

to the Order Instituting Proceedings, and the Exchange's responses to such comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> designates December 8, 2012 as the date by which the Commission should either approve or disapprove the proposed rule change (File Number SR-NASDAQ-2012-043).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67963; File No. SR-NYSEArca-2012-82]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of FlexShares Ready Access Variable Income Fund Under NYSE Arca Equities Rule 8.600

October 2, 2012.

#### I. Introduction

On August 7, 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" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of FlexShares Ready Access Variable Income Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on August 23, 2012.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by FlexShares Trust ("Trust"), a statutory

trust organized under the laws of Maryland and registered with the Commission as an open-end management investment company.<sup>4</sup> The investment adviser to the Fund will be Northern Trust Investments, Inc. ("Investment Adviser"). Foreside Fund Services, LLC will serve as the distributor for the Fund ("Distributor"). J.P. Morgan Chase Bank, N.A. will serve as the administrator, custodian, and transfer agent for the Fund ("Transfer Agent").

The Investment Adviser is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. If a sub-adviser that is also affiliated with a broker-dealer is hired for the Fund, such sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Investment Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new manager, 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.<sup>5</sup>

The Fund will not be an index fund. The Fund will be actively managed and will not seek to replicate the performance of a specified index.

The Fund will seek maximum current income consistent with the preservation of capital and liquidity. The Fund will seek to achieve its investment objective by investing under normal circumstances<sup>6</sup> at least 65% of its total

<sup>4</sup> The Trust is registered under the 1940 Act ("1940 Act"). On June 28, 2012, the Trust filed with the Commission a post-effective amendment to Form N-1A under the Securities Act of 1933 ("1933 Act") and the 1940 Act relating to the Fund (File Nos. 333-173967 and 811-22555) ("Registration Statement"). 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. 30068 (May 22, 2012) (File No. 812-13868) ("Exemptive Order").

<sup>5</sup> See NYSE Arca Equities Rule 8.600, Commentary .06.

<sup>6</sup> The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income 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.

assets in a non-diversified portfolio<sup>7</sup> of fixed income instruments, including bonds, debt securities, and other similar instruments issued by U.S. and non-U.S. public and private sector entities.<sup>8</sup> Such issuers include, without limitation, U.S. and non-U.S. governments and their subdivisions, agencies, instrumentalities, or sponsored enterprises, U.S. state and local governments, international agencies and supranational entities, and U.S. and non-U.S. private-sector entities, such as corporations and banks. The average portfolio duration<sup>9</sup> of the Fund will vary based on The Northern Trust Company Investment Policy Committee's forecast for interest rates and will normally not exceed one year. The dollar-weighted average portfolio maturity of the Fund is normally not expected to exceed two years.

The Fund will invest in debt securities that are, at the time of investment, rated within the top four rating categories by a Nationally Recognized Statistical Rating Organization ("NRSRO") or of comparable quality as determined by the Investment Adviser.<sup>10</sup> Subsequent to its purchase by the Fund, a rated security may cease to be rated or its rating may be reduced below investment grade or a security may no longer be considered to be investment grade. In such case, the Fund is not required to dispose of the security. The Investment Adviser will determine what action,

<sup>7</sup> The Fund will be "non-diversified" under the 1940 Act and may invest more of its assets in fewer issuers than "diversified" funds.

<sup>8</sup> "Fixed income instruments" includes, but is not limited to: securities issued or guaranteed by the U.S. Government, its agencies, or government sponsored enterprises; corporate debt securities, including corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; bank capital and trust preferred securities; fixed and variable rate loan participations and assignments; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on fixed income instruments; and reverse repurchase agreements on fixed income instruments.

<sup>9</sup> Duration measures the price sensitivity of a fixed-income security to changes in interest rates. Interest rate changes have a greater effect on the price of fixed-income securities with longer durations.

<sup>10</sup> In determining whether a security is of "comparable quality," the Investment Adviser may consider, for example, whether the issuer of the security has issued other rated securities, whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any), whether and (if applicable) how the security is collateralized, other forms of credit enhancement (if any), the security's maturity date, liquidity features (if any), relevant cash flow(s), valuation features, other structural analysis, macroeconomic analysis, and sector or industry analysis.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 67682 (August 17, 2012), 77 FR 51081 ("Notice").

including potential sale, is in the best interest of the Fund.

The Fund may invest, without limitation, in fixed income instruments of foreign issuers in developed and emerging markets,<sup>11</sup> including, without limitation, debt securities of emerging-market foreign governments in the following regions: Asia and Pacific, Central and South America, Eastern Europe, Africa, and the Middle East. Within these regions, the Fund may invest in countries such as Brazil, Chile, China, Columbia, Czech Republic, Egypt, Hungary, India, Indonesia, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, and Turkey, although this list may change as market developments occur and may include additional emerging market countries that conform to selected ratings, liquidity, and other criteria. Notwithstanding the foregoing, the Fund will not invest more than 20% of its total assets in fixed income instruments of foreign issuers in emerging markets.<sup>12</sup>

Foreign debt securities include direct investments in non-U.S. dollar-denominated debt securities traded primarily outside of the United States and dollar-denominated debt securities of foreign issuers. The Fund will invest in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at the time of investment.<sup>13</sup> Foreign government

<sup>11</sup> While there is no universally accepted definition of what constitutes an "emerging market," in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors. The Investment Adviser will look at a variety of commonly-used factors when determining whether a country is an "emerging" market. In general, the Investment Adviser will consider a country to be an emerging market if:

(1) It is either (a) classified by the World Bank in the lower middle or upper middle income designation for one of the past 3 years (*i.e.*, per capita gross national product of less than U.S. \$9,385), or (b) classified by the World Bank as high income in each of the last three years, but with a currency that has been primarily traded on a non-delivered basis by offshore investors (*e.g.*, Korea and Taiwan);

(2) The country's debt market is considered relatively accessible by foreign investors in terms of capital flow and settlement considerations; and

(3) The country has issued the equivalent of \$5 billion in local currency sovereign debt.

The criteria used to evaluate whether a country is an "emerging market" will change from time to time based on economic and other events.

<sup>12</sup> The Fund may invest more than 25% of its total assets in fixed income securities and instruments of issuers in a single developed market country.

<sup>13</sup> The Fund will invest only in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally, a corporate bond must have \$200 million

obligations may include debt obligations of supranational entities, including international organizations (such as the European Coal and Steel Community and the International Bank for Reconstruction and Development, also known as the World Bank) and international banking institutions and related government agencies. The Fund also may invest in foreign time deposits and other short-term instruments. The Fund may invest a portion of its assets in the obligations of foreign banks and foreign branches of domestic banks.

The Fund may invest, without limitation, in mortgage- or asset-backed securities, other structured securities, including collateralized mortgage obligations ("CMOs"), and also including to-be-announced transactions (or "TBA Transactions").<sup>14</sup> A TBA

(or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 20% of its net assets in corporate bonds with less than \$200 million par amount outstanding, including up to 5% of its assets in corporate bonds with less than \$100 million par amount outstanding, if (i) the Investment Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of seeking maximum current income consistent with the preservation of capital and liquidity, and (iii) such investment is deemed by the Investment Adviser to be in the best interest of the Fund.

<sup>14</sup> In addition to credit and market risk, asset-backed securities may involve prepayment risk because the underlying assets (loans) may be prepaid at any time. Prepayment (or call) risk is the risk that an issuer will exercise its right to pay principal on an obligation held by the Fund (such as a mortgage-backed security) earlier than expected. This may happen during a period of declining interest rates. Under these circumstances, the Fund may be unable to recoup all of its initial investment and will suffer from having to reinvest in lower yielding securities. The loss of higher yielding securities and the reinvestment at lower interest rates can reduce the Fund's income, total return, and share price. The value of these securities also may change because of actual or perceived changes in the creditworthiness of the originator, the service agent, the financial institution providing the credit support, or the counterparty. Like other fixed-income securities, when interest rates rise, the value of an asset-backed security generally will decline. Credit supports generally apply only to a fraction of a security's value. However, when interest rates decline, the value of an asset-backed security with prepayment features may not increase as much as that of other fixed-income securities. In addition, non-mortgage asset-backed securities involve certain risks not presented by mortgage-backed securities. Primarily, these securities do not have the benefit of the same security interest in the underlying collateral. If the issuer of the security has no security interest in the related collateral, there is the risk that the Fund could lose money if the issuer defaults.

Transaction is a method of trading mortgage-backed securities.<sup>15</sup> However, the Fund will not invest more than 10% of its total assets in non-agency<sup>16</sup> mortgage- or asset-backed securities.

The Fund may invest in variable and floating rate instruments. Variable and floating rate instruments have interest rates that periodically are adjusted either at set intervals or that float at a margin tied to a specified index rate. These instruments include variable amount master demand notes, long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date, and leveraged inverse floating rate instruments ("inverse floaters"). Some variable and floating rate instruments have interest rates that periodically are adjusted as a result of changes in inflation rates.

Because there is no active secondary market for certain variable and floating rate instruments, they may be more difficult to sell if the issuer defaults on its payment obligations or during periods when the Fund is not entitled to exercise its demand rights. In addition, variable and floating rate instruments are subject to changes in value based on changes in market interest rates or changes in the issuer's or guarantor's creditworthiness.

The Fund may borrow money and enter into reverse repurchase agreements in amounts not exceeding one-fourth of the value of its total assets (including the amount borrowed). To the extent consistent with its investment objective and strategies, the Fund may enter into repurchase agreements with financial institutions such as banks and broker-dealers that are deemed to be creditworthy by the Investment Adviser and may invest a portion of its assets in custodial receipts.

#### Other Investments

The Fund may engage in forward foreign currency transactions for hedging purposes in order to protect against uncertainty in the level of future foreign currency exchange rates, to facilitate local settlements, or to protect against currency exposure in connection

<sup>15</sup> In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to the settlement date.

<sup>16</sup> "Non-agency" securities are financial instruments that have been issued by an entity that is not a government-sponsored agency, such as the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), Federal Home Loan Banks, or the Government National Mortgage Association ("Ginnie Mae").

with its distributions to shareholders.<sup>17</sup> The Fund, however, does not expect to engage in currency transactions for speculative purposes (e.g., for potential income or capital gain). A forward currency exchange contract is an obligation to exchange one currency for another on a future date at a specified exchange rate.

To the extent consistent with its investment policies, the Fund may hold up to 15% of its net assets in securities that are illiquid (calculated at the time of investment), including Rule 144A Securities and master demand notes. The aggregate value of all of the Fund's illiquid securities, Rule 144A Securities, master demand notes, fixed and variable rate loan participations and assignments, inverse floaters, and long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date shall not exceed 15% of the Fund's total assets. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities.

The Fund may purchase and sell securities on a when-issued, delayed delivery, or forward commitment basis. The Fund also may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts (such as buy backs or mortgage dollar rolls).

<sup>17</sup> Liquid assets equal to the amount of the Fund's assets that could be required to consummate forward contracts will be segregated except to the extent the contracts are otherwise "covered." The segregated assets will be valued at market or fair value. If the market or fair value of such assets declines, additional liquid assets will be segregated daily so that the value of the segregated assets will equal the amount of such commitments by the Fund. A forward contract to sell a foreign currency is "covered" if the Fund owns the currency (or securities denominated in the currency) underlying the contract, or holds a forward contract (or call option) permitting the Fund to buy the same currency at a price that is (i) no higher than the Fund's price to sell the currency or (ii) greater than the Fund's price to sell the currency provided the Fund segregates liquid assets in the amount of the difference. A forward contract to buy a foreign currency is "covered" if the Fund holds a forward contract (or call option) permitting the Fund to sell the same currency at a price that is (i) as high as or higher than the Fund's price to buy the currency or (ii) lower than the Fund's price to buy the currency provided the Fund segregates liquid assets in the amount of the difference.

The Fund may temporarily hold cash and cash-like instruments or invest in short-term obligations pending redemption requests. The Fund also may hold up to 100% of its total assets in cash or cash-like instruments or invest in short-term obligations as a temporary measure mainly designed to limit the Fund's losses in response to adverse market, economic, or other conditions. The Fund may not achieve its investment objective when it holds cash or cash-like instruments, or invests its assets in short-term obligations or otherwise makes temporary investments. The Fund also may miss investment opportunities and have a lower total return during these periods.

The Fund may not purchase or sell physical commodities unless acquired as a result of ownership of securities or other instruments.

The Fund may not concentrate its investments (i.e., invest 25% or more of its total assets in the securities of a particular industry or industry group). For purposes of this limitation, securities of the U.S. government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. government securities, and securities of state or municipal governments and their political subdivisions are not considered to be issued by members of any industry.

The Fund may invest in the securities of other investment companies. Such investments will be limited so that, as determined after a purchase is made, either: (a) not more than 3% of the total outstanding stock of such investment company will be owned by the Fund, the Trust as a whole, and its affiliated persons (as defined in the 1940 Act); or (b)(i) not more than 5% of the value of the total assets of the Fund will be invested in the securities of any one investment company, (ii) not more than 10% of the value of its total assets will be invested in the aggregate securities of investment companies as a group, and (iii) not more than 3% of the outstanding voting stock of any one investment company will be owned by the Fund. These limits will not apply to the investment of uninvested cash balances in shares of registered or unregistered money market funds whether affiliated or unaffiliated. The foregoing exemption, however, only applies to an unregistered money market fund that (i) limits its investments to those in which a money market fund may invest under Rule 2a-7 of the 1940 Act, and (ii) undertakes to comply with all the other provisions of Rule 2a-7.

Investments by the Fund in other investment companies, including exchange-traded funds ("ETFs"),<sup>18</sup> will be subject to the limitations of the 1940 Act except as expressly permitted by Commission orders. The Fund also may invest in other types of U.S. exchange-traded products, such as Exchange-Traded Notes.<sup>19</sup>

The Fund intends to qualify as a regulated investment company under Subchapter M of Subtitle A, Chapter 1, of the Internal Revenue Code.

The Fund will not invest in any non-U.S. registered equity securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund's benchmark (i.e., the Citigroup 3-Month Treasury Bill Index).

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Investment Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>20</sup> 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 ("NAV") per Share will be calculated daily and that the NAV and the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), will be made available to all market participants at the same time.

<sup>18</sup> For purposes of this proposed rule change, ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3), 8.100, and 8.600.

<sup>19</sup> For purposes of this proposed rule change, Exchange Traded Notes are securities registered under the 1933 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6).

<sup>20</sup> 17 CFR 240.10A-3.

Additional information regarding the Trust, Fund, Shares, Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and/or the Registration Statement, as applicable.<sup>21</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>22</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>23</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>24</sup> 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 Fund 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,<sup>25</sup> which sets forth Congress's 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, 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

<sup>21</sup> See Notice and Registration Statement, *supra* notes 3 and 4, respectively.

<sup>22</sup> 15 U.S.C. 78f.

<sup>23</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

seconds during the Core Trading Session.<sup>26</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's 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>27</sup> The NAV of the Fund will normally be determined as of the close of the regular trading session (ordinarily 4:00 p.m., Eastern Time) on the New York Stock Exchange ("NYSE") on each business day. Further, a basket composition file, which includes the security names and share quantities, if applicable, 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 NYSE via the National Securities Clearing Corporation. 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. 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. In addition, price information for the debt securities, fixed income instruments, and other investments, including forwards and securities of other investment companies, held by the Fund will be available through major market data vendors and/or the securities exchange on which they are listed and traded. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission 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

<sup>26</sup> According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

<sup>27</sup> On a daily basis, the Fund will disclose for each portfolio security and other financial instrument of the Fund the following information on the Trust's Web site: ticker symbol (if applicable), name of securities and financial instruments, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the securities and financial instruments in the portfolio. The Web site information will be publicly available at no charge.

Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>28</sup> In addition, 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. The Exchange 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.<sup>29</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>30</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Investment Adviser is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio.<sup>31</sup> Moreover, the

<sup>28</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>29</sup> See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). 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.

<sup>30</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii). The Exchange represents that, consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Investment Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio.

<sup>31</sup> 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 Investment 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

Exchange represents that it is able to obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange 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 Holders (“ETP Holders”) in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information 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 Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to

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.

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, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,<sup>32</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will invest in debt securities that are, at the time of investment, rated within the top four rating categories by an NRSRO.

(7) The Fund will invest only in non-U.S. corporate bonds that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally, a corporate bond must have \$200 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered as an eligible investment.

(8) The Fund will not invest: (a) More than 20% of its total assets in fixed income instruments of foreign issuers in emerging markets; (b) more than 10% of its total assets in non-agency mortgage- or asset-backed securities; (c) consistent with the Exemptive Order, in options contracts, futures contracts, or swap agreements; and (d) in any non-U.S. registered equity securities.

(9) The aggregate value of all of the Fund’s illiquid securities, Rule 144A Securities, master demand notes, fixed and variable rate loan participations and assignments, inverse floaters, and long-term variable and floating rate bonds where the Fund obtains at the time of purchase the right to put the bond back to the issuer or a third party at par at a specified date shall not exceed 15% of the Fund’s total assets.

(10) The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage.

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

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

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>33</sup> and the rules and regulations thereunder applicable to a national securities exchange.

<sup>32</sup> 17 CFR 240.10A–3.

<sup>33</sup> 15 U.S.C. 78f(b)(5).

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR–NYSEArca–2012–82) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

Kevin M. O’Neill,  
Deputy Secretary.

[FR Doc. 2012–24738 Filed 10–5–12; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67965; SR–NYSEArca–2012–28]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the JPM XF Physical Copper Trust Pursuant To NYSE Arca Equities Rule 8.201

October 2, 2012.

On April 2, 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”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of JPM XF Physical Copper Trust (“Trust”) pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on April 20, 2012.<sup>3</sup>

The Commission initially received one comment letter, which opposed the proposed rule change.<sup>4</sup> On May 30, 2012, the Commission extended the time period for Commission action to July 19, 2012.<sup>5</sup> On June 19, 2012, NYSE Arca submitted a letter in support of its proposal.<sup>6</sup> On July 13, 2012, V&F submitted a second comment letter

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Securities Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772.

<sup>4</sup> See letter from Vandenberg & Felio, LLP (“V&F”), received May 9, 2012. All of the comment letters received by the Commission are available at <http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml>.

<sup>5</sup> See Securities Exchange Act Release No. 67075, 77 FR 33258 (June 5, 2012).

<sup>6</sup> See letter from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated June 19, 2012.