Number SR–EDGX–2014–19 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72686; File No. SR–NYSEArca–2013–127]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendments No. 2 and No. 3, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, No. 2, and No. 3, To List and Trade Shares of Nine Series of the IndexIQ Active ETF Trust Under NYSE Arca Equities Rule 8.600

July 28, 2014.

I. Introduction

On November 18, 2013, 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the IQ Long/Short Alpha ETF, IQ Bear U.S. Large Cap ETF, IQ Bear U.S. Small Cap ETF, IQ Bear International ETF, IQ Bear Emerging Markets ETF, IQ Bull U.S. Large Cap ETF, IQ Bull U.S. Small Cap ETF, IQ Bull International ETF and IQ Bull Emerging Markets ETF (each a ''Fund'' and, collectively, the ''Funds'') under NYSE Arca Equities Rule 8.600. On November 26, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on December 4, 2013.[4] On January 15, 2014, the Commission extended the time period for Commission action to March 4, 2014.[5] On March 4, 2014, the Commission published for comment an order instituting proceedings under Section 19(b)(2)(B) of the Act (''Order Instituting Proceedings'') to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[6] On April 11, 2014, the Exchange submitted Amendment No. 2 to the proposed rule change.[7] On May 28, 2014, the Commission extended the time period for Commission action to August 1, 2014.[8] The Commission received no comments on the proposed rule change. On July 25, 2014, the Exchange filed Amendment No. 3.[9] This order approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

II. Description of the Proposal[10]

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''), which governs the listing and trading of Managed Fund Shares.[11] Each Fund is a series of the IndexIQ Active ETF Trust (''Trust'').[12] IndexIQ Advisors LLC (''Adviser'') is the investment adviser for the Funds, and the Exchange states that the Adviser is not a broker-dealer and is not affiliated with a broker-dealer.[13] The Bank of New York Mellon (''Administrator'') is the administrator, custodian, transfer agent, and securities lending agent for the Funds. ALPS Distributors Inc. (''Distributor'') is the distributor for the Funds.

A. Principal Investments of the Funds Under Normal Circumstances[14]

1. IQ Long/Short Alpha ETF

According to the Exchange, the investment objective of the IQ Long/Short Alpha ETF is to seek capital appreciation. The Exchange states that

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[48] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified: (1) How certain holdings will be valued for purposes of calculating a fund's net asset value, and (2) where investors will be able to obtain pricing information for certain underlying holdings.

[4] *See* Securities Exchange Act Release No. 70954 (November 27, 2013), 78 FR 72955 (''Notice'').

[5] *See* Securities Exchange Act Release No. 71309 (January 15, 2014), 79 FR 03657 (January 22, 2014).

[6] *See* Securities Exchange Act Release No. 71645 (March 4, 2014), 79 FR 13349 (March 10, 2014) (''Order Instituting Proceedings'').

[7] In Amendment No. 2, the Exchange supplemented the information that would be provided daily regarding the contents of each Fund's portfolio. Specifically, the Exchange states: ''On a daily basis, the Funds will disclose on *www.indexiq.com* the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the applicable Fund's portfolio.''

[8] *See* Securities Exchange Act Release No. 72265 (May 28, 2014), 79 FR 32008 (June 3, 2014).

[9] In Amendment No. 3, the Exchange addressed the impact of the derivatives held by the Funds on the Funds' arbitrage mechanisms, stating: ''The Adviser believes that there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of each Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a ''cash in lieu'' amount when each Fund processes purchases or redemptions of creation units in-kind.''

[10] Additional information regarding the Funds; Shares; investment objective; strategies, methodology and restrictions; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice. *See* Notice, *supra* note 4, and Registration Statement, *infra* note 12, respectively.

[11] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), as amended (''1940 Act''), organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca 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.

[12] The Trust is registered under the 1940 Act. On September 12, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N–1A relating to the Funds (File Nos. 333–183489 and 811–22739) (the ''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trusts under the 1940 Act. *See* Investment Company Act Release No. 30198 (September 10, 2012) (File No. 812–13956) (the ''Exemptive Order'').

[13] *See* Notice, *supra* note 4, 78 FR at 72956. The Exchange also states that, in the event that the Adviser becomes newly affiliated with a broker-dealer or any new adviser or subadviser is a registered broker-dealer or becomes affiliated with a broker-dealer, a firewall will be erected with respect to relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. *See id.*

[14] The Exchange states that the term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including 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.

at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization companies [15] by investing in exchange-traded funds (''ETFs'') [16] or swap agreements, options contracts, and futures contracts with economic characteristics similar to those of the ETFs for which they are substituted (such swap agreements, options contracts, and futures contracts, collectively, ''Financial Instruments'').[17] The Exchange also states that the Fund will take long and short positions in U.S.-listed ETFs registered pursuant to the Investment Company Act of 1940 (''1940 Act'') holding primarily U.S. large capitalization equity securities. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.[18]

2. IQ Bear U.S. Large Cap ETF

According to the Exchange, the investment objective of the IQ Bear U.S. Large Cap ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization issuers, by taking short positions in ETFs or Financial Instruments. The Exchange also states that the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily U.S. large capitalization equity securities. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

3. IQ Bear U.S. Small Cap ETF

According to the Exchange, the investment objective of the IQ Bear U.S. Small Cap ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of U.S. small capitalization companies [19] by taking short positions in ETFs or Financial Instruments. Additionally, the Exchange states that the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily U.S. small capitalization equity securities. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

4. IQ Bear International ETF

According to the Exchange, the investment objective of the IQ Bear International ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in developed market countries [20] by taking short positions in ETFs or Financial Instruments. Additionally, the Exchange states that the Fund will take primarily short positions in U.S.-listed ETFs registered pursuant to the 1940 Act holding primarily developed market equity securities. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

5. IQ Bear Emerging Markets ETF

According to the Exchange, the investment objective of the IQ Bear Emerging Markets ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in emerging market countries,[21] by taking short positions in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

6. IQ Bull U.S. Large Cap ETF

According to the Exchange, the investment objective of the IQ Bull U.S. Large Cap ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization issuers [22] by investing in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

7. IQ Bull U.S. Small Cap ETF

According to the Exchange, the investment objective of the IQ Bull U.S. Small Cap ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of U.S. small capitalization issuers [23] by investing in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

8. IQ Bull International ETF

According to the Exchange, the investment objective of the IQ Bull International ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in developed market countries [24] by investing in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments, according to the Exchange.

9. IQ Bull Emerging Markets ETF

According to the Exchange, the investment objective of the IQ Bull Emerging Markets ETF is to seek capital appreciation. The Exchange states that at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in emerging market countries [25] by investing in ETFs or Financial Instruments. Cash balances arising from the use of short selling and derivatives typically will be held in

[15] According to the Registration Statement, the Adviser considers ''large capitalization companies'' to be those having market capitalizations of at least $5 billion.

[16] For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs will all be listed and traded in the U.S. on registered exchanges. The ETFs in which the Funds may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETFs.

[17] The Exchange represents that all options contracts and futures contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the Intermarket Surveillance Group (''ISG'') or a party to a comprehensive surveillance sharing agreement with the Exchange.

[18] According to the Registration Statement, money market instruments are generally short-term cash instruments that have a remaining maturity of 397 days or less and exhibit high quality credit profiles. These include U.S. Treasury Bills and repurchase agreements.

[19] According to the Registration Statement, the Adviser will consider ''small capitalization companies'' to be those that having market capitalizations of between $300 million and $2 billion.

[20] According to the Registration Statement, developed market countries will generally include Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. To the extent that the Adviser believes that countries should be added or subtracted to the developed markets category, the Adviser may adjust the list of countries accordingly.

[21] According to the Registration Statement, emerging market countries will generally include Brazil, Chile, China, Colombia, the Czech Republic, Egypt, Hungary, India, Indonesia, Malaysia, Mexico, Morocco, Peru, the Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, and Turkey. To the extent that the Adviser believes that countries should be added or subtracted to the emerging markets category, it may adjust the list of countries accordingly.

[22] *See* note 15, *supra.*

[23] *See* note 19, *supra.*

[24] *See* note 20, *supra.*

[25] *See* note 21, *supra.*

money market instruments, according to the Exchange.

B. Other Investments of the Funds (Under Normal Circumstances)

The Exchange states that each Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis. The instruments in which each Fund may invest include: (1) Short-term obligations issued by the U.S. government; (2) negotiable certificates of deposit (''CDs''), fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (3) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's Ratings Group, Inc., or, if unrated, of comparable quality as determined by the Adviser; (4) repurchase agreements (only from or to a commercial bank or a broker-dealer, and only if the repurchase is scheduled to occur within seven days or less); and (5) money market mutual funds. CDs are short-term negotiable obligations of commercial banks.

The Exchange states that each Fund may invest directly in non-ETF equity securities, including U.S.-listed and non-U.S. listed equity securities, provided, however, that all equity securities in which the Funds may invest will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the Intermarket Surveillance Group (''ISG'') or a party to a comprehensive surveillance sharing agreement with the Exchange.

In addition to ETFs, the Funds may invest in U.S.-listed exchange-traded notes [26] and other U.S.-listed exchange-traded products,[27] according to the Exchange.

The Exchange states that certain Funds may use American depositary receipts, European depositary receipts, and Global depositary receipts when, in the discretion of the Adviser, the use of such securities is warranted for liquidity, pricing, timing, or other reasons. The Exchange represents that no Fund will invest more than 10% of its net assets in unsponsored depositary receipts.[28]

C. Fund Investment Restrictions

Each Fund will seek to qualify for treatment as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.[29]

A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A Securities.[30] The Funds will monitor their portfolio liquidity on an ongoing basis to determine whether, in the light of current circumstances, an adequate level of liquidity is being maintained, and the Funds will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities and other illiquid assets.

A Fund will not invest more than 25% of its total assets, directly or indirectly (i.e., through underlying ETFs), in an individual industry, as defined by the Standard Industrial Classification Codes utilized by the Division of Corporate Finance of the Commission.[31] This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities or investments in shares of investment companies.

According to the Registration Statement, a Fund may not purchase or sell commodities or commodity contracts unless those assets have been acquired as a result of the ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts, but this shall not prevent the Fund from purchasing, selling, or entering into financial futures contracts (including futures contracts on indices of securities, interest rates, or currencies), options on financial futures contracts (including futures contracts on indices of securities, interest rates, or currencies), warrants, swaps, forward contracts, foreign currency spot and forward contracts, or other derivative instruments that are not related to physical commodities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[32] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[33] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. 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 Exchange Act,[34] 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 and the ETF shares underlying the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. Quotation and last-sale information for options contracts will be available via the Options Price Reporting Authority. Information regarding market price and trading volume of the Shares will be

[26] Exchange-traded notes are securities such as those listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6).

[27] For purposes of this filing, other U.S.-listed exchange-traded products include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200), Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201), Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202), Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203), and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[28] *See* Notice, *supra* note 4, 78 FR at 72960.

[29] 26 U.S.C. 151.

[30] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[31] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[32] 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).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78k–1(a)(1)(C)(iii).

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. The Commission also 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. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time) on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.[35] The Web site information will be publicly available at no charge. The NAV of each Fund will be calculated by the Administrator and determined each business day as of the close of regular trading on the Exchange (ordinarily 4:00 p.m. Eastern Time). 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 as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.[36] According to the Exchange, information regarding the equity securities and other portfolio securities held by each Fund, as well as the securities that underlie the derivatives held by each Fund, will be available from the national securities exchange trading such securities, automated quotation systems, published or other public sources, or on-line information services.[37] The Portfolio Indicative Value of the Funds, 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 Core Trading Session.[38] The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.[39]

The Exchange represents that trading in Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached.[40] 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,[41] and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser, as the Reporting Authority, 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 each Fund's portfolio.[42] The Exchange states that the Adviser is not a broker-dealer and is not affiliated with a broker-dealer.[43] Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[44]

As discussed above, at least 80% of each Fund's assets will be exposed to equity securities of issuers domiciled in the U.S. or in developed or in emerging market countries, by investing in or taking short positions in ETFs or Financial Instruments. According to the Exchange, Financial Instruments are swap agreements, exchange-listed options contracts, and exchange-listed futures contracts with economic characteristics similar to those of the ETFs for which they are substituted. In the Order Instituting Proceedings, the Commission asked for public comment on (1) whether the Disclosed Portfolio of each Fund would include enough information to price the Financial Instruments, which may constitute a high percentage of each Fund's portfolio; and (2) what impact, if any, holding such a high percentage of Financial Instruments would have on the Funds' arbitrage mechanism.[45]

After the Order Instituting Proceedings was published, the Exchange filed Amendment No. 2, which supplemented the information to be made public about the Funds' portfolios, providing that the Disclosed Portfolio for each Fund would include: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the applicable Fund's portfolio. The Exchange states that there will be minimal, if any, impact to the traditional arbitrage mechanism as a result of the use of derivatives and that market makers and participants should be able to value the derivatives held by the Funds as long as the positions are disclosed with relevant information.[46] The Exchange asserts that the price at which Shares trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.[47] In addition, the Exchange asserts that the use of derivatives will not significant affect the settlement or operational aspects of the Fund's arbitrage mechanism.[48]

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

[35] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds 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.

[36] *See* Notice, *supra* note 4, 78 FR 72963.

[37] *See id.* at 72962.

[38] The Exchange states that it understands that several major market data vendors display or make widely available PIVs taken from the CTA or other data feeds. *See id.* at 72962, n.29.

[39] *See id.* at 62964.

[40] *See id.* at 72962.

[41] These may include: (1) The extent to which trading is not occurring in the securities or the financial instruments comprising the Disclosed Portfolio of a Fund; and (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. *See id.* at 72963.

[42] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[43] *See* note 13, *supra.*

[44] For a list of the current members of ISG, see *www.isgportal.org.*

[45] *See* Order Instituting Proceedings, *supra* note 6, 78 FR at 13352.

[46] *See* Amendment No. 3, *supra* note 9.

[47] *See id.*

[48] *See id.*

equity securities. In support of this proposal, the Exchange represented that:

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

(2) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.

(3) Except for the unsponsored depository receipts referenced above,[49] all equity securities in which the Funds may invest will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

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

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit 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 Equity Trading Permit 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 Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Exchange Act,[50] as provided by NYSE Arca Equities Rule 5.3.

(7) Each Fund's investments will be consistent with its respective investment objective.

(8) A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A Securities.

(9) A minimum of 100,000 Shares 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 Funds. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[51] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendments No. 2 and No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments No. 2 and No. 3 to the proposed rule change are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–127 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2013–127. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–127 and should be submitted on or before August 22, 2014.

V. Accelerated Approval of Proposed Rule Change as Modified by Amendments No. 2 and No. 3

As discussed above, the Exchange submitted Amendment No. 2 to supplement the information to be provided in the Disclosed Portfolios of the Funds. Additionally, the Exchange submitted Amendment No. 3 to address the impact of the Funds' derivatives on the Funds' arbitrage mechanisms. The Commission believes that the Funds' additional disclosures regarding derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday and engage in effective arbitrage as argued by the Exchange in Amendment No. 3, thus removing impediments to a free and open market and protecting investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[52] to approve the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3, prior to the 30th day after the date of publication in the **Federal Register** of notice of Amendments No. 2 and No. 3 of the filing.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[53] that the proposed rule change (SR–NYSEArca–2013–127), as modified by Amendments No. 1, No. 2, and No. 3, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Kevin M. O'Neill,

Deputy Secretary.

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[49] *See* text accompanying note 28, *supra*.

[50] 17 CFR 240.10A–3.

[51] 15 U.S.C. 78f(b)(5).

[52] 15 U.S.C. 78s(b)(2).

[53] 15 U.S.C. 78s(b)(2).

[54] 17 CFR 200.30–3(a)(12).