

Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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

No written comments were either solicited or received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> 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)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing.<sup>10</sup> However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> 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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without

interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.<sup>12</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>13</sup>

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)<sup>14</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2018-22 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-MRX-2018-22. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2018-22 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-83546; File No. SR-NYSEArca-2018-40]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Investments of the REX BKCM ETF**

June 28, 2018.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 26, 2018, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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

The Exchange proposes certain changes regarding investments of the REX BKCM ETF, shares of which are currently listed on the Exchange under NYSE Arca Rule 8.600-E ("Managed Fund Shares"). The proposed change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

#### 1. Purpose

The Exchange proposes certain changes, described below under "Application of Generic Listing Requirements", regarding investments of the REX BKCM ETF ("Fund"), shares ("Shares") of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600-E, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange. Shares of the Fund commenced trading on the Exchange on May 16, 2018 in accordance with the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600-E.

The Fund is a series of the Exchange Listed Funds Trust ("Trust").<sup>5</sup> Exchange

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

<sup>5</sup> The Trust is registered under the 1940 Act. On May 7, 2018, the Trust filed with the Commission

Traded Concepts, LLC ("Adviser") is the investment adviser to the Fund. BKCM LLC ("BKCM") and Vident Investment Advisory, LLC are the sub-advisers ("Sub-Advisers") to the Fund. Foreside Fund Services, LLC ("Distributor") is the distributor of the Fund's Shares. BNY Mellon serves as the Fund's transfer agent and custodian. BNY Mellon and UMB Fund Services ("UMBFS") serve as administrators to the Fund ("Administrator").<sup>6</sup>

Commentary .06 to Rule 8.600-E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition,

an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Fund (File Nos. 333-180871 and 811-22700) (the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Trust will file an amendment to the Registration Statement as necessary to conform to representations in this filing. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30445 (April 2, 2013) ("Exemptive Order"). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

<sup>6</sup> The Commission has previously approved listing and trading on the Exchange of other series of Managed Fund Shares under Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 79683 (December 23, 2016) (SR-NYSEArca-2016-82) (order approving a proposed rule change to list and trade shares of the JPMorgan Diversified Event Driven ETF under NYSE Arca Equities Rule 8.600); 77904 (May 25, 2016) (SR-NYSEArca-2016-17) (order approving a proposed rule change to list and trade of shares of the JPMorgan Diversified Alternatives ETF under NYSE Arca Equities Rule 8.600).

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

Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Advisers are not registered as broker-dealers or affiliated with a broker-dealer. In the event (a) the Adviser or a Sub-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 and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### REX BKCM ETF

##### Principal Investments

According to the Registration Statement, the Fund's investment objective is to seek total return. The Fund will seek to achieve its investment objective, under normal market conditions,<sup>8</sup> by obtaining investment exposure to an actively managed portfolio consisting of equity securities of cryptocurrency-related and other blockchain technology-related companies.

According to the Registration Statement, in implementing the Fund's investment strategy, BKCM will seek to identify companies utilizing blockchain technologies to generate present or future revenue from their core business. A company will only be eligible for inclusion in the portfolio to the extent that BKCM determines the company has committed material resources to the development of such revenue stream. Cryptocurrency-related companies mine, trade, or promote the mainstream adoption of cryptocurrencies or provide trading venues for cryptocurrencies and other blockchain applications. Other blockchain technology-related companies utilize blockchain technology in connection with disrupting traditional financial transaction mechanisms, develop enterprise blockchain solutions, or use

implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>8</sup> The term "normal market conditions" is defined in NYSE Arca Rule 8.600-E(c)(5).

blockchain technology to decentralize user data and enhance privacy on the internet.

The Fund, through its “Subsidiary”, (as described below), may invest up to 15% of its total assets in the following over-the-counter (“OTC”) equity securities: shares of the Bitcoin Investment Trust (“GBTC”).<sup>9</sup> The Subsidiary’s investment in GBTC will be reflected in the net asset value of the Fund’s Shares based on the closing price of GBTC on OTCQX Best Marketplace.

The Fund expects to obtain exposure to certain investments, including GBTC, by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund’s taxable year, in a wholly-owned and controlled Cayman Islands subsidiary (“Subsidiary”), as described below in “Investment in the Subsidiary”.

The Fund and the Subsidiary may invest in the securities of non-exchange-traded open-end investment companies (*i.e.*, mutual funds).

As discussed below under “Application of Generic Listing Requirements” below, with the exception of the Subsidiary’s holdings of shares of GBTC and the Fund’s and the Subsidiary’s investment in non-exchange-traded open-end investment company securities, the Fund’s and the Subsidiary’s investment in equity securities will satisfy the requirements of Commentary .01(a) of NYSE Arca Rule 8.600–E.

The Fund and the Subsidiary may hold fixed income securities. Such holdings will comply with the criteria in Commentary .01(b) of NYSE Arca Rule 8.600–E.

The Fund and the Subsidiary may hold cash and cash equivalents. Such holdings will comply with the criteria in Commentary .01(c) of NYSE Arca Rule 8.600–E.

<sup>9</sup> The Bitcoin Investment Trust is a private, open-ended trust available to accredited investors that derives its value from the price of bitcoin. Shares of GBTC are restricted securities that may not be resold except in transactions exempt from registration under the Securities Act. On March 4, 2016, GBTC submitted to the Commission an amended Form D as a business trust. Shares of GBTC have been quoted on OTC Markets Group, Inc.’s (“OTC Markets”) OTCQX Best Marketplace under the symbol “GBTC” since March 26, 2015. On April 2, 2018, GBTC published an annual report for GBTC for the period ended December 31, 2017. Both GBTC’s Form D and annual report can be found on OTC Market’s website: <http://www.otcm Markets.com/stock/GBTC/filings>.

OTC Markets is a wholly owned subsidiary of OTC Link LLC, which is a member of the Financial Industry Regulatory Authority (“FINRA”) and is registered with the Commission as an alternative trading system (“OTC Link ATS”).

The Fund and the Subsidiary may hold listed derivatives.<sup>10</sup> Such holdings will comply with the criteria in Commentary .01(d) and (f) of NYSE Arca Rule 8.600–E.

The Fund and the Subsidiary may hold OTC derivatives.<sup>11</sup> Such holdings will comply with the criteria in Commentary .01(e) and (f) of NYSE Arca Rule 8.600–E.

#### Investment in the Subsidiary

According to the Registration Statement, the Fund expects to obtain additional exposure through investment in the Subsidiary. Such investment may not exceed 25% of the Fund’s total assets, as measured at the end of every quarter of the Fund’s taxable year. The Subsidiary otherwise is subject to the same general investment policies and restrictions as the Fund. Except as noted, references to the investment strategies of the Fund for non-equity securities and other financial instruments include the investment strategies of the Subsidiary.

The Subsidiary is not registered under the 1940 Act. The Board has oversight responsibility for the investment activities of the Fund, including its investments in the Subsidiary, and the Fund’s role as the sole shareholder of the Subsidiary. Also, in managing the Subsidiary’s portfolio, the Adviser would be subject to the same investment restrictions and operational guidelines that apply to the management of the Fund.

Any Subsidiary will be advised by the Adviser and will be managed on a day-to-day basis by the Sub-Advisers, and will have the same investment objective as the Fund. According to the Registration Statement, the Fund’s investment in the Subsidiary would be expected to provide the Fund with an effective means of obtaining exposure to certain cryptocurrency investments in a manner consistent with U.S. federal tax law requirements applicable to regulated investment companies.

#### Creations and Redemptions

According to the Registration Statement, the Fund offers and issues Shares at net asset value (“NAV”) in “Creation Unit Aggregations” (or “Creation Units”), generally in exchange for the “Deposit Securities” and the “Cash Component” (each as defined below). Shares are redeemable only in Creation Unit Aggregations and, generally, in exchange for the Deposit Securities and Cash Component.

<sup>10</sup> The Fund will not hold listed derivatives based on bitcoin or other cryptocurrencies.

<sup>11</sup> The Fund will not hold OTC derivatives based on bitcoin or other cryptocurrencies.

The Trust reserves the right to offer an “all cash” option for creations and redemptions of Creation Units for the Fund.<sup>12</sup>

The Trust issues and sells Shares of the Fund only in Creation Units on a continuous basis through the Distributor, at their NAV next determined after receipt, on any business day, of an order received in proper form.

The consideration for purchase of a Creation Unit of the Fund generally consists of an in-kind deposit of a designated portfolio of securities—the “Deposit Securities”—per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund’s portfolio and an amount of cash—the Cash Component. The Cash Component is an amount equal to the difference between the net asset value of the Shares (per Creation Unit) and the market value of the Deposit Securities. Together, the Deposit Securities and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Administrator, through the National Securities Clearing Corporation (“NSCC”), makes available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit is applicable, subject to any adjustments, in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund changes as rebalancing adjustments and corporate action events are reflected from time to time by the Sub-Advisers with a view to the Fund’s investment objective. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.*, a “cash in lieu” amount—to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for transfer through the “Clearing Process” (discussed

<sup>12</sup> The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares wholly or partially in cash, such transactions will be effected in the same manner for all Authorized Participants (as defined below).

below), or which may not be eligible for trading by an “Authorized Participant” (as defined below) or the investor for which it is acting. The Trust also reserves the right to offer an “all cash” option for creations of Creation Units for the Fund.

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

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

All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of at least 50,000 Shares. The size of a Creation Unit is subject to change. All orders to create Creation Units, whether through the Clearing Process (through a Participating Party) or outside the Clearing Process (through a DTC Participant), must be placed in the manner and by the time set forth in the Participant Agreement and/or applicable order form. The date on which an order to create Creation Units (or an order to redeem Creation Units as discussed below) is placed is referred to as the “Transmittal Date.”

If permitted by a Sub-Adviser in its sole discretion with respect to the Fund, an Authorized Participant may also agree to enter into or arrange for an exchange of a futures contract for related position (“EFCRP”) or block trade with the relevant Fund or its Subsidiary whereby the Authorized Participant would also transfer to such Fund a number and type of exchange-traded futures contracts at or near the closing settlement price for such contracts on the purchase order date. Similarly, a Sub-Adviser in its sole discretion may agree with an Authorized Participant to use an EFCRP

or block trade to effect an order to redeem Creation Units.<sup>13</sup>

#### Redemption

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. The Trust will not redeem Shares in amounts less than Creation Units. Shareholders must accumulate enough Shares in the secondary market to constitute a Creation Unit in order to have such shares redeemed by the Trust.

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

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities—as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form, and the value of the Fund Securities (the “Cash Redemption Amount”), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

<sup>13</sup> As described in the Registration Statement, an EFCRP is a technique permitted by the rules of certain futures exchanges that, as utilized by the Fund in a Sub-Adviser’s discretion, would allow such Fund or its Subsidiary to take a position in a futures contract from an Authorized Participant, or give futures contracts to an Authorized Participant, in the case of a redemption, rather than to enter the futures exchange markets to obtain such a position. An EFCRP by itself will not change either party’s net risk position materially. Because the futures position that the Fund would otherwise need to take in order to meet its investment objective can be obtained without unnecessarily impacting the financial or futures markets or their pricing, EFCRPs can generally be viewed as transactions beneficial to the Fund. A block trade is a technique that permits certain funds to obtain a futures position without going through the market auction system and can generally be viewed as a transaction beneficial to the Fund.

If it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem such Shares in cash, and the redeeming Beneficial Owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions specified above, to offset the Trust’s brokerage and other transaction costs associated with the disposition of Fund Securities). The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the Fund Securities but does not differ in NAV.

An Authorized Participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the Fund Securities applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash. The Trust also reserves the right to offer an “all cash” option for redemptions of Creation Units for the Fund.<sup>14</sup>

#### Intraday Indicative Value

Information regarding the intraday value of Shares of the Fund, also known as the “intraday indicative value” (“IIV”), will be disseminated every 15 seconds during the Exchange’s Core Trading Session by market data vendors or other information providers. The IIV will generally be determined by using both current market quotations and/or price quotations obtained from broker-dealers that may trade in the portfolio securities and other financial instruments held by the Fund.

#### Other Restrictions

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 and other investments may result in leverage). That is, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.*, 2X or -3X) of the Fund’s primary broad-based

<sup>14</sup> See note 11, *supra*.

securities benchmark index (as defined in Form N-1A).<sup>15</sup>

#### The Fund's Use of Derivatives

To the extent the Fund or the Subsidiary invests in derivative instruments, such investments will be made consistent with the Fund's investment objective and policies. 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 or the Subsidiary's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>16</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.

#### Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each business day, before commencement of trading in Fund Shares on NYSE Arca, the Fund will disclose on its website the identities and quantities of the portfolio instruments and other assets held by the Fund including assets directly held by the Subsidiary, that will form the basis for the Fund's calculation of NAV at the end of the business day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, one or more major market data vendors will disseminate an updated IIV for the Fund. 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).

#### Disclosed Portfolio

The Fund's disclosure of derivative positions in the applicable Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose the information regarding the Disclosed Portfolio required under NYSE Arca

<sup>15</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>16</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.

Rule 8.600-E(c)(2) to the extent applicable. The Fund's website information will be publicly available at no charge.

#### Impact on Arbitrage Mechanism

The Adviser believes there will be minimal impact to the arbitrage mechanism as a result of any use by the Fund or the Subsidiary of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that 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.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives.

#### Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the "generic" listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(a)(1) to NYSE Arca Rule 8.600-E.

As noted above, the Fund, through its Subsidiary, may invest up to 15% of its total assets in OTC equity securities issued by GBTC, a trust that has as its investment objective for the net asset value per share to reflect the performance of the market price of bitcoin, less GBTC's expenses. The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(E) to Rule 8.600-E with respect to the Fund's investments, through the Subsidiary, in such OTC securities. While the Fund's investments in GBTC would not meet the requirements of Commentary .01(a)(1)(E) to Rule 8.600-E, such investments satisfy several other important criteria. For example, shares of GBTC have a minimum monthly trading volume of 250,000 shares, or a minimum notional volume traded per month of \$25 million, averaged over the last six months, and a market value in excess of the required \$75 million.

Shares of GBTC have been quoted on OTC Market's OTCQX Best Marketplace under the symbol "GBTC" since March 26, 2015. The Exchange represents, for informational purposes, that, as of May 7, 2018, approximately 187,572,000 shares of GBTC were outstanding, with a market capitalization of \$2,807,952,840 based on the last traded price. Moreover, average trading volume for the 6 months ended May 7, 2018 was 7,107,650 shares per day, and total trading volume for 2017 was 1,576,551,613 shares.

As noted above, GBTC has demonstrated significant liquidity. The liquid market in the shares of GBTC also alleviates many of the valuation concerns raised by the Staff. The substantial and sustained trading volume in shares of GBTC, as well as the fact that such investment will be limited to 15% of the Fund's assets, would help to limit any adverse effect on the Fund's arbitrage mechanism.

As noted above, on February 27, 2018, GBTC submitted to the Commission an amended Form D as a business trust. On April 2, 2018, GBTC published an annual report for the period ended December 31, 2017. This report can be found on OTC Market's website.

As noted above, the Fund and the Subsidiary may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities (*i.e.*, mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600-E with respect to the Fund's and the Subsidiary's investments in such securities.<sup>17</sup> Investments in such

<sup>17</sup> Commentary .01(a) to Rule 8.600-E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2-E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2-E(j)(3)); Derivative Securities Products (*i.e.*, Investment Company Units and securities described in Section 2 of Rule 8-E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2-E(j)(6). Commentary .01(a)(1) to Rule 8.600-E (U.S. Component Stocks) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least \$75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the

equity securities will not be principal investments of the Fund.<sup>18</sup> Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.<sup>19</sup> Because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude application of those provisions to certain “Derivative Securities Products” that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E)

equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and

(F) American Depositary Receipts (“ADRs”) in a portfolio may be exchange-traded or nonexchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

<sup>18</sup> For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

<sup>19</sup> The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities. See, e.g., Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E).<sup>20</sup> In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that “based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.” The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio criteria) in Commentary .01(a)(1)(A) through (D) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months is tailored to exchange-traded securities (e.g., U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose applicable with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S.

<sup>20</sup> The Commission initially approved the Exchange’s proposed rule change to exclude “Derivative Securities Products” (i.e., Investment Company Units and securities described in Section 2 of Rule 8) and “Index-Linked Securities (as described in Rule 5.2–E(j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (“2008 Approval Order”). See also, Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares). See also, Amendment No. 7 to SR–NYSEArca–2015–110, available at <https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf>.

Component Stocks held by series of Managed Fund Shares.

In addition, the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund’s investments in such securities.<sup>21</sup> Thus, the Exchange believes that it is appropriate to permit the Fund and the Subsidiary to invest in non-exchange-traded open-end management investment company securities, as described above.

The Exchange notes that, other than Commentary .01(a)(1) to Rule 8.600–E, the Fund will meet all other requirements of Rule 8.600–E.

#### Availability of Information

The Fund’s website ([www.rexshares.com](http://www.rexshares.com)), which is publicly available, includes a form of the prospectus for the Fund that may be downloaded. The Fund’s website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day’s reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),<sup>22</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on the Fund’s website the Disclosed Portfolio for the Fund as defined in NYSE Arca Rule 8.600–E(c)(2) that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>23</sup>

<sup>21</sup> See Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

<sup>22</sup> The Bid/Ask Price of the Fund’s Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>23</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

Continued

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov).

Quotation and last sale information for the Shares and U.S. exchange-traded equity securities will be available via the CTA high speed line. Quotation and last sale information for futures, exchange-traded options and non-U.S. exchange-traded equity securities will be available from the exchange on which they are listed. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Price information for fixed income securities, cash equivalents, non-exchange-traded investment company securities (other than money market funds), shares of GBTC, listed derivatives and OTC derivatives may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Price information for money market funds and other non-exchange-traded investment company securities also will be available from the applicable investment company's website and from market data vendors.

In addition, the IIV, as defined in NYSE Arca Rule 8.600-E(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>24</sup> The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

<sup>24</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>25</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of the Fund inadvisable.

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

### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3<sup>26</sup> under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

### 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 FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and

applicable federal securities laws.<sup>27</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded equity securities, certain futures and certain 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 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>28</sup>

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

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

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the

<sup>27</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>28</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>25</sup> See NYSE Arca Rule 7.12-E.

<sup>26</sup> 17 CFR 240.10A-3.

Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

#### Information Bulletin

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

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

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>29</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued

listing criteria in NYSE Arca Rule 8.600–E. The Adviser and Sub-Advisers are not registered as broker-dealers or affiliated with a broker-dealer. 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 FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded equity securities, certain futures and certain 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. The Exchange is also able to obtain information regarding trading in the Shares, the commodity underlying futures or options on futures through ETP Holders, in connection with such ETP Holders’ proprietary or customer trades which they effect through ETP Holders on any relevant market. The IIV, as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market

participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund’s portfolio holdings will be disclosed on its website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. On a daily basis, the Fund will disclose the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The Fund’s website information will be publicly available at no charge. With respect to the Fund’s holdings of shares of GBTC, on March 4, 2016, GBTC submitted to the Commission an amended Form D as a business trust. Shares of GBTC have been quoted on OTC Market’s OTCQX Best Marketplace under the symbol “GBTC” since March 26, 2015. On April 2, 2018, GBTC published an annual report for the period ended December 31, 2017. Such reports are available on OTC Market’s website.

Investors can also obtain the Trust’s SAI, the Fund’s Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust’s SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s website at [www.sec.gov](http://www.sec.gov).

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund’s investments in non-exchange-traded open-end investment company securities. Investments in such equity securities will not be principal investments of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. Because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude application of those provisions to certain “Derivative Securities Products” that are exchange-

<sup>29</sup> 15 U.S.C. 78f(b)(5).

traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depository Receipts (as described in NYSE Arca Rule 8.100–E) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that “based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.” The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio criteria) in Commentary .01(a)(1) (A) through (D) applicable to U.S. Component Stocks. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

In addition, the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund’s investments in such securities.<sup>30</sup> Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

As noted above, the Fund’s investments in derivative instruments will be consistent with the Fund’s investment objective and policies. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. To mitigate leveraging risk, the Adviser will segregate or “ earmark ” liquid assets or otherwise cover the transactions that may give rise to such risk. 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. In addition, OTC derivatives may be tailored more specifically to the assets held by the Fund than available listed derivatives.

The Exchange notes that, other than Commentary .01(a)(1) to Rule 8.600–E, the Fund will meet all other requirements of Rule 8.600–E.

The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund’s holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The 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 and other investments may result in leverage). That is, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or –3X) of the Fund’s primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that holds fixed income securities, equity securities and derivatives and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares of the Fund and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance

sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund’s holdings, the IIV, the Disclosed Portfolio for the Fund, and quotation and last sale information for the Shares of the Fund.

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

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

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArc–2018–40 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.

<sup>30</sup> See note 21, *supra*.

All submissions should refer to File Number SR–NYSEArca–2018–40. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–40, and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14300 Filed 7–2–18; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83544; File No. SR–DTC–2018–002]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rules and Fee Schedule Relating to Participant and Pledgee Applications

June 28, 2018.

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 June 21, 2018, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rules 19b–4(f)(2) and (f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of DTC<sup>5</sup> consists of proposed modifications to (i) the DTC Fee Schedule (“Fee Schedule”)<sup>6</sup> to add two new application fees that would be charged, respectively, to legal entities that formally submit an application (“Application”) to become either a Participant<sup>7</sup> (each, a “Participant Applicant”) or a Pledgee<sup>8</sup> (each, a “Pledgee Applicant”) of DTC (Participant Applicants and Pledgee Applicants, referred to collectively as “Applicants”), and (ii) DTC's Policy Statements on the Admission of Participants (jointly referred to as the “Policy Statement”) with respect to the provision that requires a non-U.S. entity that applies to become a Participant (“Non-U.S. Participant Applicant”) to provide to DTC a legal opinion (“Foreign Legal Opinion”) of its counsel in its jurisdiction of organization (“Jurisdiction of Organization”).<sup>9</sup> With respect to (i) above, the Fee Schedule would be amended to charge (A) each Participant Applicant a fee of \$5,000 in connection with its Application to become a Participant (“Participant Application Fee”), and (B) each Pledgee Applicant a fee of \$2,500 in connection with its Application to become a Pledgee (“Pledgee Application Fee”) (Participant Application Fee and Pledgee Application Fee, collectively referred to as “Application Fees”). With respect to (ii) above, the Policy Statement would be amended to (A)

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

<sup>2</sup> 17 CFR 240.19b–4.

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

<sup>4</sup> 17 CFR 240.19b–4(f)(2) and (f)(4).

<sup>5</sup> Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at [www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc\\_rules.pdf](http://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf).

<sup>6</sup> Available at <http://www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf?la=en>.

<sup>7</sup> See Rule 2, Section 1, *supra* note 5.

<sup>8</sup> See Rule 2, Section 3, *supra* note 5.

<sup>9</sup> See Policy Statement, *supra* note 5 at 133–134.

remove the provision that requires each Non-U.S. Participant Applicant to obtain a Foreign Legal Opinion from its counsel and (B) provide that DTC would obtain a Foreign Legal Opinion from its outside counsel (“DTC Counsel”) in the Jurisdiction of Organization of a new Non-U.S. Participant Applicant, which opinion DTC would use in conjunction with its review of the Application of that and each subsequent new Non-U.S. Participant Applicant domiciled in that Jurisdiction of Organization, as described below. Each Non-U.S. Participant Applicant would be charged a fee (“Foreign Legal Opinion Fee”) with respect to the applicable Foreign Legal Opinion obtained by DTC, as described below. The proposed rule change would also amend the Policy Statement to impose a time limit (“Time Limit”) of six months for an Applicant to complete its Application with required documentation (“Required Documentation”),<sup>10</sup> before its Application would expire, as described below. The proposed rule change would also make other changes of a technical nature to the Rules text, as described below.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>10</sup> The Required Documentation relates to the DTC services the Applicant seeks to utilize and includes, but is not limited to, the applicable form of agreement with DTC providing, among other matters, that the Applicant will abide by the Rules and agreeing to New York governing law. There is a standard form Participant's Agreement to be signed by a Participant Applicant, and a standard form Pledgee's Agreement to be signed by a Pledgee Applicant. Certain certifications and other documentation, including but not limited to opinions of counsel, authorizing resolutions and appointment of authorized signers, may be required of a Participant Applicant depending on the nature and level of DTC services the Participant Applicant seeks to use. Participant Applicants are also required to provide certain financial and regulatory reports and other information, as applicable, to allow DTC to evaluate the Applicant's financial condition, operational capability and character. See Rule 2, *supra* note 5, and the Policy Statement, *supra* note 9.

<sup>31</sup> 17 CFR 200.30–3(a)(12).