

the SPAC to definitively establish that it will satisfy the Shareholder Requirement before completing the combination. In addition, Nasdaq states that, while other companies cannot become listed until they demonstrate compliance with the Shareholder Requirement, SPACs completing business combinations are already listed and, without more time, would be the only type of company to face immediate delisting as a result of these difficulties. Finally, Nasdaq states that 21 of the 49 SPAC business combinations processed by Nasdaq during 2019 and 2020 needed additional time to demonstrate compliance with the Shareholder Requirement.

Nasdaq emphasizes that, under its proposal, the SPAC must still demonstrate that it satisfied the applicable Shareholder Requirement immediately following the business combination, and is simply being provided 15 calendar days to provide evidence that it did. However, Nasdaq has not explained the extent to which the 21 SPACs that needed additional time to demonstrate compliance in 2019 and 2020 actually were in compliance with the shareholder requirement immediately following the closing of the business combination, or instead were not in compliance and needed additional time to acquire the requisite number of shareholders. If the former, Nasdaq has not explained why, like newly-listed companies in advance of their public offerings, the SPAC could not provide preliminary evidence of its compliance with the Shareholder Requirement in advance of the business combination, or why last minute shareholder redemptions would impact that evidence. If the latter, then the SPACs in fact were not in compliance with the Shareholder Requirement at the time of the business combination, and do not provide support for Nasdaq's proposal, which is premised on the assumption that such SPACs simply needed additional time to evidence their compliance.

More broadly, Nasdaq does not explain how its proposal addresses the regulatory risks to fair and orderly markets, investor protection and the public interest, and the manipulation concerns if companies initially list, and can continue to trade, on the Exchange without meeting the Shareholder Requirement. Notably, and as discussed in the OIP, Nasdaq has not addressed the risk that, by waiting for SPACs to demonstrate compliance with the Shareholder Requirement until after the closing of the business combination, non-compliant companies could be listed on the Exchange despite not

meeting initial listing standards, and have their securities continue to trade until the delisting process has been completed. In such circumstances, a SPAC could complete a business combination and very soon thereafter be subject to delisting proceedings, and during such time its securities may continue to trade with a number of holders that is substantially less than the required minimum raising concerns about the maintenance of fair and orderly markets and investor protection.

While Nasdaq has amended its proposal to require certain public disclosure, the Commission does not believe the disclosure required by the proposed rule adequately addresses the potential risks associated with trading during a time period in which the minimum number of round lot shareholders may not be present, nor has Nasdaq explained why subjecting shareholders to this potential risk is consistent with the protection of investors and the public interest, and the other requirements of Section 6(b)(5) of the Exchange Act.<sup>37</sup>

As stated above, under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."<sup>38</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.<sup>39</sup> For the reasons discussed above, the Commission concludes that, because Nasdaq has not demonstrated that its proposal is designed to prevent fraudulent and manipulative acts and practices or to protect investors and the public interest, Nasdaq has not met its burden to demonstrate that its proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular Section 6(b)(5) of the

Exchange Act.<sup>40</sup> For this reason, the Commission must disapprove the proposal.

#### IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act,<sup>41</sup> that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.<sup>42</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR-Nasdaq-2020-062 is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91952; File No. SR-NYSEArca-2021-29]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Shares of ConvexityShares 1x SPIKES Futures ETF Under NYSE Arca Rule 8.200-E (Trust Issued Receipts)

May 20, 2021.

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 May 13, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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.

<sup>40</sup> In disapproving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 15 U.S.C. 78f(b)(5).

<sup>43</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.

<sup>37</sup> The Commission notes that the commenter continued to oppose the proposal after Nasdaq amended it to require this public disclosure. See CII Letter II, *supra* note 24.

<sup>38</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>39</sup> See *id.*

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following under NYSE Arca Rule 8.200–E, Commentary .02 (“Trust Issued Receipts”): ConvexityShares 1x SPIKES Futures ETF. 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 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 the following under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: ConvexityShares 1x SPIKES Futures ETF (the “Fund”).<sup>4</sup>

The Fund is a series of the ConvexityShares Trust (the “Trust”), a Delaware statutory trust.<sup>5</sup> The Fund is

managed and controlled by its sponsor and investment manager, ConvexityShares, LLC (the “Sponsor”). The Fund is a commodity pool and the Sponsor is a commodity pool operator subject to regulation by the Commodity Futures Trading Commission (“CFTC”) and the National Futures Association under the Commodity Exchange Act, as amended. U.S. Bank, a national banking association, will provide custody and fund accounting to the Trust and the Fund. Its affiliate, U.S. Bancorp Fund Services, will be the transfer agent (“Transfer Agent”) for Fund Shares and administrator for the Fund. Foreside will serve as the distributor for the Fund (“Distributor”).

According to the Registration Statement, the Fund is benchmarked to the T3 SPIKE Front 2 Futures Index (the “Index”), an investable index of SPIKES futures contracts. The Fund will seek to offer exposure to forward equity market volatility by obtaining exposure to the components of the Index. The Index, as described further below, is intended to reflect the returns that are potentially available through an unleveraged investment in the SPIKES futures contracts comprising the Index.<sup>6</sup> The Index consists of short-term SPIKES futures contracts and measures the daily performance of a theoretical portfolio of first- and second-month futures contracts on the SPIKES Volatility Index (“SPIKES Index”).<sup>7</sup> The SPIKES Index is

in Section 2(a)(19) of the 1933 Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Registration Statement on a confidential basis with the Commission. The Exchange will not commence trading in Shares of the Fund until the Registration Statement becomes effective.

<sup>6</sup> The Index is sponsored by Triple Three Partners Pty Ltd, which licenses the use of the Index to its affiliated company, T3i Pty Ltd (Triple Three Partners Pty Ltd and T3i Pty Ltd. are collectively referred to herein as “T3 Index” or the “Index Sponsor”). T3 Index maintains a website at <https://t3index.com/>. The Index Sponsor is affiliated with the Sponsor. The Index Sponsor has implemented and will maintain a fire wall regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index Sponsor is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealers. The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event the Sponsor becomes registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to and dissemination of material non-public information regarding the Index.

<sup>7</sup> T3 Index is the owner, creator and licensor of the SPIKES Index. The SPIKES Index is calculated, maintained and published by Miami International

a non-investable index that measures the implied volatility of the SPDR S&P 500 ETF<sup>8</sup> Trust (“SPY”).<sup>9</sup> The Fund is not benchmarked to the SPIKES Index.

The Index is owned and maintained by T3 Index and is calculated and published by Solactive AG (“Solactive”). Solactive is not affiliated with T3 Index. The Index value calculated at the end of each business day will be available at [www.convexityshares.com](http://www.convexityshares.com). The Fund’s website will also provide information regarding the SPIKES futures contracts constituting the Index and the Index methodology. Futures contracts on the SPIKES Index, which futures comprise the Index, are traded on the Minneapolis Grain Exchange, LLC (“MGEX”) via the CME Globex<sup>®</sup> platform.

According to the Registration Statement, the Fund will seek daily investment results, before fees and expenses, that corresponds to one times (1x) the performance of the Index for a single day. A “single day” is measured from the time the Fund calculates its net asset value (“NAV”) to the time of the Fund’s next NAV calculation. The NAV calculation time for the Fund is typically is 4:00 p.m. (Eastern Time (“E.T.”)). The NAV will be calculated by taking the current market value of the Fund’s total assets (after the close of the NYSE Arca Core Trading Session (normally, 4:00 p.m., E.T.)), subtracting any liabilities, and dividing that total by the total number of outstanding Shares.

#### Description of the Index

According to the Registration Statement, the Index employs rules for selecting the SPIKES futures contracts comprising the Index and a formula to calculate a level for the Index from the prices of these SPIKES futures contracts. Currently, the SPIKES futures contracts comprising the Index represent the prices of two near-term SPIKES futures contracts, replicating a position that rolls the nearest month SPIKES futures

Securities Exchange, LLC (“MIAX”) via the Options Price Reporting Authority.

<sup>8</sup> SPDR S&P 500 ETF Trust is a unit investment trust that holds a portfolio of common stocks that closely tracks the price performance and dividend yield of the S&P 500 Composite Price Index (“S&P 500”). Shares of the SPDR S&P 500 ETF Trust trade on the Exchange under the symbol “SPY.”

<sup>9</sup> According to the Registration Statement, the market’s current expectation of the possible rate and magnitude of movements in an index is commonly referred to as the “implied volatility” of the index. For these purposes, “implied volatility” is a measure of the expected volatility of SPY over the next 30 days. The SPIKES Index does not represent the actual or the realized volatility of SPY. The SPIKES Index is calculated based on the prices of a constantly changing portfolio of SPY put and call options.

<sup>4</sup> Commentary .02 to NYSE Arca Rule 8.200–E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

<sup>5</sup> On December 15, 2020, ConvexityShares Trust submitted to the Commission its draft registration statement, with respect to the Trust, on Form S–1 (“Registration Statement”) under the Securities Act of 1933 (“1933 Act”). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the 1933 Act. Section 6(e) of the 1933 Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in 1933 Act Rule 433(h)(4). An emerging growth company is defined

contracts to the next month SPIKES futures contracts at or close to the daily settlement price via a Trade-At-Settlement<sup>10</sup> program towards the end of each business day in equal fractional amounts. This results in a constant weighted average maturity of one month. The rules applicable to the Index are subject to change by T3 Index.

The level of the Index is published by one or more major market data vendors in real time at least once every 15 seconds and at the close of trading in the Exchange's Core Trading Session (normally 4:00 p.m., E.T.) on each business day.

The Index is comprised solely of SPIKES futures contracts. SPIKES futures contracts were launched for trading by MGEX, via the CME Globex® platform, on December 14, 2020. According to the Registration Statement, SPIKES futures contracts allow investors to invest based on their view of the forward implied market volatility of SPY. Investors that believe the forward implied market volatility of SPY will increase may buy SPIKES futures contracts. Conversely, investors that believe that the forward implied market volatility of SPY will decline may sell SPIKES futures contracts. While the SPIKES Index represents a measure of the expected 30-day volatility of SPY, the prices of SPIKES futures contracts are based on the current expectation of the expected 30-day volatility of SPY on the expiration date of the futures contract.

#### SPIKES Index

According to the Registration Statement, the SPIKES Index is an index designed to measure the implied volatility of SPY over 30 days in the future. The SPIKES Index is calculated based on the prices of certain put and

call options on SPY. The SPIKES Index is reflective of the premium paid by investors for certain options linked to the level of the S&P 500. The SPIKES Index is a theoretical calculation and cannot be traded on a spot basis. The SPIKES Index is reported by Bloomberg Finance L.P. and Reuters under the ticker symbol "SPIKE." The SPIKES Index is calculated and disseminated every 100 milliseconds.

#### Investment Objectives and Strategies

According to the Registration Statement, the Fund will seek daily investment results, before fees and expenses, that corresponds to one times (1x) the performance of the Index for a single day. The Fund is benchmarked to the Index, which is comprised of SPIKES futures contracts, and will seek to offer exposure to market volatility through publicly traded futures markets.

Under normal market conditions,<sup>11</sup> the Fund will invest primarily in SPIKES futures contracts to gain the appropriate exposure to the Index. Under certain circumstances, the Fund may also invest in futures contracts and swap contracts ("VIX Relation Positions") on the Cboe Volatility Index ("VIX"),<sup>12</sup> an index that tracks volatility and would be expected to perform in a substantially similar manner as the SPIKES Index.

In seeking to achieve the Fund's investment objective, the Sponsor will use a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investments that the Sponsor believes, in combination, should produce daily returns consistent with the Fund's objective.

The Fund seeks to achieve its investment objective through the appropriate amount of exposure to the SPIKES futures contracts included in the Index. The Fund will not directly invest in the SPIKES Index. In addition, under specified circumstances described below, the Fund may invest in VIX Related Positions.

In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to SPIKES futures

contracts, the Sponsor may cause the Fund to invest in VIX Related Positions. According to the Registration Statement, the Sponsor expects the Fund's positions in VIX Related Positions to consist primarily of VIX futures contracts.<sup>13</sup> In the event accountability rules, price limits, position limits, margin limits or other exposure limits are reached with respect to VIX futures contracts, or if the market for a specific VIX futures contract experiences emergencies or disruptions or in situations where the Sponsor deems it impractical or inadvisable to buy or sell VIX futures contracts, the Fund would hold VIX swap agreements.

The Fund will also hold cash or cash equivalents such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) as collateral for investments and pending investments.

#### Creation and Redemption of Shares

According to the Registration Statement, the Fund will create and redeem Shares from time to time in one or more "Creation Units" or "Redemption Units" (together, "Units"). A Unit consists of 25,000 Shares. The size of a Unit is subject to change. The creation and redemption of Units are made in exchange for delivery to the Fund or the distribution by the Fund of the amount of cash represented by the Units being created or redeemed, the amount of which is based on the combined NAV of the number of Shares included in the Units being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Units is properly received. If permitted by the Sponsor in its sole discretion with respect to the Fund, an "Authorized Participant" may also agree to enter into or arrange for an exchange of a futures contract for related position ("EFCRP") or block trade with the Fund whereby the Authorized Participant would also transfer to the Fund a number and type of exchange-traded futures contracts at or near the closing settlement price for such contracts on the purchase order date. Similarly, the Sponsor in its sole discretion may agree with an Authorized Participant to use an EFCRP to effect an order to redeem Units.<sup>14</sup> All APs would be able to use

<sup>10</sup> A Trade at Settlement ("TAS") is a transaction at a price equal to the daily settlement price, or at a specified differential above or below the daily settlement price. The TAS transaction price will be determined following execution and based upon the daily settlement price of the respective SPIKES futures contract month. TAS transactions are permitted in the SPIKES futures contract as outright or spread transactions. TAS transactions are available for trading only during the regular Hours of Trading of 8:30 a.m.–2:58 p.m. Central Time. However, TAS transactions in an expiring SPIKES futures contract are not permitted during the Business Day of its final settlement date. The permissible price range for permitted TAS transactions is from 0.50 index points below the daily settlement price to 0.50 index points above the daily settlement price. The permissible minimum increment for a TAS transaction is 0.01 index points. See MGEX Rule 83.15 at <http://www.mgex.com/documents/20210318-Rulebook.pdf>. The term "Business Day" means a day when MGEX is open for business, and the term "Hours of Trading" means the hours, on business days, established by MGEX Rules for trading. See MGEX Rules, Chapter 1.

<sup>11</sup> The term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>12</sup> The VIX Index is a measure of estimated near-term future volatility based upon the weighted average of the implied volatilities of near-term put and call options on the S&P 500.

<sup>13</sup> Futures on the VIX are traded on the Cboe Futures Exchange.

<sup>14</sup> According to the Registration Statement, an EFCRP is a technique permitted by the rules of certain futures exchanges that, as utilized by the Fund in the Sponsor's discretion, would allow the Fund to take a position in a futures contract from an Authorized Participant, or give futures contracts to an Authorized Participant, in the case of a

an EFCRP to effect orders to create or redeem Units.

Authorized Participants are the only persons that may place orders to create and redeem Units. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) Depository Trust Company participants.

#### Creation Procedures

According to the Registration Statement, on any business day, an Authorized Participant may place an order to create one or more Units.<sup>15</sup> Purchase orders must be placed by 2:00 p.m. E.T. or the close of the Core Trading Session on the NYSE Arca, whichever is earlier. Purchase orders are irrevocable.

The total payment required to create each Creation Unit is the NAV of 25,000 Shares on the purchase order date.

#### Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Units mirror the procedures for the creation of Units. On any business day, an Authorized Participant may place an order with the Transfer Agent, and accepted by the Distributor, to redeem one or more Units. Redemption orders must be placed by 2:00 p.m. E.T. or the close of the Core Trading Session on the NYSE Arca, whichever is earlier. Redemption orders are irrevocable.

Upon request of an Authorized Participant made at the time of a redemption order, the Sponsor at its sole discretion may determine, in addition to delivering redemption proceeds, to transfer futures contracts to the Authorized Participant pursuant to an EFCRP or to a block trade sale of futures contracts to the Authorized Participant.

#### Determination of Redemption Proceeds

The redemption proceeds from the Fund consist of the cash redemption amount and, if permitted by the Sponsor in its sole discretion with respect to the Fund, an EFCRP or block trade with the Fund as described above. The

redemption proceeds from the Fund consist of a cash redemption amount equal to the NAV of the number of Units requested in the Authorized Participant's redemption order on the redemption order date, less transaction fees and any amounts attributable to any applicable EFCRP or block trade.

#### Indicative Fund Value

In order to provide updated information relating to the Fund for use by investors and market professionals, an updated "Indicative Fund Value" ("IFV") will be calculated. The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and will be updating throughout the Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the approximate aggregate per Share value of the investments held by the Fund based on the most recently available prices for the Fund's investments. The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The IFV will be readily available from the Fund's website, automated quotation systems, published or other public sources, or major market data vendors' website or on-line information services.

#### Availability of Information

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time, after 4 p.m. each day. In addition, the Fund's website, [www.convexityshares.com](http://www.convexityshares.com), will display the end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website before 9:30 a.m. E.T. each day. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the quantity and type of each holding (including the ticker symbol, maturity date or other identifier, if any) and other descriptive information including, in the case of a swap, the type of swap, its notional value and the underlying instrument, index or asset on which the swap is based, (iii) the market value of each investment held by the Fund, (iv) the type (including maturity, ticker symbol, or other identifier) and value of each Treasury security and cash equivalent, and (v) the amount of cash held in the Fund's portfolio. The Fund's website will be publicly accessible at no charge.

The Fund's website will include a form of the prospectus that may be downloaded. The Fund's website will

include additional quantitative information updated on a daily basis, including, trading volume, the prior business day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>16</sup> and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.

This website disclosure of the Fund's daily holdings will occur at approximately the same time as the disclosure by the Trust of the daily holdings to Authorized Participants so that all market participants are provided daily holdings information at approximately the same time. Therefore, the same holdings information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current daily holdings of the Fund through the Fund's website.

Complete real-time data for SPIKES futures contracts is available by subscription through on-line information services. MGEX also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. E.T. and at the close of trading on each business day by Bloomberg and Reuters. The level of the SPIKES Index and the VIX is available from Bloomberg and Reuters. Price information regarding cleared VIX swap contracts is available from major market data vendors. Price information regarding VIX futures is available from the Cboe Futures Exchange and from major market data vendors. Price information for cash equivalents is available from major market data vendors. Price information for non-exchange-traded VIX swap contracts may be obtained from brokers and dealers who make markets in such instruments. 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 regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

<sup>16</sup> The Bid/Ask Price of the Fund's Shares is determined using the mid-point between the current national best bid and offer at the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or its service providers.

redemption, rather than to enter the futures exchange markets to obtain such a position.

<sup>15</sup> For purposes of processing purchase and redemption orders for the Fund, a "business day" means any day other than a day when any of NYSE Arca, the New York Stock Exchange, MGEX or other exchange material to the valuation or operation of the Fund, or the calculation of the SPIKES Index, options contracts underlying the SPIKES Index, SPIKES futures contracts or the Index is closed for regular trading.

### 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 the Fund.<sup>17</sup> 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. The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares or disclosure of the Fund's daily holdings is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV and the Fund's daily holdings is available to all market participants.

### 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. E.T. in accordance with NYSE Arca Rule 7.34–E (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 Rule 7.6–E, 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 will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200–E. The trading of the Shares will be subject to NYSE Arca Rule 8.200–E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. With respect to the application of Rule 10A–3<sup>18</sup> under the

Act, the Fund will rely on the exception contained in Rule 10A–3(c)(7).<sup>19</sup> The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.

### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>20</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments 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, SPIKES futures, VIX futures and other underlying exchange-listed instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed

instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA").<sup>21</sup> The Exchange has in place a CSSA with MGEX regarding trading in all futures contracts on MGEX.

All of the net assets of the Fund invested in futures contracts shall consist of futures contracts whose principal market is a member of the ISG or is a market with which the Exchange has a CSSA.

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 Index, portfolio holdings and reference assets, (b) limitations on Index or portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. 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).

### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>22</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 pursuant to the initial and continued listing criteria in NYSE Arca Rule

<sup>19</sup> See Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

<sup>20</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>21</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 Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See NYSE Arca Rule 7.12–E.

<sup>18</sup> 17 CFR 240.10A–3.

8.200–E.<sup>23</sup> The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares of the Fund 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, SPIKES futures, VIX futures and other underlying exchange-listed instruments 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, SPIKES futures, VIX futures and other underlying exchange-listed instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, SPIKES futures, VIX futures and other underlying exchange-listed instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange has in place a CSSA with MGEX regarding trading in all futures contracts on MGEX.

All of the net assets of the Fund invested in futures contracts shall consist of futures contracts whose principal market is a member of the ISG or is a market with which the Exchange has a CSSA.

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time, after 4 p.m. E.T. each day. Complete real-time data for SPIKES futures contracts is available by subscription through on-line information services. MGEX also provides delayed futures information on current and past trading sessions and market news free of charge on its website. The level of the Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4 p.m. E.T. and at the close of trading on each business day by Bloomberg and Reuters. The level of the SPIKES Index and the VIX is available from Bloomberg and Reuters. Price information regarding cleared VIX swap contracts is available from major market data vendors. Price information regarding VIX futures is available from the Cboe Futures Exchange and from major market data vendors. Price information for cash equivalents is available from major market data vendors. Price information for non-exchange-traded VIX swap

contracts may be obtained from brokers and dealers who make markets in such instruments. 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 regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services.

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 an additional type of Trust Issued Receipts based on prices related to market volatility 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 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.

#### *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 an additional type of Trust Issued Receipts based on prices related to market volatility 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 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 the 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2021–29 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–2021–29. 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 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. 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–NYSEArca–2021–29 and should be submitted on or before June 16, 2021.

<sup>23</sup> The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 (17 CFR 240.10A–3) under the Act, as provided by NYSE Arca Rule 5.3–E.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-11078 Filed 5-25-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91958; File No. SR-MSRB-2021-03]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Amendments to MSRB Rule A-8 and the By-Laws of the Municipal Securities Rulemaking Board To Update Descriptions of Board Rulemaking Processes and Eliminate Redundant or Obsolete Provisions

May 20, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 19, 2021 the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rule A-8, relating to rulemaking procedures, and parallel amendments to Article 8 of the By-Laws of the Municipal Securities Rulemaking Board (“Bylaws”), which reproduces MSRB Rule A-8 (the “proposed rule change”). The MSRB has designated the proposed rule change as “concerned solely with the administration of the self regulatory organization” under Section 19(b)(3)(A)(iii) of the Act <sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. As described below, the proposed rule change would update

descriptions of Board rulemaking processes and eliminate redundant or obsolete provisions.

The text of the proposed rule change is available on the MSRB’s website at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-Filings.aspx), at the MSRB’s principal office, 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 MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

MSRB rulemaking is governed by Section 19 of the Exchange Act <sup>5</sup> and Rule 19b-4 thereunder, which describe the processes self-regulatory organizations must follow to file proposed rule changes with the Commission. MSRB Rule A-8 reflects, and to some extent incorporates, these requirements and includes provisions that describe Board processes for complying with them. The proposed rule change is intended to update these provisions and reduce unnecessary complexity, as follows.

##### Eliminating Unnecessary Descriptions of Statutory Requirements

Section (a) of MSRB Rule A-8 notes the statutory requirements with which the Board must comply when it adopts rules and also restates the statutory authority granted to the Board in Section 15B(b) of the Exchange Act.<sup>6</sup> While referencing the Board’s statutory authority in section (a) is useful to provide context for what follows, the more detailed description adds unnecessary length and complexity. The proposed rule change streamlines the section by deleting the detailed description but does not change the substance of the rule. The proposed rule change further improves the readability of section (a) by moving the sentence

describing who must sign rule filings—a separate topic—into a new section (b).

##### Removing Outdated or Obsolete References

Current section (b) of MSRB Rule A-8 (section (c) in the proposed rule change) notes that the Board may “render or cause to be rendered advisory opinions and interpretations of rules of the Board at the request of any interested person.”<sup>7</sup> The proposed rule change removes the reference to “advisory opinions,” a term that the Board once used, but no longer uses, to describe certain interpretations. Removing this reference would eliminate the potential for confusion about the meaning of the term without limiting the kinds of interpretive and other materials relating to rulemaking that the Board may issue.<sup>8</sup>

In addition, because the Board may interpret its rules on its own initiative, in addition to upon request, the proposed rule change removes the reference to “the request of any interested person.” Finally, the proposed rule change replaces the words “render” and “rendered” in the first sentence with “issue” and “issued” and revises the second sentence to say that interpretations shall “be consistent with,” rather than “represent,” the Board’s intent in adopting the rules being interpreted. The Board believes that the new phrasing is clearer.

Current section (c) of MSRB Rule A-8 provides that the Board may approve procedures relating to the administration of MSRB rules pursuant to MSRB Rule A-4(d), which describes requirements for taking Board action without a meeting. Current Rule A-8(c) also provides that such procedures can take effect no earlier than 10 business days after publication and that regulated entities are subject to these procedures in the same manner as they are subject to the rules of the Board.

Adopted at a time when the Board’s rules required the Board to approve changes to Board rules at a meeting of the Board (rather than through action without a meeting), Rule A-8(c) permitted the Board to approve minor changes to an MSRB form, for example, without a meeting. Because the Board’s

<sup>7</sup> The Board is currently engaged in a retrospective review of the catalogue of interpretive guidance in its rule book. The multi-year initiative is intended to streamline and modernize the rule book by clarifying, amending and/or retiring guidance that no longer achieves its intended purposes. See MSRB Notice 2021-02 (February 11, 2021).

<sup>8</sup> Depending on its substance, an interpretation may be deemed to be a proposed rule change pursuant to Exchange Act Rule 19b-4, in which case it must be filed with the Commission.

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>5</sup> 15 U.S.C. 78s.

<sup>6</sup> 15 U.S.C. 78o-4(b).