

definition of “investment banking services” that is substantially similar to that found in the research rules. The proposed definition of “investment banking services” would include “acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger, acquisition or other corporate reorganization; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs) or similar investments or otherwise acting in furtherance of a private offering of the issuer; or serving as placement agent for the issuer.”

One commenter requested that, if a definition of “investment banking services” were adopted, it should be limited to U.S. registered offerings.<sup>39</sup> FINRA disagrees that the proposed rule should permit abusive IPO allocation arrangements in exchange for compensation for investment banking services in an overseas transaction (which may involve an affiliate of the U.S. member). In such cases, the same or similar potential conflicts of interest and problematic incentives apply both for the member as well as for the executive officers and directors and should not be permitted.

Commenters supported the addition of definitions for the terms “initial public offering” and “public company.”<sup>40</sup> In response to comments, FINRA is proposing to add a definition of “IPO” to mean the “initial public offering of an issuer’s equity securities, which offering is registered under the Securities Act of 1933 and as a result of which the issuer becomes a public company.” The proposed definition of “public company” means “any company that is registered under Section 12 of the Securities Exchange Act of 1934 or files periodic reports pursuant to Section 15(d) thereof.” These proposed definitions are identical in scope to the corresponding definitions found in the Voluntary Initiative.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Additional Comment

We seek specific comment on whether there are any alternatives to the proposed rule change that FINRA should consider, such as whether proposed new Rule 5131(b)’s spinning provision should be modified to include a mandatory ban prohibiting members from seeking or providing investment banking services to a company for a period of 12 months following any allocation of IPO shares to an account of an executive officer or director of such company and whether such a ban would facilitate compliance.

### V. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NASD–2003–140 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR–NASD–2003–140. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–NASD–2003–140 and should be submitted on or before April 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010–5913 Filed 3–17–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61689; File No. SR–NYSEArca–2010–12]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing of the One Fund Under NYSE Arca Equities Rule 8.600

March 11, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on March 2, 2010, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): One Fund, a series of the U.S. One Trust. The text of the proposed rule change is available at the Exchange, the

<sup>41</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

<sup>39</sup> See ABA.

<sup>40</sup> See generally ABA and SIA.

Commission's Public Reference Room, and <http://www.nyx.com>.

## 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 to list and trade the following Managed Fund Shares<sup>4</sup> ("Shares") under NYSE Arca Equities Rule 8.600: One Fund (the "Fund"), a series of the U.S. One Trust (the "Trust").<sup>5</sup> The Fund is a "fund of

<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) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges ("UTP") of the following actively managed funds under Rule 8.600: Securities Exchange Act Release Nos. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR-NYSEArca-2008-28) (order approving trading pursuant to UTP of Bear Stearns Active ETF); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving trading of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR-NYSEArca-2009-22) (order approving listing of Grail American Beacon Large Cap Value ETF); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR-NYSEArca-2009-74) (order approving listing of four Grail Advisors RP ETFs); 60981 (November 10, 2009) (SR-NYSEArca-2009-79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 60975 (November 10,

funds," which means that the Fund seeks to achieve its investment objective by investing primarily in the retail shares of other exchange-traded funds that are registered under Investment Company Act of 1940 ("1940 Act") ("Underlying ETFs").<sup>6</sup>

U.S. One, Inc. (the "Adviser") is the adviser for the Fund.<sup>7</sup> The Adviser is not affiliated with a broker-dealer.<sup>8</sup> If the Adviser becomes affiliated with a broker-dealer, the Adviser would be required to comply with the "fire wall" provisions contained in Commentary

2009) (SR-NYSEArca-2009-83) (order approving listing of Grail American Beacon International Equity ETF); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing of five fixed income funds of the PIMCO ETF Trust).

<sup>6</sup> The Trust is registered under the 1940 Act. On February 5, 2010, the Trust filed with the Commission Amendment No. 2 to Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-160877 and 811-22320) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

<sup>7</sup> The Exchange represents that the Adviser, as the investment adviser of the Fund, and its related personnel, are subject to Investment Advisers Act Rule 204A-1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. 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 advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>8</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 investment adviser is 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.

.07 to NYSE Arca Equities Rule 8.600. PNC Global Investment Servicing, Inc. serves as the custodian, transfer agent and administrator for the Fund.

According to the Registration Statement, the Fund's investment objective is to seek long-term capital appreciation. In pursuing its investment objective, the Adviser will normally invest at least 80% of its total assets in Underlying ETFs. The Adviser invests in Underlying ETFs that track various securities indices comprised of large, mid and small capitalization companies in the United States, Europe and Asia, as well as other developed and emerging markets.

The Adviser employs an asset allocation strategy focused on increasing shareholder return and reducing risk through exposure to a variety of domestic and foreign market segments. The Adviser's asset allocation strategy pre-determines a target mix of investment types for the Fund to achieve its investment objective and then implements the strategy by selecting securities that best represent each of the desired investment types. The strategy also calls for periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the target mix and indicates purchases and sales necessary to return to the target mix. The Fund may change its investment objective without shareholder approval, upon 60 days' notice to shareholders.

The Adviser intends to hold Underlying ETFs that hold equity securities of large, mid and small capitalization companies in the United States, as well as other developed countries and developing countries, and that give the Fund exposure to most major developed and developing markets around the world. While the Fund intends to primarily invest in Underlying ETFs that hold equity securities, the Adviser may also invest in Underlying ETFs that may hold U.S. and foreign government debt and investment grade corporate bonds. There is no limit on the percentage of Fund assets that may be invested in securities of foreign issuers, including in securities of emerging market issuers, through Underlying ETFs.

The Adviser selects Underlying ETFs based on their ability to accurately represent the underlying stock market to which the Adviser seeks exposure for the Fund, and seeks to construct a portfolio that will outperform its benchmark, the S&P 500 Index. Additionally, the Adviser seeks to maintain a low after-tax cost structure for the Fund and, therefore, also evaluates ETFs based on their

underlying costs. The Adviser employs a buy and hold strategy, meaning that it buys and holds securities for a long period of time, with minimal portfolio turnover. The Fund, using a buy and hold strategy, seeks to achieve its investment objective through investment in Underlying ETFs that track certain securities indices.

According to the Registration Statement, the Fund does not invest in derivatives. The Underlying ETFs in which the Fund invests may, to a limited extent, invest in derivatives; however, the Fund will not invest in an Underlying ETF that uses derivatives as a principal investment strategy.

According to the Registration Statement, in addition to the principal investments and strategies described in the Registration Statement, the Fund may also, to a lesser extent, use other strategies, and engage in other investment practices.

The Fund generally will remain fully invested in the Underlying ETFs. However, the Fund may, to a limited extent, also invest its other assets in securities not included in the indices tracked by the Underlying ETFs, but which the Adviser believes will help the Fund stay fully invested and reduce transaction costs. As non-principal strategies, the Fund may invest in debt and other equity securities, cash and cash equivalents or other money market instruments, including shares of money market mutual funds and repurchase agreements.

The Fund or its Underlying ETFs may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. The Fund and its Underlying ETFs may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The Fund or the Underlying ETFs may invest in short-term instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. The Fund or the Underlying ETFs may invest in short-term instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons.

Underlying ETFs may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management

purposes. To the extent an Underlying ETF uses futures and/or options on futures, it will do so in accordance with Rule 4.5 under the Commodity Exchange Act ("CEA").<sup>9</sup>

Underlying ETFs may trade put and call options on securities, securities indices and currencies; may enter into swap agreements, including, but not limited to, equity index swaps and interest rate swap agreements, in an attempt to gain exposure to the stocks making up an index of securities in a market without actually purchasing those stocks, or to hedge a position; may buy and sell stock index futures contracts with respect to any stock index traded on a recognized stock exchange or board of trade; may invest in complex securities such as equity options, index options, repurchase agreements, foreign currency contracts, hedges and swaps, and futures contracts; and may invest in exchange-traded notes.

According to the Registration Statement, the Fund may take advantage of opportunities in other investments which are not presently contemplated for use by the Fund or which are not currently available but which may be developed, to the extent such opportunities are both consistent with the Fund's investment objective and legally permissible for the Fund. Before entering into such transactions or making any such investment, the Fund will provide appropriate disclosure.

The Trust has adopted the following investment restrictions as fundamental policies with respect to the Fund. These restrictions cannot be changed with respect to the Fund without the approval of the holders of a majority of the Fund's outstanding voting securities. Except with the approval of a majority of the outstanding voting securities, the Fund may not:

1. (a) With respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (b) acquire more than 10% of the outstanding voting securities of any one issuer.<sup>10</sup>

2. Invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in

securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. For purposes of this restriction, the Fund will aggregate the portfolio holdings of the Underlying ETFs so that the Fund will not have indirectly invested more than 25% of its assets in a particular industry or group of industries.

In addition to the investment restrictions adopted as fundamental policies set forth above, the Fund will not hold illiquid assets in excess of 15% of its net assets.<sup>11</sup> An illiquid asset is any asset which may not be sold or disposed of in the ordinary course of business within seven days at approximately the value at which the Fund has valued the investment.

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company ("RIC") under the Internal Revenue Code.<sup>12</sup>

Underlying ETFs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETFs may hold non-U.S. equity securities, the Fund will not invest in non-U.S. equity securities.

The Fund offers and issues Shares at their net asset value ("NAV") only in aggregations of a specified number of Shares (each, a "Creation Unit"). The Fund generally offers and issues Shares in exchange for shares of specified Underlying ETFs ("Deposit Securities") together with the deposit of a specified cash payment ("Cash Component"). The Trust reserves the right to permit or require the substitution of a "cash in

<sup>11</sup> This restriction may be changed without a shareholder vote.

<sup>12</sup> According to the Registration Statement, one of several requirements for RIC qualification is that a Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership (the "90% Test"). A second requirement for qualification as a RIC is that a Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership (the "Asset Test").

<sup>9</sup> 7 U.S.C. 1.

<sup>10</sup> This diversification standard is contained in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

lieu” amount to be added to the Cash Component to replace any Deposit Security. The Shares are redeemable only in Creation Unit aggregations, and generally in exchange for portfolio securities and a specified cash payment. A Creation Unit of the Fund consists of 50,000 Shares.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>13</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

*Availability of Information:* The Fund’s Web site (<http://www.onefund.com>), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund’s Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day’s reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),<sup>14</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 Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>15</sup> The Web site

information will be publicly available at no charge.

On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange (“NYSE”) via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

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 Web site at <http://www.sec.gov>. Information regarding market price and trading volume of the Shares is and 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 will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including

investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

*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>16</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

*Trading Rules:* The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

*Surveillance:* The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. 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’s current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of

<sup>16</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

<sup>13</sup> 17 CFR 240.10A-3.

<sup>14</sup> The Bid/Ask Price of the Fund is determined using 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>15</sup> Under accounting procedures followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG.<sup>17</sup>

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

*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. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its 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 Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value 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 Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>18</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 will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

### 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 purposes of the Act.

### 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 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

## 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-12 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2010-12. This file number should be included on the subject line if e-mail 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 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2010-12 and should be submitted on or before April 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>17</sup> For a list of the current members of ISG, see <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>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 17 CFR 200.30-3(a)(12).