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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72748; File No. SR-NYSEArca-2014-46)

August 4, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to List and Trade Shares of the Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF Under NYSE Arca Equities Rule 8.600

## I. Introduction

On April 16, 2014, 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 the Fidelity Investment Grade Bond ETF, Fidelity Limited Term Bond ETF, and Fidelity Total Bond ETF (each a “Fund,” and collectively “Funds”) under NYSE Arca Equities Rule 8.600. On May 1, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change was published for comment in the Federal Register on May 6, 2014.<sup>3</sup> On June 18, 2014, the Commission designated a longer period for Commission action on the proposed rule change.<sup>4</sup> On July 28, 2014, the Exchange filed Amendment No. 2 to the proposed rule change,<sup>5</sup> which amended and replaced the proposed rule

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<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. 72064 (May 1, 2014), 79 FR 25908 (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 72422, 79 FR 25908 (June 24, 2014).

<sup>5</sup> In Amendment No. 2, the Exchange: (1) noted the replacement of Fidelity Management & Research Company with Fidelity Investments Money Management, Inc. as the Funds’ manager (“Manager”); (2) stated that the Manager will have overall responsibility for directing each Fund’s investments and handling each Fund’s business affairs; (3) disclosed that FMR Co., Inc. (“FMRC”) is affiliated with the Manager; (4) disclosed

change in its entirety. The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

## II. Description of the Proposed Rule Change

### A. In General

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Funds are offered by Fidelity Merrimack Street Trust (“Trust”), a Massachusetts business trust.<sup>6</sup> Fidelity Investments

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that other investment advisors are affiliated with the Manager; (5) specified that only senior loans would be included in the definition of “Debt Securities,” one of the primary investments of the Funds; (6) designated structured securities, junior loans, and other securities believed to have debt-like characteristics, including hybrid securities, as non-primary investments; (7) specified that the Funds’ junior loans, structured securities, and hybrid securities would be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service; (8) stated that the Funds’ derivative investments also may overlie hybrid securities; (9) specified that, in computing each Fund’s net asset value (“NAV”), junior loans, structured securities, and hybrid securities would be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service; (10) expanded the information to disclosed daily about the portfolio of each Fund on the Funds’ website to 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 Fund’s portfolio; and (11) stated that quotation information for OTC-traded derivative instruments may be obtained from brokers and dealers who make markets in such instruments or through nationally recognized pricing services through subscription agreements.

<sup>6</sup> The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On April 17, 2014, 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) (“1933 Act”) and the 1940 Act relating to the Funds (File Nos. 333-186372 and 811-

Money Management, Inc. will be the Funds' manager and will have overall responsibility for directing each Fund's investments and handling each Fund's business affairs.<sup>7</sup> FMRC, which is affiliated with the Manager, will serve as a sub-adviser for the Fidelity Total Bond ETF, and other investment advisers will serve as sub-advisers for the Funds (together with FMRC, "Sub-Advisers").<sup>8</sup> Other investment advisers, which also are affiliates of the Manager, will assist the Manager with foreign investments; these investment advisers include Fidelity Management & Research (U.K.) Inc., Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Inc. Fidelity Distributors Corporation ("FDC") will be the distributor for the Shares.<sup>9</sup> Fidelity Distributors Corporation ("FDC") will be the distributor for the Funds' Shares.<sup>10</sup>

The Exchange represents that the Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers, and that each (1) has implemented a fire wall with respect to affiliated broker-dealers regarding access to information concerning the composition of or changes to the portfolios, and (2) will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolios.<sup>11</sup>

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22796) (the "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. 30513 (May 10, 2013) ("Exemptive Order") (File No. 812-14104).

<sup>7</sup> See Amendment No. 2, supra note 5.

<sup>8</sup> See id.

<sup>9</sup> See id.

<sup>10</sup> See id.

<sup>11</sup> See Commentary .06 to Rule 8.600. In the event (a) the Manager or any of the Sub-Advisers becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Manager or Sub-Adviser will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to

B. The Exchange's Description of the Funds

The Exchange has made the following representations concerning the Fund.

Fidelity Investment Grade Bond ETF

The Exchange states that the Fidelity Investment Grade Bond ETF would seek a high level of current income. The Manager would use the Barclays U.S. Aggregate Bond Index ("Aggregate Index") as a guide in structuring the Fund and selecting its investments. The Manager would manage the Fund to have similar overall interest rate risk to the Aggregate Index.

Normally,<sup>12</sup> the Manager would invest at least 80% of the Fund's assets in investment-grade debt securities (those of medium and high quality).<sup>13</sup> The debt securities in which the Fund may invest are: corporate debt securities; U.S. Government securities; repurchase agreements and reverse repurchase agreements;<sup>14</sup> money market securities; mortgage and other

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information concerning the composition of 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 Notice, supra note 3, 79 FR at 25909.

<sup>12</sup> The term "normally" 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. According to the Registration Statement, each Fund reserves the right to invest without limitation in investment-grade money market or short-term debt instruments for temporary, defensive purposes.

<sup>13</sup> Investment-grade debt securities include all types of debt instruments that are of medium and high-quality. An investment-grade rating means the security or issuer is rated investment-grade by a credit rating agency registered as a nationally recognized statistical rating organization with the Commission (for example, Moody's Investors Service, Inc.), or is unrated but considered to be of equivalent quality by the relevant Fund's Manager or Sub-Adviser.

<sup>14</sup> Investment-grade debt securities include repurchase agreements collateralized by U.S. Government securities as well as repurchase agreements collateralized by equity securities, non-investment-grade debt, and all other instruments in which a Fund can

asset-backed securities;<sup>15</sup> senior loans; loan participations and loan assignments and other evidences of indebtedness, including letters of credit, revolving credit facilities, and other standby financing commitments; stripped securities; municipal securities; sovereign debt obligations; and obligations of international agencies or supranational entities (collectively, “Debt Securities”).<sup>16</sup>

The Fund may hold uninvested cash or may invest it in cash equivalents such as: repurchase agreements; shares of investment companies, including exchange traded funds registered under the 1940 Act that primarily hold short-term bonds; or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).<sup>17</sup> The Manager may invest the Fund’s assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.<sup>18</sup>

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perfect a security interest, provided that the repurchase agreement counterparty has an investment-grade rating.

<sup>15</sup> Each Fund may invest up to 20% of its total assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation will not apply to U.S. Government securities.

<sup>16</sup> See Amendment No. 2, supra note 5. Debt Securities may be fixed, variable, or floating rate securities. Variable rate securities provide for a specific periodic adjustment in the interest rate, while floating rate securities have interest rates that change whenever there is a change in a designated benchmark rate or the issuer’s credit quality, sometimes subject to a cap or floor on the interest rate. Some variable or floating rate securities are structured with put features that permit holders to demand payment of the unpaid principal balance plus accrued interest from the issuers or certain financial intermediaries. In addition, Debt Securities may include zero coupon bonds. Investments in Debt Securities may have a leveraging effect on a Fund.

<sup>17</sup> The Exchange states that currently it is expected that the Funds will only invest in Fidelity central funds that are money market funds. See Notice, supra note 3, 79 FR at 25910, n.22.

<sup>18</sup> The Exchange states that the Fund’s holdings generally are expected to be U.S. dollar denominated. See id. at 25910, n.23.

### Fidelity Limited Term Bond ETF

The Fidelity Limited Term Bond ETF would seek to provide a high rate of income. The Manager would use the Fidelity Limited Term Composite Index (“Composite Index”) as a guide in structuring the Fund and selecting its investments. The Manager would manage the Fund to have similar overall interest rate risk to the Composite Index.

Normally, the Manager would invest at least 80% of the Fund’s assets in investment-grade Debt Securities (those of medium and high quality). The Manager may invest the Fund’s assets in Debt Securities of foreign issuers in addition to securities of domestic issuers. Additionally, the Fund may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short-term bond ETFs or mutual funds, or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).

### Fidelity Total Bond ETF

According to the Registration Statement, Fidelity Total Bond ETF would seek a high level of current income. The Manager would use the Barclays U.S. Universal Bond Index (“Universal Index”) as a guide in structuring the Fund and selecting its investments. The Manager would use the Universal Index as a guide in allocating the Fund’s assets across the investment-grade, high yield, and emerging market asset classes (as discussed below). The Manager would manage the Fund to have similar overall interest rate risk to the Universal Index.

Normally, the Manager would invest at least 80% of the Fund’s assets in Debt Securities. The Manager would allocate the Fund’s assets across investment-grade, high yield, and emerging market Debt Securities. The Manager may invest up to 20% of the Fund’s assets in lower-

quality Debt Securities.<sup>19</sup> The Manager may invest the Fund's assets in Debt Securities of foreign issuers in addition to securities of domestic issuers.<sup>20</sup>

According to the Registration Statement, the Fund may hold uninvested cash or may invest it in cash equivalents such as repurchase agreements, shares of short-term bond ETFs or mutual funds, or money market funds, including Fidelity central funds (special types of investment vehicles created by Fidelity for use by the Fidelity funds and other advisory clients).

According to the Registration Statement, the Manager would allocate the Fund's assets among different asset classes, using the composition of the Universal Index as a guide, and among different market sectors (for example, corporate, asset-backed, or government securities) and different maturities based on its view of the relative value of each sector or maturity.

#### Other Investments

As described above, although the Manager would normally invest at least 80% of assets of the Fidelity Investment Grade Bond ETF and Fidelity Limited Term Bond ETF in investment-grade Debt Securities and would normally invest at least 80% of assets of the Fidelity Total Bond ETF in Debt Securities, the Manager may invest up to 20% of a Fund's assets in other securities and financial instruments, as summarized below.

According to the Registration Statement, the Funds may invest in securities of other investment companies (other than the short-term bond investment companies described above). In addition, the Funds may invest in other exchange-traded products ("ETPs") – other than the short-term bond ETFs described above – such as commodity pools, or in other entities that are traded on an exchange.

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<sup>19</sup> Lower-quality debt securities, also referred to as high yield debt securities, are those of less than investment-grade quality.

<sup>20</sup> The Fund's holdings may be U.S. dollar denominated and non-dollar denominated.

According to the Registration Statement, the Funds may invest in inverse ETFs (also called “short ETFs” or “bear ETFs”), shares of which are expected to increase in value as the value of the underlying benchmark decreases.

According to the Registration Statement, the Funds also may invest in leveraged and inverse leveraged ETFs, which seek to deliver multiples or inverse multiples of the performance of an index or other benchmark they track and which use derivatives in an effort to amplify the returns of the underlying index or benchmark.

According to the Registration Statement, the Funds may invest in exchange traded notes (“ETNs”), which are a type of senior, unsecured, unsubordinated debt security issued by financial institutions and which combine aspects of both bonds and ETFs. The Funds may invest in leveraged ETNs.

According to the Registration Statement, the Funds may invest in American Depositary Receipts (“ADRs”) as well as other “hybrid” forms of ADRs, including European Depositary Receipts (“EDRs”) and Global Depositary Receipts (“GDRs”), which are certificates evidencing ownership of shares of a foreign issuer.<sup>21</sup>

The Funds may invest in: junior loans, by buying an assignment of all or a portion of the junior loan from a lender or by purchasing a loan participation from a lender or other purchaser of a participation; structured securities;<sup>22</sup> and other securities believed to have debt-like

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<sup>21</sup> The Funds will invest only in ADRs, EDRs, and GDRs that are traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>22</sup> Structured securities (also called “structured notes”) are derivative debt securities, the interest rate on or principal of which is determined by an unrelated indicator. The Funds may invest in “indexed securities,” which are instruments whose prices are indexed to the prices of other securities, securities indexes, or other financial indicators.

characteristics, including hybrid securities,<sup>23</sup> which may offer characteristics similar to those of a bond security (such as stated maturity and preference over equity in bankruptcy).<sup>24</sup>

In addition to the investment-grade Debt Securities described above, Fidelity Investment Grade Bond ETF and Fidelity Limited Term Bond ETF may invest in lower-quality Debt Securities. The Manager may invest up to 10% of the Fidelity Investment Grade Bond ETF's assets in lower-quality Debt Securities. Lower-quality Debt Securities include all types of debt instruments that have poor protection with respect to the payment of interest and repayment of principal, or may be in default.

In addition to the investment grade repurchase agreements described above, Investment Grade Bond ETF and Limited Term Bond ETF may invest in repurchase agreements with repurchase agreement counterparties that do not have an investment-grade rating, if those repurchase agreements are collateralized by U.S. Government securities as well as repurchase agreements collateralized by equity securities, non-investment-grade debt, and all other instruments in which a Fund can perfect a security interest.

The Funds may invest in exchange-listed and non-exchange-listed preferred securities, exchange-listed or non-exchange-listed real estate investment trusts, and restricted securities,

The Manager may make investments in the following types of derivatives: futures (both long and short positions); U.S. exchange-traded as well as over-the-counter ("OTC") options

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<sup>23</sup> A hybrid security generally combines both debt and equity characteristics. A common type of hybrid security is a convertible bond that has features of a debt security, until a certain date or triggering event, at which point the security may be converted into an equity security. A hybrid security may also be a warrant, convertible security, certificate of deposit, or other evidence of indebtedness.

<sup>24</sup> See Amendment No. 2, supra note 5.

(including options on futures and swaps);<sup>25</sup> forwards; and swaps,<sup>26</sup> including interest rate swaps (exchanging a floating rate for a fixed rate), total return swaps (exchanging a floating rate for the total return of an index, security, or other instrument or investment), and credit default swaps (buying or selling credit default protection).<sup>27</sup> The Funds' derivative investments would overlie Debt Securities, hybrid securities,<sup>28</sup> interest rates, currencies, or related indexes. Currency-related derivatives include foreign exchange ("FX") transactions such as FX forwards, non-deliverable forwards, and cross-currency FX trades ("Currency-related Derivatives").

The Funds may conduct foreign currency transactions on a spot (i.e., cash) basis or forward basis (i.e., by entering into forward contracts to purchase or sell foreign currencies). The Funds may invest in options and futures relating to foreign currencies.<sup>29</sup>

The Funds may engage in transactions with financial institutions that are, or may be considered to be, "affiliated persons" of the Funds under the 1940 Act.<sup>30</sup> These transactions may involve repurchase agreements with custodian banks; short-term obligations of, and repurchase agreements with, the 50 largest U.S. banks (measured by deposits); municipal securities; U.S.

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<sup>25</sup> The Funds may also buy and sell options on swaps (swaptions), which are generally options on interest rate swaps.

<sup>26</sup> To limit the counterparty risk involved in swap agreements, a Fund will enter into swap agreements only with counterparties that meet certain standards of creditworthiness.

<sup>27</sup> Investments in derivatives may have a leveraging effect on a Fund. Not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

<sup>28</sup> See Amendment No. 2, supra note 5.

<sup>29</sup> The Funds' investments in foreign currency options will be exchange-listed.

<sup>30</sup> The Exchange states that, in accordance with exemptive orders issued by the Commission, each Fund's Board of Trustees has established and periodically reviews procedures applicable to transactions involving affiliated financial institutions. See Notice, supra note 3, 79 FR at 25913.

Government securities with affiliated financial institutions that are primary dealers in these securities; short-term currency transactions; and short-term borrowings.

#### Additional Limitations on Investments

Each 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 deemed illiquid by the Manager or Sub-Advisers.<sup>31</sup> Each Fund would 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 would 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. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Any foreign equity securities in which a Fund may invest would be limited to securities that trade in markets that are members of ISG, which includes all U.S. national securities

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<sup>31</sup> The Exchange states that each Fund currently does not intend to purchase any asset if, as a result, more than 10% of its net assets would be invested in assets that are deemed to be illiquid because they are subject to legal or contractual restrictions on resale or because they cannot be sold or disposed of in the ordinary course of business at approximately the prices at which they are valued. For purposes of a Fund's illiquid assets limitation discussed above, if through a change in values, net assets, or other circumstances, the Fund were in a position where more than 10% of its net assets were invested in illiquid assets, it would consider appropriate steps to protect liquidity. According to the Registration Statement, various factors may be considered in determining the liquidity of the Fund's investments, including: (1) the frequency of trades and quotes for the asset; (2) the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; (3) dealer undertakings to make a market in the asset; and (4) the nature of the asset and the nature of the marketplace in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the asset).

exchanges and certain foreign exchanges, or that are parties to a comprehensive surveillance sharing agreement with the Exchange.

### 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>32</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>33</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>34</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 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 for the Shares 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>35</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. According to the Exchange, quotation and last-sale information for the Shares and underlying securities that are U.S.

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<sup>32</sup> 15 U.S.C. 78f.

<sup>33</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>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

exchange listed, including ETFs, ETPs, ETNs, ADRs, EDRs, GDRs, exchange-traded REITs, exchange-traded preferred securities, and exchange-traded convertible securities, will be available via the Consolidated Tape Association (“CTA”) high-speed line.<sup>36</sup> Quotation and last-sale information for such U.S. exchange-listed securities as well as futures will be available from the exchange on which they are listed.<sup>37</sup> Quotation and last-sale information for exchange-listed options will be available via the Options Price Reporting Authority.<sup>38</sup> Quotation information for OTC-Traded Securities and investment company securities (excluding ETFs), as well as for OTC-traded derivative instruments (such as options, swaps, forwards, and Currency-related Derivatives), may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.<sup>39</sup> In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.<sup>40</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund would disclose on its website the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that would form the basis for such Fund’s calculation of NAV at the end of the business day.<sup>41</sup> The NAV of each

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<sup>36</sup> See Notice, supra note 3, 79 FR at 25916.

<sup>37</sup> See id.

<sup>38</sup> See id.

<sup>39</sup> See Amendment No. 2, supra note 5.

<sup>40</sup> The Exchange states that several major market data vendors display or make widely available Portfolio Indicative Values taken from the CTA or other data feeds. See Notice, supra note 3, 79 FR at 25916, n.58.

<sup>41</sup> On a daily basis, each Fund will disclose for each portfolio security and other financial instrument of the Fund the following information: 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

Fund normally would be determined once daily Monday through Friday, generally as of the regularly scheduled close of business of the New York Stock Exchange (normally 4:00 p.m. Eastern Time) on each day the New York Stock Exchange is open for trading. A basket composition file, which would include the security names and share quantities required to be delivered in exchange for each Fund's Shares, together with estimates and actual cash components, would be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares would 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 would be published daily in the financial section of newspapers. The website for the Funds would include a form of the prospectus for the Funds 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 Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of each Fund 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>42</sup> In

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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 Fund's portfolio. See Amendment No. 2, supra note 5. The website information will be publicly available at no charge. See Notice, supra note 3, 79 FR at 25916.

<sup>42</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

addition, trading in the Shares would be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities or financial instruments constituting the Disclosed Portfolio of a Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>43</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of each Fund 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>44</sup> In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded options, futures, exchange traded-equity securities (including ADRs, EDRs, and GDRs), and other exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Commission also notes that FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine.<sup>45</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information

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<sup>43</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 each Fund. Trading in Shares of a 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>44</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>45</sup> See Notice, supra note 3, 79 FR at 25917.

by its employees.<sup>46</sup> The Exchange represents that the Manager and the Sub-Advisers are not broker-dealers but are affiliated with one or more broker-dealers, and that each (1) has implemented a firewall with respect to affiliated broker-dealers regarding access to information concerning the composition of or changes to the portfolios, and (2) would be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolios.<sup>47</sup>

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 the following representations:

- (1) The Shares of each Fund 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.

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<sup>46</sup> See id.

<sup>47</sup> See supra note 11. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

- (3) Trading in the Shares will be subject to the existing surveillance procedures 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 deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.
- (4) 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 Units (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.
- (5) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Exchange Act,<sup>48</sup> as provided by NYSE Arca Equities Rule 5.3.

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<sup>48</sup> 17 CFR 240.10A-3.

- (6) A Fund may hold up to an aggregate amount of 15% of its net assets (calculated at the time of investment) in assets deemed illiquid by the Adviser, consistent with Commission guidance.
- (7) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.
- (8) Each Fund will invest no more than 20% of its total assets in mortgage-backed securities or in other asset-backed securities, provided that this limitation does not apply to U.S. Government securities.
- (9) The Funds will invest only in ADRs, EDRs, and GDRs that are traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.
- (10) Not more than 10% of the net assets of a Fund in the aggregate shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.
- (11) The Funds' investments in foreign currency options will be exchange-listed.

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

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 6(b)(5) of the Act<sup>49</sup> and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>49</sup> 15 U.S.C. 78f(b)(5).

#### IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-46 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-2014-46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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-NYSEArca-2014-46 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of Amendment No. 2 in the Federal Register. Amendment No. 2 supplements the proposed rule change by, among other things: (1) re-designating certain asset classes (i.e., junior loans, structured securities, and securities believed to have debt-like characteristics, including hybrid securities) as non-primary investments; (2) providing additional information regarding the NAV valuation of Funds' junior loans, structured securities, and hybrid securities; (3) expanding the information to be disclosed daily about the portfolio of each Fund on the Funds' website; and (4) providing information regarding the availability of price information for OTC-traded derivative instruments, which may be held by the Funds. The Commission believes that this additional information should aid in the pricing of the Shares. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>50</sup> to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

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<sup>50</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>51</sup> that the proposed rule change (SR-NYSEArca-2014-46), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>51</sup> 15 U.S.C. 78s(b)(2).

<sup>52</sup> 17 CFR 200.30-3(a)(12).