

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-IEX-2016-01, and should be submitted on or before August 22, 2016.

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

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18054 Filed 7-29-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78414; File No. NYSEArca-2016-79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Virtus Japan Alpha ETF Under NYSE Arca Equities Rule 8.600

July 26, 2016.

I. Introduction

On May 24, 2016, NYSE Arca, Inc. ("Exchange") 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 Virtus Japan Alpha ETF ("Fund") under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"). The proposed rule change was published for comment in the **Federal Register** on June 9, 2016.³ On June 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund ("ETF"). The Shares will be offered by Virtus ETF Trust II ("Trust"), which is registered with the Commission as an open-end management investment company.⁵ Virtus ETF Advisers LLC will serve as the investment adviser to the Fund ("Adviser"). Euclid Advisors LLC will serve as the Fund's sub-adviser ("Sub-Adviser"). ETF Distributors LLC will be the principal underwriter and distributor of the Fund's Shares, Virtus ETF Solutions LLC will serve as the administrator for the Fund, and the Bank of New York Mellon will serve as accounting services administrator, custodian, and transfer agent for the Fund. The Exchange further states that the Adviser and Sub-Adviser are not registered broker-dealers but are affiliated with a broker-dealer and each has implemented a "fire wall" with respect to such broker-dealer regarding

³ See Securities Exchange Act Release No. 77992 (Jun. 3, 2016), 81 FR 37222 ("Notice").

⁴ In Amendment No. 1, the Exchange made minor, clarifying changes to the description of the Fund, including, among other things, the Fund's permitted investments, restrictions on investments, calculation of net asset value ("NAV"), and publicly available information relating to the Fund and its investments. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2016-79/nysearca201679-1.pdf>.

⁵ According to the Exchange, the Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act"). The Exchange also states that, on February 26, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-206600 and 811-23078) ("Registration Statement"). The Exchange also states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Notice, *supra* note 3, 81 FR at 37222-37223.

access to information concerning the composition and/or changes to the Fund's portfolio.⁶

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund's portfolio holdings and investment restrictions.⁷

A. Exchange's Description of the Fund's Principal Investments

Under normal circumstances,⁸ the Fund will invest not less than 80% of its assets in the common stocks of certain Japanese companies listed in the JPX-Nikkei 400 Total Return Index ("Index"), a free-float adjusted market-capitalization-weighted equity index composed of 400 Tokyo Stock Exchange-listed securities, and in the financial instruments listed below in this section.

The Fund will be actively-managed through the selection, at any given time, of approximately 80-100 common stocks from the Index based on quantitative and qualitative factors, including an assessment of the following characteristics: cash flow return on invested capital; earnings quality and momentum; operational quality; corporate governance policies; and capital stewardship. The Fund may invest in such Index components by directly purchasing shares of common stock or investing in American

⁶ See Notice, *supra* note 3, 81 FR at 37223. The Exchange further represents that in the event (i) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (ii) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Exchange represents that such adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. See *id.*

⁷ The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in the Notice, Amendment No. 1, and the Registration Statement, as applicable. See Notice, Amendment No. 1, and Registration Statement, *supra* notes 3, 4, and 5, respectively.

⁸ The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. See Amendment No. 1, *supra* note 4 at 5-6.

¹⁹ 17 CFR 200.30-3(a)(12) and (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Depository Receipts (“ADRs”)⁹ on the common stock of such Index components. Securities held by the Fund may be underweighted or overweighted relative to their positions in the Index.

Although the Fund will focus on investment in securities in the Index as described above, the Fund may also invest in common stocks of other Japanese companies with characteristics similar to those listed on the Index, as determined by the Sub-Adviser. With respect to such common stocks, the Fund will only invest in securities that are listed on the Tokyo Stock Exchange¹⁰ and that have a market capitalization of \$250,000,000 U.S. dollars or greater. The Fund may also invest in exchange-traded and over-the-counter ADRs on those common stocks.¹¹

Positions may be reduced or removed when the Sub-Adviser determines that a security has become overweighted within the Fund’s portfolio, that the security’s prospects have adversely changed, that the Fund should raise funds for new or other investments, or that there are more attractive opportunities.¹²

B. Exchange’s Description of Other Investments for the Fund

While the Fund, under normal circumstances, will invest at least 80% of its assets in common stock of Japanese companies listed in the Index, common stock of certain other Japanese companies and ADRs, as described above, the Fund may invest its remaining assets in the securities and financial instruments described below.¹³

The Fund may invest in securities index futures contracts and foreign currency futures contracts.¹⁴ In general,

⁹ ADRs, which evidence ownership of underlying securities issued by a foreign corporation, are bought and sold in the United States and are typically issued by a U.S. bank or trust company. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange listed. See Notice, *supra* note 3, 81 FR at 37223.

¹⁰ Japan Exchange Regulation (“JPX-R”), an affiliate of the Tokyo Stock Exchange that conducts self-regulatory functions on behalf of the Tokyo Stock Exchange, is a member of the Intermarket Surveillance Group, and information relating to transactions in Tokyo Stock Exchange listed securities is available through JPX-R. See Amendment No. 1, *supra* note 4, at 6.

¹¹ *Id.*

¹² See Notice, *supra* note 3, 81 FR at 37223.

¹³ *Id.*

¹⁴ In instances involving the purchase of futures contracts, the Fund will deposit in a segregated account with its custodian an amount of cash, cash equivalents, or appropriate securities equal to the cost of the futures contracts, to the extent that such deposits are required under the 1940 Act. See *id.* at 37223.

the Fund will not purchase or sell futures contracts unless either (i) the futures contracts are purchased for “bona fide hedging” purposes (as defined under applicable Commodity Futures Trading Commission regulations) or (ii) if purchased for other purposes, the sum of the amounts of initial margin deposits and premiums required to establish the positions on the Fund’s existing futures would not exceed 5% of the liquidation value of the Fund’s total assets.¹⁵

The Fund may also invest in forward contracts and non-deliverable forward (“NDF”) contracts on the foreign currency spot market.¹⁶

The Fund may invest in when-issued and forward-commitment securities (which means that delivery and payment would take place a number of days after the date of the commitment to purchase), if the Fund holds sufficient liquid assets to meet the purchase price.¹⁷

The Fund may invest in the following equity securities: common stocks traded on U.S. or Japanese securities exchanges (other than the Tokyo Stock Exchange); common stocks traded in the over-the-counter market; U.S. and foreign exchange-traded preferred stocks; U.S. and foreign exchange-traded convertible preferred stocks; U.S. and foreign exchange-traded convertible bonds; U.S. and foreign exchange-traded warrants; and U.S. and foreign exchange-traded rights. The Fund will not invest in ADRs on any of these equity securities.¹⁸

In addition, the Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder, other exchange-traded and non-exchange traded open-end investment companies, including other ETFs.¹⁹

The Fund may invest in Currency Trust Shares.²⁰

The Fund may invest in real estate investment trusts (“REITs”) traded on U.S. exchanges and Japanese exchanges.²¹

¹⁵ See *id.* at 37223–37224.

¹⁶ See *id.* at 37224.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Fund will not invest in inverse ETFs or in leveraged (e.g., 2X, –2X, 3X or –3X) ETFs. See Notice, *supra* note 3, 81 FR at 37224.

²⁰ Currency Trust Shares are securities such as those described in NYSE Arca Equities Rule 8.202.

²¹ *Id.*

The Fund may enter into short sales of securities. The Fund may also enter into short sales “against the box,” *i.e.*, when the Fund sells a security short while owning a securities equivalent in kind and amount to the securities sold short (or securities convertible or exchangeable into such securities) and will hold such securities while the short sale is outstanding.²²

The Fund may invest in the following money market instruments: U.S. Government obligations; corporate debt obligations²³ (including, without limitation, those subject to repurchase agreements); banker’s acceptances (credit instruments evidencing the obligation of a bank to pay a draft drawn on it by a customer); certificates of deposit of domestic branches of banks (certificates representing the obligation of a bank to repay funds deposited with it for a specified period of time); commercial paper²⁴ (unsecured, short-term debt obligation of a bank, corporation, or other borrower); and master notes (unsecured obligations that are redeemable upon demand of the holder and that permit the investment of fluctuating amounts at varying rates of interest).²⁵

The Fund may invest assets in shares of money market funds.²⁶

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political, or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash and cash equivalent positions.²⁷

²² *Id.*

²³ The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its corporate bond assets in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries.

²⁴ The Fund will directly invest in commercial paper only if such commercial paper is rated in one of the two highest rating categories as rated by a major credit agency or, if unrated, will be of comparable quality as determined by the Sub-Adviser. *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Cash equivalents are short-term instruments with maturities of less than 3 months. Short-term instruments shall include the following: (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers’ acceptances; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits; (vi) commercial paper; and (vii) money market funds. *Id.*

C. Exchange's Description of the Fund's Investment Restrictions

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" for purposes of the Internal Revenue Code of 1986.²⁸

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid 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 assets.²⁹ Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.³⁰

The Fund will not invest in options or swaps.³¹

The Fund's investments will be consistent with the Fund's investment objective and will not be used to produce leveraged returns. 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 Index.³²

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.³³ In particular, the

Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,³⁴ 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 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 also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,³⁵ which sets forth the finding of Congress 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.

According to the Exchange, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line.³⁶ On each business day, before commencement of trading in Shares in the Core Trading Session³⁷ on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio for the Fund (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.³⁸ In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3),³⁹ will be widely disseminated at least every 15 seconds

during the Exchange's Core Trading Session by one or more major market data vendors.⁴⁰ The Fund's NAV will be determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE") (normally at 4:00 p.m., Eastern Time) on each day that the NYSE is open for trading.⁴¹ The Fund's Web site will include a form of the prospectus for the Fund, as well as additional quantitative information updated on a daily basis.⁴² 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.⁴³ 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.⁴⁴

Intra-day, closing, and settlement prices of U.S. exchange-listed equity

⁴⁰ Currently, it is the Exchange's understanding that several major market data vendors display or make widely available Portfolio Indicative Values taken from CTA or other data feeds. *Id.*

⁴¹ *Id.* at 37224. According to the Exchange, in determining the value of the Fund's assets, U.S. and foreign exchange-traded equity securities, including shares of common stocks, preferred stocks, convertible preferred stocks, convertible bonds, warrants, rights, ETFs, REITs, Currency Trust Shares, and exchange-traded ADRs, generally will be valued at market value using quotations from the primary market on which they are traded. The Fund normally will use third party pricing services to obtain market quotations. Common stocks and ADRs traded in the over-the-counter markets will be priced utilizing market quotations provided by approved pricing services or by broker quotation. Money market instruments and cash equivalents will be valued on the basis of broker quotes or valuations provided by a third party pricing service, which in determining value utilizes information regarding recent sales, market transactions in comparable securities, quotations from dealers, and various relationships between securities. Futures contracts will generally be valued at the settlement price of the relevant exchange. Investments in other open-end investment companies (other than ETFs) that are registered under the 1940 Act, including money market funds, will be valued based upon the NAVs reported by those registered open-end investment companies. NDFs and forward contracts will be valued intraday using market quotes or another proxy as determined to be appropriate by a third party market data provider. Securities and assets for which market quotations are not readily available, or that cannot be accurately valued using the Fund's normal pricing procedures, will be valued by the Trust's Fair Value Pricing Committee at fair value as determined in good faith under policies approved by the Board. In addition, the Trust may fair value foreign equity portfolio securities each day the Trust calculates the Fund's NAV. Pursuant to policies adopted by the Board, the Adviser will consult with Bank of New York Mellon and the Sub-Adviser on a regular basis regarding the need for fair value pricing. The Board will monitor and evaluate the Fund's use of fair value pricing, and will periodically review the results of any fair valuation under the Trust's policies. *See* Amendment No. 1, *supra* note 4 at 10-12.

⁴² *Id.* at 14.

⁴³ *Id.* at 16.

⁴⁴ *Id.*

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁶ *See* Notice, *supra* note 3, 81 FR at 37226.

³⁷ The term "Core Trading Session" is defined in NYSE Arca Equities Rule 7.34(a)(2).

³⁸ On a daily basis, the Adviser will disclose on the Fund's Web site 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); the identity of the security, index, or other asset or instrument underlying the holding, if any; 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 Fund's portfolio. The Web site information will be publicly available at no charge. *See* Notice, *supra* note 3, 81 FR at 37226.

³⁹ The Fund's Portfolio Indicative Value will be calculated based on the current market value of the Fund's portfolio holdings. *Id.* The Portfolio Indicative Value calculation will be an estimate of the value of the Fund's NAV per Share using market data converted into U.S. dollars at the current currency rates. The Portfolio Indicative Value price will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. *Id.* at 37227.

²⁸ 26 U.S.C. 851. *Id.*

²⁹ Under the supervision of the Board of Trustees of the Trust ("Board"), the Fund will determine the liquidity of the Fund's investments, which will be monitored by the Board pursuant to reports. In determining the liquidity of the Fund's investments, the Fund may consider various factors including, without limitation: (i) The frequency of trades and quotations; (ii) the number of dealers and prospective purchasers in the marketplace; (iii) dealer undertakings to make a market; (iv) the nature of the security (including, without limitation, any demand or tender features; and (v) the nature of the marketplace for trades (including, without limitation, the ability to assign or offset the Fund's rights and obligations relating to the investment). *See* Amendment No. 1, *supra* note 4, at 9-10.

³⁰ *Id.*

³¹ *Id.* at 10.

³² *See* Notice, *supra* note 3, 81 FR at 37224.

³³ 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).

securities (including common stocks, shares of preferred stocks, convertible preferred stocks, convertible bonds, warrants, rights, ETFs, REITs, Currency Trust Shares and ADRs) 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. Intra-day, closing, and settlement prices of non-U.S. exchange-listed equity securities (including common stocks, REITs traded on Japanese exchanges, preferred stocks, convertible preferred stocks, convertible bonds, warrants, and rights), will be available from the foreign exchanges on which such securities trade as well as from major market-data vendors. Intra-day and closing price information for common stocks and ADRs traded in the over-the-counter markets will be available from major market-data vendors. Price information from brokers and dealers or pricing services will be available for money market instruments, money market funds, cash equivalents, forwards, and NDFs held by the Fund. Quotation and last sale information for futures will be available from the exchange on which they are listed. Price information regarding open-end investment company securities (other than ETFs), including money market funds, will be available from the applicable fund.⁴⁵

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 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.⁴⁶ 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. In addition, trading in the Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.⁴⁷ The

Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.⁴⁸ In addition, the Exchange states that, while the Adviser and Sub-Adviser are not registered as broker-dealers, the Adviser and Sub-Adviser are affiliated with broker-dealers and that each has implemented a fire wall with respect to that broker-dealer regarding access to information concerning the composition of, and changes to, the portfolio.⁴⁹ 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.⁵⁰ The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁵¹

maintenance of a fair and orderly market are present. *Id.*

⁴⁸ *Id.* at 37228.

⁴⁹ See *id.* at 37223; see also *supra* note 6 and accompanying text. The Exchange further represents 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, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. See Amendment No. 1, *supra* note 4, at 5.

⁵⁰ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

⁵¹ According to the Exchange, FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and the Exchange is responsible for FINRA's performance under this regulatory services agreement. See Notice, *supra* note 3, 81 FR at 37227.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.⁵² In support of this proposal, the Exchange has also represented that:

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

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

(3) The Exchange and FINRA will communicate as needed regarding trading in the Shares, ETFs, and certain exchange-traded equity securities underlying the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs and certain exchange-traded equity securities underlying the Shares from those markets and entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, and certain exchange-traded equity securities underlying the Shares from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA"). The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

(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 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

⁴⁵ *Id.*

⁴⁶ See Notice, *supra* note 3, 81 FR at 37227.

⁴⁷ These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the

⁵² *Id.*

or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio 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 Fund will be in compliance with Rule 10A-3 under the Act,⁵³ as provided by NYSE Arca Equities Rule 5.3.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets.

(8) Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts shall consist of futures contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA. No more than 10% of the net assets of the Fund will be invested in ADRs that are not exchange-listed.

(9) The Fund's investments will be consistent with the Fund's investment objective and will not be used to produce leveraged returns. 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 Index.

(10) All ETFs in which the Fund invests will be listed and traded in the U.S. on a national securities exchange and the Fund will not invest in inverse ETFs or in leveraged (*e.g.*, 2X, -2X, 3X or -3X) ETFs.

(11) The Fund will not invest in options or swaps.

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

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the

Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.⁵⁴ If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice, and in Amendment No. 1 to the proposed rule change. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600, including those set forth in this proposed rule change, as modified by Amendment No. 1, to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act⁵⁵ 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 Exchange Act,⁵⁶ that the proposed rule change (SR-NYSEArca-2016-79), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-18052 Filed 7-29-16; 8:45 am]

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⁵⁴ The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (SR-BATS-2016-04) (approving a proposed rule change to list and trade shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF), available at: <http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf>. In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78s(b)(2).

⁵⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78421; File No. SR-C2-2016-013]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule to Amend the Fees Schedule

July 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 14, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/>), at the Exchange's Office of the Secretary, 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

The Exchange proposes to amend its Fees Schedule.³ Specifically, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed fee change on July 1, 2016 (SR-C2-2016-011). On July

⁵³ See 17 CFR 240.10A-3.