

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>29</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative upon filing. The Exchange states that such waiver will enable continuous access to the platform by users and a seamless transition of ownership of Silexx. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any novel issues and waiver will allow current users of Silexx to continue to use the platform without interruption. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>30</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2017-068 on the subject line.

of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>29</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>30</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

##### *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-CBOE-2017-068. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2017-068, and should be submitted on or before December 12, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82080; File No. SR-NYSEArca-2017-86]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Shares of the JPMorgan Managed Futures ETF Under NYSE Arca Rule 8.600-E

November 15, 2017.

#### I. Introduction

On September 14, 2017, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the JPMorgan Managed Futures ETF ("Fund") under NYSE Arca Rule 8.600-E. The proposed rule change was published for comment in the **Federal Register** on October 5, 2017.<sup>3</sup> On October 25, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> On November 9, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The Commission

<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. 81766 (September 29, 2017), 82 FR 46566 ("Notice").

<sup>4</sup> Amendment No. 1 to the proposed rule change replaced and superseded the original filing in its entirety. In Amendment No. 1, the Exchange clarified (i) the circumstances under which the Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Redemption Instruments (as defined in the Notice); and (ii) that quotation and last sale information for the Shares and for portfolio holdings of the Fund that are U.S. exchange-listed, including preferred stocks and REITs, will be available via the Consolidated Tape Association ("CTA") high speed line. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-86/nysearca201786-2655573-161380.pdf>. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

<sup>5</sup> Amendment No. 2 to the proposed rule change replaces and supersedes the original filing, as modified by Amendment No. 1, in its entirety. In Amendment No. 2, the Exchange represented that: (i) Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and (ii) information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-86/nysearca201786-2678501-161480.pdf>.

Amendment No. 2 is not subject to notice and comment because it is a technical amendment that

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<sup>31</sup> 17 CFR 200.30-3(a)(12).

has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

## II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2<sup>6</sup>

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares<sup>7</sup> on the Exchange. The Fund is a series of J.P. Morgan Exchange-Traded Fund Trust (“Trust”), a Delaware statutory trust.<sup>8</sup> J.P. Morgan Investment Management Inc. (“Adviser”) will be the investment adviser to the Fund and will also provide administrative services for and oversee the other service providers for the Fund.<sup>9</sup> JPMorgan

does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

<sup>6</sup> The Commission notes that additional information regarding the Trust (as defined below), the Fund, its investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in the Notice, Amendment Nos. 1 and 2, and the Registration Statement (as defined below), as applicable. See Notice, *supra* note 3, Amendment No. 1, *supra* note 4, Amendment No. 2, *supra* note 5, and Registration Statement, *infra* note 8.

<sup>7</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (“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.

<sup>8</sup> The Trust is registered under the 1940 Act. On July 18, 2017, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (“Securities Act”) and the 1940 Act relating to the Fund (File Nos. 333-191837 and 811-22903) (“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. 31990 (February 9, 2016) (“Exemptive Order”). The Exchange represents that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

<sup>9</sup> The Adviser is a wholly-owned subsidiary of JPMorgan Asset Management Holdings Inc., which is an indirect, wholly-owned subsidiary of JPMorgan Chase & Co., a bank holding company. The Adviser is not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or 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, it will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Distribution Services, Inc. will be the distributor of the Fund’s Shares.

### A. Principal Investments

According to the Exchange, the Fund will seek to provide long-term total return. Through the Adviser’s systematic investment process, the Fund seeks to achieve its investment objective by investing globally to exploit opportunities across a broad range of asset classes. The Fund will invest its assets globally to gain exposure, either directly or through the use of derivatives, to equity securities (across market capitalizations) in developed markets, debt securities (including below investment grade or high yield debt securities), commodities (through its Subsidiary, as defined below), and currencies (including in emerging markets). The Fund may use both long and short positions (achieved primarily through the use of financial derivative instruments). The Adviser will make use of derivatives, including swaps, futures, options, and forward contracts, in implementing its strategies.

According to the Exchange, under normal market conditions,<sup>10</sup> the Fund will invest principally (*i.e.*, at least 50% of the Fund’s assets) in the securities and financial instruments described below, which may be represented by derivatives relating to such securities and financial instruments, as further discussed below.

The Fund may purchase and sell U.S. and foreign exchange-traded commodity futures, equity futures, options on equity futures, bond futures, index futures, currency futures, and options on currency futures.

The Fund may invest in over-the-counter (“OTC”) total return swaps on equities, fixed income, commodities, and foreign currencies; currency swaps; interest rate swaps; credit default swaps (“CDS”); CDS index swaps (“CDX”) and loan credit default index swaps (“LCDX”).

The Fund may invest in the following forward and spot currency transactions: Non-deliverable forwards, foreign currency forward contracts,<sup>11</sup> spot currency transactions, caps, and floors.

The Fund may invest in cash and cash equivalents, which are investments in money market funds (including funds for which the Adviser and/or its

affiliates may serve as investment adviser or administrator), bank obligations,<sup>12</sup> and commercial paper.<sup>13</sup>

The Fund may invest in U.S. Government obligations, which may include direct obligations of the U.S. Treasury, including Treasury bills, notes, and bonds, all of which are backed as to principal and interest payments by the full faith and credit of the United States, and separately traded principal and interest component parts of such obligations that are transferable through the Federal book-entry system known as Separate Trading of Registered Interest and Principal of Securities (“STRIPS”) and Coupons Under Book Entry Safekeeping (“CUBES”).

The Fund may invest in U.S. and foreign corporate debt.

### B. Other Investments

While the Fund, under normal market conditions, will invest at least fifty percent (50%) of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the other assets and financial instruments described below.

The Fund may invest in U.S. and foreign exchange-traded call and put options on equities, equity indexes, and equity futures.

The Fund will gain exposure to commodity markets by investing directly in commodity-related instruments or indirectly by investing up to 20% of its total assets in the Managed Futures Fund CS Ltd., a wholly owned subsidiary of the Fund organized under the laws of the Cayman Islands (“Subsidiary”). The Subsidiary is also advised by the Adviser. The Subsidiary will only invest in commodity- or cash-management-related investments described above in the Principal Investments section. However, the Subsidiary (unlike the Fund) may invest without limitation in commodity-related investments, including derivative instruments linked to the value of a particular commodity, commodity index, or commodity futures contract, as described above. The

<sup>12</sup> Bank obligations include the following: Bankers’ acceptances, certificates of deposit and time deposits. Bankers’ acceptances are bills of exchange or time drafts drawn on and accepted by a commercial bank. Maturities are generally six months or less. Certificates of deposit are negotiable certificates issued by a bank for a specified period of time and earning a specified return. Time deposits are non-negotiable receipts issued by a bank in exchange for the deposit of funds.

<sup>13</sup> Commercial paper consists of secured and unsecured short-term promissory notes issued by corporations and other entities. Maturities generally vary from a few days to nine months.

<sup>10</sup> The term “normal market conditions” is defined in NYSE Arca Rule 8.600–E(c)(5).

<sup>11</sup> A foreign currency forward contract is a negotiated agreement between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate. The rate can be higher or lower than the spot rate between the currencies that are the subject of the contract.

Subsidiary will otherwise be subject to the same investment restrictions as the Fund.

The Fund may invest in U.S. exchange-listed preferred stock.

The Fund may invest in real estate investment trusts (“REITs”) that are listed and traded on U.S. national securities exchanges.

The Fund may invest in repurchase agreements and reverse repurchase agreements.

The Fund may invest in sovereign obligations, which are investments in debt obligations issued or guaranteed by a foreign sovereign government or its agencies, authorities, or political subdivisions. The Fund may also invest in obligations of supranational entities, including securities designated or supported by governmental entities to promote economic reconstruction or development of international banking institutions and related government agencies.

In addition to money market funds discussed in the Principal Investments section, the Fund may invest in shares of other non-exchange-traded investment company securities, including investment company securities for which the Adviser and/or its affiliates may serve as investment adviser or administrator, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder and/or any applicable exemption or exemptive order under the 1940 Act with respect to such investments.

### C. Investment Restrictions

The Fund’s investments, including investments in derivatives, will be consistent with the Fund’s investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund’s (and the Subsidiary’s) investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund’s primary broad-based securities benchmark index (as defined in Form N-1A).<sup>14</sup>

### D. Application of Generic Listing Requirements

The Exchange proposes to list and trade the Shares under Commentary .01 to NYSE Arca Rule 8.600–E, which provides generic listing standards for Managed Fund Shares. Commentary

.01(e) to NYSE Arca Rule 8.600–E currently requires that, on both an initial and ongoing basis, no more than 20% of the Fund’s assets may be invested in OTC derivatives (calculated as the aggregate gross notional value of the OTC derivatives). The Exchange states that the portfolio for the Fund will not meet the generic listing requirement set forth in Commentary .01(e) to Rule 8.600–E. Specifically, the Exchange states that the aggregate gross notional value of the Fund’s investments in OTC derivatives may exceed 20% of Fund assets, calculated based on the aggregate gross notional value of such OTC derivatives. The Exchange states that the Adviser intends to engage in strategies that utilize OTC foreign currency forward transactions and OTC swaps, as further described above in the Principal Investments section, and that, depending on market conditions, the exposure of the Fund to these strategies may exceed 20% of the Fund’s assets.

According to the Exchange, the Adviser represents that the foreign exchange forward market is OTC and swaps may be traded OTC, and, as such, it is not possible to implement these strategies efficiently using listed derivatives. Therefore, if the Fund was limited to investing 20% of its assets in OTC derivatives, the Fund would have to exclude or underweight these strategies and would be less diversified, concentrating risk in the other strategies it will utilize. In addition, the Exchange states that the Adviser represents that the Fund will follow an investment strategy utilized within the JP Morgan Diversified Alternative ETF, shares of which have previously been approved by the Commission for Exchange listing and trading.<sup>15</sup>

The Exchange states that it believes that it is appropriate and in the public interest to allow the Fund to exceed the 20% limit on portfolio assets that may be invested in OTC derivatives in Commentary .01(e) to Rule 8.600 for several reasons. First, the Exchange states that the limit could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. In addition, the Exchange represents that the Fund’s investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund’s investment objective and policies and, to limit the

potential risk associated with such transactions, the Fund will segregate or “earmark” assets determined to be liquid by the Adviser in accordance with procedures established by the Trust’s Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. Furthermore, the Exchange represents that the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. The Exchange states that, because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure. In addition, the Exchange states that OTC derivatives may be tailored more specifically to the assets held by the Fund than available listed derivatives.

According to the Exchange, other than Commentary .01(e), the Fund’s portfolio will meet all other requirements of NYSE Arca Rule 8.600–E.

### III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, 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>17</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.

As noted above, the Exchange proposes that more than 20% of the Fund’s assets (calculated as the aggregate gross notional value) may be invested in OTC forwards and swaps.<sup>18</sup>

<sup>16</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>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> The Exchange states that investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund’s investment objective and policies. To limit the potential risk associated with such transactions, the Fund will segregate or “earmark” assets determined

<sup>14</sup> The Fund’s broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund’s first full calendar year of performance.

<sup>15</sup> See Securities Exchange Act Release No. 77904 (May 25, 2016), 81 FR 35101 (June 1, 2016) (SR–NYSEArca–2016–17) (order approving listing and trading of shares of the JPMorgan Diversified Alternative ETF under NYSE Arca Equities Rule 8.600).

The Exchange states that limiting the Fund's investments in OTC derivatives to 20% of the Fund's assets could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The Exchange states that if the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund would have to exclude or underweight the strategies utilizing OTC forwards and OTC swaps and the Fund would be less diversified, concentrating risk in the other strategies it plans to utilize. The Exchange states that the Adviser represents that it is not possible to implement its investment strategies efficiently using listed derivatives because the foreign exchange forward market is OTC and swaps may be traded OTC. In addition, the Exchange states that suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments. Furthermore, the Exchange states that OTC derivatives may be tailored more specifically than the available listed derivatives to the assets held by the Fund.<sup>19</sup> The Exchange represents that the Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value the derivative positions intraday. As proposed, on a daily basis, the Fund will disclose on its Web site the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600-E(c)(2) to the extent applicable.<sup>20</sup> The Web site information will be publicly available at no charge.

to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk.

<sup>19</sup>In addition, the Adviser represents that the Fund will follow an investment strategy utilized by the JP Morgan Diversified Alternatives ETF, shares of which were previously approved for Exchange listing and trading by the Commission pursuant to Section 19(b)(2) of the Act. *See supra* note 15.

<sup>20</sup>NYSE Arca Rule 8.600-E(c)(2) requires that the Web site for each series of Managed Fund Shares disclose the following information regarding the Disclosed Portfolio, to the extent applicable: (A) Ticker symbol; (B) CUSIP or other identifier; (C) description of the holding; (D) with respect to holdings in derivatives, the identity of the security, commodity, index or other asset upon which the derivative is based; (E) the strike price for any options; (F) the quantity of each security or other

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>21</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. The Portfolio Indicative Value ("PIV") for the Fund, as defined in NYSE Arca Rule 8.600-E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.<sup>22</sup> Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for portfolio holdings of the Fund that are U.S. exchange-listed, including preferred stocks and REITs, will be available via the CTA high speed line and from the exchanges on which they are listed. Quotation and last sale information for U.S. and foreign exchange-traded futures will be available from the exchanges on which they are listed. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Price information for preferred stocks will also be available from one or more major market data vendors or from broker-dealers. Quotation information for cash equivalents, swaps, obligations of supranational agencies, non-exchange-listed investment company securities (including money market funds), U.S. Government obligations, U.S. Government agency obligations, sovereign obligations, repurchase agreements, reverse repurchase agreements, and U.S. and foreign corporate debt may be obtained from

asset held as measured by (i) par value, (ii) notional value, (iii) number of shares, (iv) number of contracts, and (v) number of units; (G) maturity date; (H) coupon rate; (I) effective date; (J) market value; and (K) percentage weighting of the holding in the portfolio.

<sup>21</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>22</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available PIVs taken from the CTA or other data feeds.

brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. The U.S. dollar value of foreign securities, instruments, and currencies can be derived by using foreign currency exchange rate quotations obtained from nationally recognized pricing services. Forwards and spot currency price information will be available from major market data vendors. In addition, the Fund's Web site, which will be publicly available prior to the public offering of the Shares, will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Trading in Shares of the Fund will be halted if the circuit-breaker parameters in NYSE Arca Rule 7.12-E 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. Moreover, trading in the Shares will be subject to NYSE Arca Rule 8.600-E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Adviser is not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented and will maintain a "fire wall" with respect to that broker-dealer regarding access to information concerning the composition of and/or changes to the Fund's portfolio.<sup>23</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>24</sup>

<sup>23</sup> The Exchange also represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

<sup>24</sup> *See* NYSE Arca Rule 8.600-E(d)(2)(B)(ii).

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. In support of this proposal, the Exchange represents that:

(1) Other than Commentary .01(e), the Fund's portfolio will meet all other requirements of NYSE Arca Rule 8.600–E.

(2) The aggregate gross notional value of the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated based on the aggregate gross notional value of such OTC derivatives.

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

(4) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, 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 applicable federal securities laws.

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

(6) 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: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually

redeemable); (b) NYSE Arca Rule 9.2–E(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 Early and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information. In addition, the Information Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

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

(8) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act.<sup>25</sup>

(9) The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's (and the Subsidiary's) investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The Exchange represents that all statements and representations made in the filing regarding (1) the description of the portfolio; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the rule filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor<sup>26</sup> for

<sup>25</sup> See 17 CFR 240.10A–3.

<sup>26</sup> The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or

compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment Nos. 1 and 2.

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>27</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>28</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR–NYSEArca–2017–86), 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>30</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017–25136 Filed 11–20–17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82083; File No. SR–NYSEARCA–2017–125]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Governing Documents of Its Intermediate Parent Companies Intercontinental Exchange Holdings, Inc., NYSE Holdings LLC and NYSE Group, Inc. To Make Them More Consistent With the Governing Documents of Their Ultimate Parent Intercontinental Exchange, Inc.

November 15, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby

less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78k–1(a)(1)(C)(iii).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30–3(a)(12).

<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.