes place in milliseconds, and raises concerns about potential systems failures that may disrupt the dissemination of VIIV. Finally, the commenter also believes that selective disclosure of portfolio information to Trusted Agents would violate Federal securities laws, and expresses concern regarding the security of confidential portfolio information.

III. Proceedings to Determine Whether To Approve or Disapprove SR–NYSEArca–2017–36 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[32] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is

[27] The Broms Letter is available at: *https://www.sec.gov/comments/sr-nysearca-2017-36/nysearca201736-1772689-152536.pdf.*

[28] The Angel Letter is available at: *https://www.sec.gov/comments/sr-nysearca-2017-36/nysearca201736-1774133-152313.pdf.*

[29] The Norman Letter is available at: *https://www.sec.gov/comments/sr-nysearca-2017-36/nysearca201736-1863492-156216.pdf.*

[30] *See* Third Amended and Restated Application for an Order under Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14405), dated May 2, 2017, at Exhibit E (''Additional Research on the Ability to Reverse Engineer the Proposed Precidian ETF,'' by Ricky Alyn Cooper, Ph.D., dated August 2015).

[31] *See* Norman Letter, Appendix One (''The Reverse Engineering of Portfolio Compositions,'' by Dr. Anthony Hayter, dated July 17, 2017).

[32] 15 U.S.C. 78s(b)(2)(B).

appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[33] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting 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, . . . 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.'' [34]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[35]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by August 25, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 8, 2017.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[36] in addition to any other comments they may wish to submit about the proposed rule change. Specifically, the Commission seeks comment on the statements of the Exchange contained in the Notice, the issues raised by the commenters, and any other issues raised by the proposed rule change. In addition, the Commission seeks comment on whether the trading of the Shares would be consistent with the maintenance of fair and orderly markets. In this regard, the Commission specifically seeks comment regarding market makers' ability to make markets in the Shares and the sufficiency of the proposed VIIV as pricing information to market participants. Further, the Commission solicits comments on whether the selective disclosure of portfolio holdings to a Trusted Agent, as well as the non-transparent structure of the Funds, could result in any information asymmetry that would be inconsistent with the Act or other Federal securities laws or rules and regulations thereunder.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2017–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEArca–2017–36. 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 these filings 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–2017–36 and should be submitted on or before August 25, 2017. Rebuttal comments should be submitted by September 8, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Eduardo A. Aleman,

Assistant Secretary.

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[33] *Id.*

[34] 15 U.S.C. 78f(b)(5).

[35] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[36] *See supra* note 3.

[37] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81268; File No. SR–NYSEARCA–2017–79]

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

July 31, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 20, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.