



SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80584; File No. SR-NYSEArca-2017-44)

May 3, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the IQ Municipal Insured ETF; IQ Municipal Short Duration ETF; and IQ Municipal Intermediate ETF under NYSE Arca Equities Rule 8.600

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 20, 2017, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the IQ Municipal Insured ETF; IQ Municipal Short Duration ETF; and IQ Municipal Intermediate ETF (each a “Fund” and, collectively, the “Funds”) under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”). The proposed change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of each Fund under NYSE Arca Equities Rule 8.600,<sup>4</sup> which governs the listing and trading of Managed Fund Shares.<sup>5</sup> The Shares will be offered by the IndexIQ Active ETF Trust (the “Trust”), which is registered with the Commission as an open-end management investment company.<sup>6</sup> Each Fund is a series of the

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<sup>4</sup> The Securities and Exchange Commission (“Commission”) has approved for Exchange listing and trading shares of actively managed funds of the [sic] that principally hold municipal bonds. See, e.g., Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of shares of the PIMCO Short-Term Municipal Bond Strategy Fund and PIMCO Intermediate Municipal Bond Strategy Fund); 79293 (November 10, 2016), 81 FR 81189 (November 17, 2016) (SR-NYSEArca-2016-107) (order approving listing and trading of shares of Cumberland Municipal Bond ETF under Rule 8.600). The Commission also has approved listing and trading on the Exchange of shares of the SPDR Nuveen S&P High Yield Municipal Bond Fund under Commentary .02 of NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No.63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR-NYSEArca-2010-120).

<sup>5</sup> 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) (“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.

<sup>6</sup> The Trust is registered under the 1940 Act. On February 24, 2017, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Funds (File Nos. 333-183489 and 811-22739) (“Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration

Trust.

The investment adviser to each Fund will be IndexIQ Advisors LLC (the “Adviser”). MacKay Shields LLC will be each Fund's sub-adviser (Subadviser). ALPS Distributors, Inc. Inc. [sic] will serve as the distributor (the “Distributor”) of each Fund’s Shares on an agency basis. The Bank of New York Mellon (“BNY Mellon”) will serve as each Fund’s Administrator, Custodian, Transfer Agent and Securities Lending Agent.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end

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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. 30198 (September 10, 2012) (File No. 812-13956) (“Exemptive Order”).

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Subadviser 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.

fund's portfolio. The Adviser or Subadviser is not a registered broker-dealer but is affiliated with a broker-dealer. The Adviser and Subadviser have implemented a "fire wall" with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio. In the event (a) the Adviser or Subadviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### IQ Municipal Insured ETF

According to the Registration Statement, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions,<sup>8</sup> will invest at least 80% of its assets in municipal bonds ("Municipal Bonds", as described below) that are covered by

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<sup>8</sup> The term "under normal market conditions" as used herein 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 (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. On a temporary basis, including for defensive purposes, during the initial invest-up period (i.e., the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (i.e., rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of a Fund's net assets as of the opening of business on the first day of such periods), a Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objectives. A Fund may adopt a defensive strategy when the Adviser believes securities in which a Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

insurance policies that guarantee the timely payment of principal and interest. The Fund generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Insured Index.<sup>9</sup>

For [sic] Fund, as well as the IQ Municipal Short Duration ETF and IQ Intermediate ETF which are discussed below, the Subadviser’s investment process will begin with an assessment of macro factors that may impact the municipal bond market, as well as other regulatory, tax, governmental, and technical factors that may impact the municipal bond market. Following the assessment of these factors, the Subadviser will develop an investment strategy to position a Fund among various sectors of the municipal bond market and different states. The Subadviser then will employ a fundamental, “bottom-up” credit research analysis to select individual Municipal Bonds.

#### Municipal Bonds

For purposes of this filing, the term “Municipal Bonds” as applied to each of the Funds includes the following:

- municipal lease obligations (and certificates of participation in such obligations);
- municipal general obligation bonds (including industrial development bonds issued pursuant to federal tax law), which are issued for either project or enterprise financings in which the bond issuer pledges to the bondholders the

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<sup>9</sup> Municipal bonds are issued by or on behalf of the District of Columbia, states, territories, commonwealths and possessions of the United States and their political subdivisions and agencies, authorities and instrumentalities. Municipal securities, which may be issued in various forms, including bonds and notes, are issued to obtain funds for various public purposes.

revenues generated by the operating projects financed from the proceeds of the bond issuance;

- limited obligation bonds, which are payable only from the revenues derived from a particular facility or class of facilities or, in some cases from the proceeds of a special excise or other specific revenue source;
- municipal revenue bonds (which are typically secured by revenues generated by the issuer), including revenue anticipation notes;
- municipal bond anticipation notes (which are normally issued to provide interim financial assistance until long-term financing can be arranged);
- Municipal Bonds that feature credit enhancements, such as lines of credit, letters of credit, municipal bond insurance, and standby bond purchase agreements;
- discount bonds (which may be originally issued at a discount to par value or sold at market price below par value);
- premium bonds, which are sold at a premium to par value;
- zero coupon bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity;
- taxable municipal bonds, including Build America Bonds;
- municipal notes;
- municipal cash equivalents;
- private activity bonds (including without limitation industrial development bonds);
- pre-refunded and escrowed to maturity bonds; and

- securities issued by entities whose underlying assets are Municipal Bonds (i.e., tender option bond (TOB) trusts and custodial receipts trusts and variable rate demand notes (VRDNs) that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates).

The Fund may invest more than 25% of its total assets in Municipal Bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, the Fund's investments will be diversified among a minimum of ten different sectors of the Municipal Bond market. The Fund's investments in Municipal Bonds will include investments in state and local (e.g., county, city, town) and authority-issued Municipal Bonds relating to such sectors as the following: state general obligation; local general obligation; education; hospital; housing; industrial development revenue (IDR)/pollution control revenue (PCR); power; resource recovery; transportation; water/sewer; leasing; special tax; and pre-refunded bonds. The Fund's investments will be diversified among at least 15 different states, with no more than 30% of the Fund's securities invested in municipal securities from a single state. Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighed securities will not, in the aggregate, account for more than 50% of the weight of the Fund. No Municipal Bond held by the Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.<sup>10</sup>

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<sup>10</sup> For purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, will be treated as separate issuers of Municipal Bonds.

## Other Investments

With respect to each of the Funds, while a Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, as described above, a Fund may invest its remaining assets in other assets and financial instruments, as described below.

A Fund may invest in shares of exchange-traded funds (“ETFs”) and money market funds<sup>11</sup>, and may invest directly and indirectly in: fixed rate and floating rate 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 (“U.S. Government Securities”); repurchase agreements; commercial paper; and may purchase securities on a when-issued basis or for settlement at a future date (forward commitment), if a Fund holds sufficient liquid assets to meet the purchase price (collectively, “Other Investments”).

### IQ Municipal Short Duration ETF

According to the Registration Statement, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds. The Fund generally will maintain a dollar-weighted average portfolio duration of three years or less.

The Fund may invest more than 25% of its total assets in Municipal Bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, the Fund’s investments will be

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<sup>11</sup> 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 all will be listed and traded in the U.S. on registered exchanges.

diversified among a minimum of ten different sectors of the municipal bond market. The Fund's investments will be diversified among at least 15 different states, with no more than 30% of the Fund's securities invested in municipal securities from a single state. Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighed securities will not, in the aggregate, account for more than 50% of the weight of the Fund. No Municipal Bond held by the Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.

While the Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, the Fund may invest its remaining assets in Other Investments.

#### IQ Municipal Intermediate ETF

According to the Registration Statement, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds. The Fund generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Intermediate Index.

The Fund may invest more than 25% of its total assets in Municipal Bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, the Fund's investments will be diversified among a minimum of ten different sectors of the municipal bond market. The Fund's investments will be diversified among at least 15 different states, with no more than 30% of the Fund's securities invested in municipal securities from a single state. Under normal market

conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighed securities will not, in the aggregate, account for more than 50% of the weight of the Fund. No Municipal Bond held by the Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.

While the Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, the Fund may invest its remaining assets in Other Investments.

#### Determination of Net Asset Value ("NAV")

According to the Registration Statement, the NAV of the Shares for a Fund will be equal to a Fund's total assets minus the Fund's total liabilities divided by the total number of Shares outstanding. Interest and investment income on the Trust's assets accrue daily and are included in a Fund's total assets. Expenses and fees (including investment advisory, management, administration and distribution fees, if any) accrue daily and are included in the Fund's total liabilities. The NAV is calculated by the Administrator and Custodian and determined each business day as of the close of the NYSE Arca Core Trading Session (ordinarily 4:00 p.m. Eastern time).

A Fund typically will value fixed-income portfolio securities, including Municipal Bonds, using last available bid prices or current market quotations provided by dealers or prices (including evaluated prices) supplied by a Fund's approved independent third-party pricing services. Pricing services may use matrix pricing or valuation models that utilize certain inputs and assumptions to derive values. An amortized cost method of valuation may be used with

respect to debt obligations with sixty days or less remaining to maturity unless the Adviser determines in good faith that such method does not represent fair value.

Generally, trading in U.S. Government Securities, money market funds, and certain fixed-income securities is substantially completed each day at various times prior to the close of business on the NYSE. The values of such securities used in computing the NAV of the Fund will be determined as of such times.

The value of any ETFs held by the Fund is based on such securities' closing price on local markets, when available. The value of a money market fund held by a Fund will be based on the NAV of the money market fund.

When market quotations or prices are not readily available or are deemed unreliable or not representative of an investment's fair value, investments are valued using fair value pricing as determined in good faith by the Adviser under procedures established by and under the general supervision and responsibility of the Trust's Board of Trustees.

#### Indicative Intra-Day Value

The approximate value of each Fund's investments on a per-Share basis, the Indicative Intra-Day Value ("IIV") will be disseminated by the Exchange or one or more major market data vendors every 15 seconds during the Exchange's Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time). The IIV should not be viewed as a "real-time" update of NAV because the IIV may not be calculated in the same manner as NAV, which is computed once per day.

An independent third party calculator will calculate the IIV for each Fund during the Exchange's Core Trading Session by dividing the "Estimated Fund Value" as of the time of the calculation by the total number of outstanding Shares of that Fund. "Estimated Fund Value" is the sum of the estimated amount of cash held in a Fund's portfolio, the estimated amount of

accrued interest owed to the Fund and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of the Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Trust's website.

#### Purchase and Redemption of Creation Units

#### Creation of Shares

According to the Registration Statement, the Trust will issue and sell Shares of a Fund only in Creation Units of at least 50,000 Shares on a continuous basis through the Distributor, at their NAV next determined after receipt, on any business day (that is, any day on which the New York Stock Exchange ("NYSE") is open for business.), for an order received in proper form.

The consideration for purchase of a Creation Unit of a Fund generally will consist of an in-kind deposit of a designated portfolio of securities – the Deposit Securities — per each Creation Unit constituting a substantial replication, or a representation, of the securities included in a Fund's portfolio and an amount of cash — the "Cash Component." Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit of a Fund. The Cash Component is an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the market value of the Deposit Securities.

The Administrator, through the National Securities Clearing Corporation ("NSCC"), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for a Fund.

In addition to the list of names and numbers of securities constituting the current Deposit

Securities of a Fund Deposit, the Administrator, through the NSCC, also will make available on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of a Fund.

To be eligible to place orders to create a Creation Unit of a Fund, an entity must be (i) a “Participating Party”, *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the “Clearing Process”), a clearing agency that is registered with the Commission; or (ii) a DTC Participant, and, in each case, must have executed an agreement (“Participant Agreement”) with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units. A Participating Party and DTC Participant are collectively referred to as an “Authorized Participant.”

All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of at least 50,000 Shares. All orders to create Creation Units, whether through the Clearing Process (through a Participating Party) or outside the Clearing Process (through a DTC Participant), must be received by the Distributor no later than 3:00 p.m. Eastern Time, in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of a Fund as next determined on such date after receipt of the order in proper form.

#### Redemption of Shares

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and the Fund through the Administrator and only on a business day. Orders to redeem Creation Units must be received by the Administrator not later than 3:00 Eastern Time.

With respect to each Fund, the Administrator, through the NSCC, will make available

immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the designated portfolio of securities (“Fund Securities”) per each Creation Unit that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit generally will consist of Fund Securities – as announced by the Administrator on the business day of the request for redemption received in proper form — plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the “Cash Redemption Amount”), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

The redemption proceeds for a Creation Unit of a Fund will consist solely of cash in an amount equal to the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form less a redemption transaction fee.

If it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem such Shares in cash, and the redeeming Beneficial Owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which a Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of a

Fund next determined after the redemption request is received in proper form. A Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of a Fund Securities but does not differ in NAV.

#### Availability of Information

Each Fund will disclose on the Funds' website ([www.iqetfs.com](http://www.iqetfs.com)) at the start of each business day the identities and quantities of the securities and other assets held by each Fund that will form the basis of the Fund's calculation of its net asset value ("NAV") on that business day. The portfolio holdings so disclosed will be based on information as of the close of business on the prior business day and/or trades that have been completed prior to the opening of business on that business day and that are expected to settle on the business day. Online disclosure of such holdings is publicly available at no charge.

The website for the Funds will contain the following information, on a per-Share basis, for each Fund: (1) the prior business day's NAV; (2) the reported midpoint of the bid-ask spread at the time of NAV calculation (the "Bid-Ask Price"); (3) a calculation of the premium or discount of the Bid-Ask Price against such NAV; and (4) data in chart format displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of a Fund if, shorter). In addition, on each business day, before the commencement of trading in Shares on the NYSE Arca, each Fund will disclose on its website the identities and quantities of the portfolio securities and other assets held by each Fund that will form the basis for the calculation of NAV at the end of the business day.

On a daily basis, the Funds will disclose the information required under NYSE Arca

Equities Rule 8.600 (c)(2) to the extent applicable.

Each Fund's portfolio holdings will be disclosed on the Funds' website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.

Information regarding the extent and frequency with which market prices of Shares have tracked the relevant Fund's NAV for the most recently completed calendar year and the quarters since that year will be available without charge on the Funds' website.

The approximate value of a Fund's investments on a per-Share basis, the IIV, will be disseminated every 15 seconds during the Exchange Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time).

Investors can also obtain each Fund's Statement of Additional Information ("SAI"), shareholder reports, Form N-CSR and Form N-SAR, filed twice a year. The Funds' SAI and shareholder reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be publicly available.

Quotation and last sale information for the Shares and will be available via the Consolidated Tape Association ("CTA") high-speed line, and from the national securities exchange [sic] on which they are listed.

Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds and Other Investments. Price information for money market funds will be

available from the applicable investment company's website and from market data vendors. Pricing information regarding Municipal Bonds and Other Investments will generally be available through nationally recognized data service providers through subscription agreements. In addition, the IIV (which is 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 or other information providers.<sup>12</sup>

#### Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance. Each 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 a Fund's net assets are held in illiquid assets. 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.<sup>13</sup>

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<sup>12</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

<sup>13</sup> 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. 28193 (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 fund. 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

Each Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Each Fund may invest more than 25% of its total assets in municipal bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, a Fund's investments will be diversified among a minimum of ten different sectors of the municipal bond market. A Fund's investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state. Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighed securities will not, in the aggregate, account for more than 50% of the weight of the Fund. No Municipal Bond held by the Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of the Fund's portfolio. The Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.

#### Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolios for the Funds will not meet all of the "generic" listing requirements of Commentary .01 to NYSE Arca Equities Rule 8.600 applicable to the listing of Managed Fund Shares. Each Fund's portfolio will meet all such requirements except for those set forth in Commentary .01(b)(1).<sup>14</sup>

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Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

<sup>14</sup> Commentary .01(b)(1) to NYSE Arca Equities Rule 8.600 provides that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Funds on the Exchange notwithstanding that the Funds would not meet the requirements of Commentary .01(b)(1) to Rule 8.600 in that the Funds' investments in municipal securities will be well-diversified.

The Exchange believes that permitting Fund Shares to be listed and traded on the Exchange notwithstanding that less than 75% of the weight of a Fund's portfolio may consist of components with less than \$100 million minimum original principal amount outstanding would provide the Funds with greater ability to select from a broad range of Municipal Bonds, as described above, that would support a Fund's investment goal.

The Exchange believes that, notwithstanding that each Fund's portfolio may not satisfy Commentary .01(b)(1) to Rule 8.600, the Funds' portfolios will not be susceptible to manipulation. As noted above, the Funds' investments will be diversified among a minimum of ten different sectors of the municipal bond market. The Funds' investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state. Additionally, no Municipal Bond held by a Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of a Fund's portfolio. A Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers. The Exchange notes that, other than Commentary .01(b)(1) to Rule 8.600, each Fund's portfolio will meet all other requirements of Rule 8.600.

Trading Halts

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 a Fund.<sup>15</sup> 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.

#### Trading Rules

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 equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of a Fund's portfolio. The Exchange represents that, for initial and/or continued listing, a Fund will be in compliance with Rule 10A-3<sup>16</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV

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<sup>15</sup> See NYSE Arca Equities Rule 7.12.

<sup>16</sup> 17 CFR 240.10A-3.

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. Each Fund's investments will be consistent with a Fund's investment goal and will not be used to enhance leverage.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that 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.<sup>17</sup>

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.<sup>18</sup>

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ETFs with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and ETFs from such markets and other

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<sup>17</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>18</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

entities. In addition, the Exchange may obtain information regarding trading in the Shares and ETFs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board ("MSRB") relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) or (c) [sic] the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of a Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by a 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. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the

procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., Eastern Time each trading day.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>19</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, 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. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by a Fund reported to TRACE. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. Each Fund may not purchase illiquid assets if, in the aggregate, more than 15% of its net assets would be invested in illiquid assets. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and will implement and maintain a fire wall with respect to each of its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolios.

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Funds on the Exchange notwithstanding that the Funds would not meet the requirements of Commentary .01(b)(1) to Rule 8.600 in that the Funds' investments in municipal securities will be well-diversified. As noted above, the Funds' investments will be diversified among a minimum of ten different sectors of the municipal bond market. The Funds'

investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state. Additionally, no Municipal Bond held by a Fund will exceed 5% of the weight of the Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of a Fund's portfolio. A Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers. The Exchange notes that, other than Commentary .01(b)(1) to Rule 8.600, each Fund's portfolio will meet all other requirements of Rule 8.600.

The Exchange believes that permitting Fund Shares to be listed and traded on the Exchange notwithstanding that less than 75% of the weight of a Fund's portfolio may consist of components with less than \$100 million minimum original principal amount outstanding would provide the Funds with greater ability to select from a broad range of municipal securities, as described above, that would support a Fund's investment goal.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding each Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares and ETFs will be available via the CTA high-speed line, and from the national securities exchange [sic] on which they are listed. 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. Trading in Shares of the Funds 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. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that principally hold municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, IIV, Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that principally hold municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2017-44 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-2017-44. 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-2017-44 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).

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