printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–053 and should be submitted on or before July 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–14191 Filed 6–11–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67145; File No. SR–NYSEArca–2012–34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade the Huntington US Equity Rotation Strategy ETF and Huntington EcoLogical Strategy ETF Under NYSE Arca Equities Rule 8.600

June 6, 2012.

I. Introduction

On April 12, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Huntington US Equity Rotation Strategy ETF and Huntington EcoLogical Strategy ETF (each, a ''Fund'' and collectively, ''Funds'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on April 27, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

[18] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66846 (April 23, 2012), 77 FR 25218 (''Notice'').

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Funds pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Funds will be actively managed exchange-traded funds. The Shares of each Fund will be offered by Huntington Strategy Shares (''Trust''), a Delaware statutory trust registered with the Commission as an open-end management investment company.[4] Huntington Asset Advisors, Inc. (''Adviser'') is the investment adviser of each Fund and will manage the investment portfolios of the Funds. SEI Investments Distribution Co. (''Distributor'') is the principal underwriter and distributor of the Funds' Shares. Citibank, N.A. is the custodian for the Funds. The Exchange represents that the Adviser is affiliated with two broker-dealers and has implemented a fire wall with respect to each affiliated broker-dealer regarding access to information concerning the composition and/or changes to a Fund portfolio.[5]

Huntington US Equity Rotation Strategy ETF

The Fund's investment objective is to seek capital appreciation. Under normal conditions,[6] the Fund will invest at least 80% of its net assets in the exchange-listed common stocks of select companies organized in the U.S. and included in the S&P Composite 1500® (''Companies''). The S&P Composite 1500 is a combination of the following indices: the S&P 500®; the S&P MidCap 400®; and the S&P SmallCap 600®. The Fund will invest in Companies within each of the large-cap, mid-cap, and small-cap U.S. equity market segments (each a ''Market Segment''). The large-cap segment is represented by companies comprising the S&P 500, the mid-cap segment is represented by companies comprising the S&P MidCap 400, and the small-cap segment is represented by the companies comprising the S&P SmallCap 600.

The Fund will also invest in Companies operating in each of the ten sectors represented in the S&P Composite 1500. A sector is a large grouping of companies operating within the market that share similar characteristics. The ten sectors comprising the S&P Composite 1500 are: utilities, consumer staples, information technology, healthcare, financials, energy, consumer discretionary, materials, industrials, and telecommunication services (''Sectors'').

As market conditions change, the Fund intends to rotate the investment focus of the Fund so as to overweight its portfolio in Companies comprising those Market Segments and Sectors that the Adviser believes offer the greatest potential for capital appreciation in the given market environment and underweight its portfolio in those Market Segments and Sectors that the Adviser believes offer the least potential for capital appreciation in that same market environment (as described in more detail below). If the Fund's portfolio allocation to a particular Market Segment or Sector exceeds that Market Segment's or Sector's current weighting in the S&P Composite 1500, the Fund will be ''overweighting'' that Market Segment or Sector. Similarly, if the Fund's portfolio allocation to a specific Market Segment or Sector is less than that Market Segment's or Sector's current weighting in the S&P Composite 1500, then the Fund will be ''underweighting'' that Market Segment or Sector. The Adviser believes that

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On April 6, 2012, the Trust filed with the Commission an amendment to the Trust's Registration Statement on Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Funds (File Nos. 333–170750 and 811–22497) (''Registration Statement''). In addition, the Exchange represented in the Notice that the Trust had also filed an Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13785), dated April 3, 2012 (''Exemptive Application''). *See* Investment Company Act Release No. 30032 (April 10, 2012). In the Notice, the Exchange stated that the Shares would not be listed on the Exchange until an order (''Exemptive Order'') under the 1940 Act has been issued by the Commission with respect to the Exemptive Application. The Commission notes that it has issued an Exemptive Order granting certain exemptive relief to the Trust, Adviser, and Distributor under the 1940 Act. *See* Investment Company Act Release No. 30061 (May 8, 2012) (File No. 812–13785). The Exchange represents that investments made by the Funds will comply with the conditions set forth in the Exemptive Order.

[5] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer 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.

[6] The term ''under normal conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

these adjustments, collectively, will position the Fund for continued capital appreciation in the new market environment.

The Adviser retains a broad mandate and discretion to invest in Companies consistent with its evaluation of the capital appreciation potential of the Market Segments and Sectors. The strategy of overweighting and underweighting Sectors to maximize opportunities for capital appreciation may result in the Fund investing greater than 25% of its total assets in the equity securities of Companies operating in one or more Sectors. Sectors are comprised of multiple individual industries, and the Fund will not invest more than 25% of its total assets in an individual industry.

The Adviser will invest in Companies consistent with its assessment of the capital appreciation opportunities of each Market Segment and Sector. To determine the percentage of the Fund's portfolio to invest in each Market Segment and Sector, the Adviser will use ''top-down'' analysis (analyzing the impact of economic trends before considering the performance of individual stocks) to evaluate broad economic trends. These trends are used to anticipate shifts in the business cycle. The Adviser also will analyze each Market Segment and Sector to determine which Market Segment(s) and Sector(s) may benefit the most from these trends and business shifts over the next 12 months. Factors considered in assessing each Market Segment and Sector include: (1) The relationship between each Market Segment or Sector and the current business cycle; (2) valuation levels; (3) earnings growth potential; and (4) analyses of the Companies included in the respective Market Segments and Sectors.

The Adviser will monitor the market environment, Market Segments, and Sectors and may rotate the Fund's investment focus by adjusting the Fund's Market Segments and/or Sector weightings consistent with its ongoing assessment of the capital appreciation potential of each Market Segment and Sector. The Adviser may also rely, in part, on technical analysis (such as analyzing and examining past price movements to anticipate or forecast future price movements) to determine the timing of any changes to the Market Segment and/or Sector weightings.

The Fund will invest in those Companies within the Market Segments and Sectors that offer the best potential for capital appreciation based on the Adviser's evaluation of company fundamentals (including historic earnings, revenue, cash flow, and valuation (such as price-earnings ratio and book value)).

Huntington EcoLogical Strategy ETF

The Fund's investment objective is to seek capital appreciation. Under normal conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of ecologically-focused companies. The Fund will primarily (at least 65% of total assets) invest in the U.S. exchange-listed common stock of ecologically-focused companies organized in the U.S. (''U.S. Companies''). The Fund, however, may also invest up to 35% of total assets in the exchange-listed common stock (or the equivalent thereof) and sponsored American Depositary Receipts (''ADRs'') [7] of ecologically-focused companies organized outside the U.S. (''Foreign Companies'').[8] The Fund may invest in companies of all sizes.

The Adviser will apply the following ecologically-focused criteria to identify the equity securities of U.S. and Foreign Companies. ''Ecologically-focused companies'' are companies that have positioned their business to respond to increased environmental legislation, cultural shifts towards environmentally conscious consumption, and capital investments in environmentally oriented projects. These companies include, but are not limited to, all U.S. and Foreign Companies that are components of one or more well-recognized environmentally focused indices (such as the Dow Jones Sustainability Indexes and the DB NASDAQ OMX Clean Tech Index).

The Fund will also invest in ecologically-focused companies which are not included in a well-recognized environmentally-focused index, but generate at least ⅓ of their revenues from activities aligned with one or more of the following environmental themes (''Environmental Themes''):

- Alternative renewable power, such as solar, wind, geothermal, hydro, or biomass;
- Alternative renewable fuel, such as biofuel, biomass, or hydrogen;
- Alternative engines, such as electric, flywheel, or micro turbines;
- Energy efficiency such as energy efficient building materials, power, lighting, heating, or fuel;
- Resource conservation/healthier use of resources, such as recycling or renewable materials; and
- Healthy lifestyle, such as pollution control or organic foods.

A company that is not included in an environmentally-focused index or does not generate ⅓ of its revenue from activities aligned with one or more Environmental Themes shall also be considered an ecologically-focused company if the Adviser believes that environmentally conscious trends such as a stronger demand for chemical-free cleaning and farming, recycling, alternative fuel and energy, energy efficiency, pollution control, or environmental cleanup/restoration will positively impact that company's future revenue (''Environmentally Conscious Companies''). Ecologically-focused companies also include those companies that the Adviser believes demonstrate sustainable environmental practices (''Other Environmental Companies''). Sustainable environmental practices include, but are not limited to, demonstrated progress in:

- Improving energy and resource efficiency;
- Reducing emissions from business operations;
- Financial and operational support of renewable materials and less pollutive energy sources; or
- Using or promoting the use of efficient buildings (measured by such labels as LEED or Energy Star).

The Fund's investment in the securities of Environmentally Conscious Companies and Other Environmental Companies will be limited to 10% of the Fund's total assets.

The strategy of investing in ecologically-focused companies may result in the Fund investing greater than 25% of its total assets in one or more market sectors. A sector is a large grouping of companies operating within the market that share similar characteristics. The ten most commonly recognized market sectors are: utilities, consumer staples, information technology, healthcare, financials, energy, consumer discretionary, materials, industrials, and telecommunication services. Sectors are comprised of multiple individual industries, and the Fund will not invest more than 25% of its total assets in an individual industry.

The Adviser will review company fundamentals and the composition of recognized environmentally-focused indices to identify a universe of

[7] ADRs are securities issued by a U.S. bank or trust company evidencing ownership of underlying securities issued by a foreign company. ADRs are designed for use in U.S. securities markets.

[8] The foreign equity securities, including any depositary receipts, in which the Funds may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. *See infra* note 12.

ecologically-focused companies. Company fundamentals include factors reflective of a company's financial condition, including balance sheets and income statements, asset history, product or service development, and management productivity. The Adviser also will examine annual sustainability reports from companies, as well as supplemental disclosures regarding environmental practices within corporate investor relations materials.

The Adviser will focus on ecologically-focused companies that it believes have better than average potential for growth in sales and profits. Historical financial statements (income, balance sheet, cash flow) will serve as quantitative guides in the selection process. Qualitative reviews of a company's competitive position and target market potential also will influence portfolio decisions. The Fund will, under most market conditions, include a blend of growth or cyclical stocks held for price appreciation potential and dividend growth stocks held for their potential to deliver a growing stream of income.[9] Factors regarding valuation such as price to sales ratios, price to earnings ratios, and price to book ratios will influence the size of the Fund's position in each company.

Other Permitted Investments, Investment Limitations, and Additional Information Applicable to Both Funds

Each Fund, to a lesser extent, may attempt to pursue its investment objective by employing other investment strategies and by investing in additional types of securities that are not otherwise part of its principal investment strategies as described above. To the extent a Fund's principal investment policies are satisfied, including but not limited to its 80% investment policy, such Fund may also invest up to 20% of its total assets in the securities described below. Each Fund, however, will also be subject to certain additional investment limitations, including those set forth below:

- A Fund may only purchase securities of any issuer only when consistent with the maintenance of such Fund's status as a diversified company under the 1940 Act, the rules or regulations thereunder, as such statute, rules, or regulations may be amended from time to time, or any applicable exemptive relief.[10]
- A Fund may not concentrate investments in a particular industry or group of industries as concentration is defined under the 1940 Act, the rules or regulations thereunder, as such statute, rules, or regulations may be amended from time to time, or any applicable exemptive relief.
- A Fund may not hold in the aggregate more than 15% of its net assets in illiquid investments, including Rule 144A securities and loan participations.
- In accordance with the Exemptive Order, the Funds will not invest in options, futures, or swaps.
- The Funds' investments will be consistent with the Funds' investment objectives and will not be used to enhance leverage.
- Each Fund will elect to be treated, and intends to qualify each year, as a regulated investment company under Subchapter M of the Internal Revenue Code.

Finally, each Fund may also invest up to 20% of total assets in fixed income securities issued by companies organized in the U.S., including convertible securities that may be exchanged for or converted into common stock, corporate debt securities, U.S. Government securities, money market instruments, and zero coupon bonds. Each Fund may invest in other investment company securities, including mutual funds, consistent with the 1940 Act, the rules thereunder or relief from the Commission, as well as repurchase and reverse repurchase agreements. The Funds may also participate in foreign currency transactions and purchase securities on a when-issued or delayed delivery basis.

Permitted Investments and Investment Limitations Applicable to Huntington US Equity Rotation Strategy ETF

The Fund may invest up to 20% of total assets in equity securities, other than common stock of Companies, including preferred stocks, exchange-traded funds, interests in other business organizations, real estate investment trusts, and other domestic equity securities which the Adviser believes have equity characteristics (''Other Domestic Equities'').

The Fund may invest up to 20% of its total assets in the following foreign securities which are issued by companies located outside of the U.S. and principally traded in foreign markets: (i) Equity securities and fixed income securities of foreign entities; (ii) obligations of foreign branches of U.S. banks and foreign or domestic branches of foreign banks including European Certificates of Deposit, European Time Deposits, Canadian Time Deposits, Canadian Yankee Bonds, Canadian Certificates of Deposit, and investments in Canadian commercial paper and europaper; (iii) depositary receipts including ADRs, European Depositary Receipts (''EDRs''), which are also known as Continental Depositary Receipts (''CDRs''), and Global Depositary Receipts (''GDRs'');[11] (iv) securities issued or guaranteed by foreign corporations or foreign governments, their political subdivisions, agencies, and instrumentalities (*e.g.,* fixed income securities supported by national, state, or provincial governments, or similar political subdivisions); (v) debt obligations of supranational entities, including international organizations designed or supported by governmental entities to promote economic reconstruction or development, international banking institutions, and related government agencies such as the International Bank for Reconstruction and Development (World Bank), the Asian Development Bank, the European Investment Bank, and the Inter-American Development Bank; and (vi) fixed income securities of quasi-governmental agencies that are either issued by entities owned by a national, state, or equivalent government, or are obligations of a political unit that are not backed by the national government's full faith and credit (collectively, ''Foreign Securities'').[12]

Permitted Investments and Investment Limitations Specific to Huntington EcoLogical Strategy ETF

The Fund may invest up to 20% of its total assets in Other Domestic Equities and Foreign Securities other than those issued by Foreign Companies permitted

[9] Growth stocks are shares in a company whose earnings are expected to grow at an above-average rate relative to the market. Cyclical stocks are shares in a company that rise quickly when economic growth is strong and fall rapidly when growth is slowing down.

[10] Under Section 5(b)(1) of the 1940 Act, the Exchange states that a fund may not (i) 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 (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of determining a Fund's compliance with Section 5(b)(1), the issuer of the underlying security will be deemed to be the issuer of any respective depositary receipt.

[11] EDRs/CDRs are securities typically issued by a non-U.S. financial institution and evidence ownership interests in a security or a pool of securities issued by either a U.S. or foreign issuer. GDRs are issued globally and evidence a similar ownership arrangement. EDRs are designed for trading in European securities markets, and GDRs are designed for trading in non-U.S. securities markets.

[12] *See supra* note 8.

as part of the Fund's principal investment strategies.[13]

Additional information regarding the Funds, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes can be found in the Notice and Registration Statement, as applicable.[14]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[18] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.[19] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the respective Fund's calculation of the net asset value (''NAV'') at the end of the business day.[20] The NAV per Share for each Fund will be calculated by the Trust's fund accountant and determined as of the close of the regular trading session on the NYSE Arca (ordinarily 4:00 p.m., Eastern Time) on each day that the Exchange is open. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and 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. The Web site for the Funds will include a form of the prospectus for the Funds, additional data relating to NAV, and other applicable quantitative information. The intra-day, closing, and settlement prices of the portfolio securities will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[21] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[22] The Exchange will consider the suspension of trading in or removal from listing of the Shares if the PIV is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.[23] The Adviser is affiliated with two broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to each Fund's portfolio.[24] The Commission notes that Adviser personnel who make decisions on a Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding that Fund's portfolio.[25] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures

[13] *See id.*

[14] *See supra* notes 3 and 4, respectively.

[15] 15 U.S.C. 78f.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] According to the Exchange, several major market data vendors display and/or make widely available PIVs published on the CTA or other data feeds.

[20] The Disclosed Portfolio will include, as applicable, for each portfolio security or other financial instrument of the Funds the following: Ticker symbol; name of security and financial instrument; the number of shares or dollar value of each security and financial instrument held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[21] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[22] 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. 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.

[23] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

[24] *See supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[25] *See* Commentary .06 to NYSE Arca Equities Rule 8.600.

designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[26] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission also notes that all of the primary equity investments to be held by each Fund, as well as the non-U.S.-listed equity securities, including any depositary receipts, held by each Fund will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.[27]

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

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

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

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) 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: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) 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 (f) trading information.

(5) For initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 under the Act,[28] as provided by NYSE Arca Equities Rule 5.3.

(6) Each Fund may not hold more than 15% of net assets in illiquid investments, including Rule 144A securities and loan participations.

(7) The Funds will not invest in options, futures, or swaps, and the Funds' investments will be consistent with each Fund's investment objective and will not be used to enhance leverage.

(8) All of the primary equity investments to be held by each Fund, as well as the non-U.S.-listed equity securities, including any depositary receipts, held by each Fund will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(9) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [29] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NYSEArca–2012–34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

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[26] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[27] *See* Notice, *supra* note 3.

[28] *See* 17 CFR 240.10A–3.

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67147; File No. SR–Phlx–2012–72]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Implementation Date for its Excess Order Fee

June 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''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.

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

The Exchange proposes a rule change to delay the implementation date for its Excess Order Fee. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Phlx recently submitted a proposed rule change to introduce an Excess

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

[2] 17 CFR 240.19b–4.