

orders subjects NOS to the requirements of Rule 15c3-5(c)(1)(i).

NASDAQ has provided notice to its membership of its intent to discontinue Exchange Direct Orders.<sup>7</sup> Although NOM did receive such orders, they do not represent significant volume, such that NASDAQ does not believe that it will have a significant impact on its participants to eliminate this order type.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the Exchange is not required to make this order type available and has made a decision to eliminate it, as explained above. Moreover, in order to comply with the Market Access Rule, this order type is being eliminated rather than implementing the extensive necessary changes. Furthermore, because this order type was not widely used, NASDAQ does not believe that market quality will be impacted by its elimination.

### 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 not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of

the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission. The Commission believes the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because eliminating Exchange Directed Orders will allow the Exchange's broker-dealer affiliate, NOS, to be in timely compliance with SEC Rule 15c3-5.<sup>12</sup> In addition, the Exchange represents that the order type is not widely used and its elimination should not have a significant impact on market quality. Therefore, the Commission designates the proposal to be operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the 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.

## 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-NASDAQ-2011-159 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> See *supra*, note 6.

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NASDAQ-2011-159. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2011-159 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65859; File No. SR-NYSEArca-2011-84]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Russell Global Opportunity ETF; Russell Bond ETF; and Russell Real Return ETF Under NYSE Arca Equities Rule 8.600

December 1, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> <http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2011-62>.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

or “Exchange Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on November 16, 2011, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the following three series of the Russell Exchange Traded Funds Trust under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): Russell Global Opportunity ETF; Russell Bond ETF; and Russell Real Return ETF. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

### **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 Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange proposes to list and trade the following Managed Fund Shares<sup>3</sup> (“Shares”) under NYSE Arca Equities Rule 8.600: Russell Global

Opportunity ETF; Russell Bond ETF; and Russell Real Return ETF (each, a “Fund” and, collectively, “Funds”). The Funds are series of the Russell Exchange Traded Funds Trust (“Trust”).<sup>4</sup> Each of the Funds is a “fund of funds,” which means that each Fund seeks to achieve its investment objective by investing primarily in the retail shares of other exchange-traded funds that are registered under the 1940 Act (“Underlying ETFs”).<sup>5</sup> The Funds also may invest in other types of U.S. exchange-traded products, such as Exchange Traded Notes (“ETNs”) and exchange-traded pooled investment vehicles (collectively, with Underlying ETFs, “Underlying ETPs”).<sup>6</sup>

Russell Investment Management Company (“Adviser”) is the adviser for the Funds.<sup>7</sup> State Street Bank & Trust

<sup>4</sup> The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving Exchange listing and trading of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR–NYSEArca–2009–74) (order approving Exchange listing and trading of four Grail Advisors RP ETFs); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of SIM Dynamic Allocation Diversified Income ETF and SIM Dynamic Allocation Growth Income ETF); 64689 (June 16, 2011), 76 FR 36608 (June 22, 2011) (SR–NYSEArca–2011–18) (order approving Exchange listing and trading of Meidell Tactical Advantage ETF).

<sup>5</sup> The Trust is registered under the 1940 Act. On May 9, 2011, the Trust filed with the Commission Post-Effective Amendment No. 6 under the Securities Act of 1933 (15 U.S.C. 77a) and Amendment No. 9 under the 1940 Act to the Trust’s registration statement on Form N–1A relating to the Funds (File Nos. 333–160877 and 811–22320) (“Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29164 (March 1, 2010) (File No. 812–13815 and 812–13658–01) (“Exemptive Order”).

<sup>6</sup> “Underlying ETPs,” which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that

Company serves as the custodian, [sic] transfer agent and Russell Fund Services Company as administrator for the Funds.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with multiple broker-dealers and has implemented a “fire wall” with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds’ portfolios. In the event (a) The Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of

reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

material non-public information regarding such portfolio.

With respect to each of the Funds, the Adviser will employ an active investment strategy, meaning that it buys and holds Underlying ETPs for either a long or short period of time depending on the opportunity and replacement opportunities.

#### Russell Global Opportunity ETF

According to the Registration Statement, the Fund's investment objective will be to seek to provide long-term capital growth. The Fund will be a "fund of funds," which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying ETFs that seek to track various indices.<sup>8</sup> These indices include those that track the performance of equity, fixed income, real estate, commodities, infrastructure or currency markets. There is no maximum limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs. A minimum of 30% of Fund assets will be invested in securities of non-U.S. issuers through Underlying ETFs. The Fund also may invest in other Underlying ETPs.

The Adviser will employ an asset allocation strategy that seeks to provide exposure to multiple asset classes in a variety of domestic and foreign markets. The Adviser's asset allocation strategy will establish a target asset allocation for the Fund and the Adviser then will implement the strategy by selecting Underlying ETPs that represent each of the desired asset classes, sectors and strategies. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or underweight Underlying ETPs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, financial markets

generally and/or relative market valuation of the asset classes, sectors or strategies represented by each Underlying ETP.

The Adviser intends to invest in Underlying ETPs that hold equity securities of large, medium and small capitalization companies across the globe including developed countries and emerging countries. Equity securities may include common and preferred stocks, warrants and rights to subscribe to common stock and convertible securities. The Adviser also intends to invest in Underlying ETPs that (1) Hold U.S. and non-U.S. government issued debt, investment grade corporate bonds, below investment grade bonds (generally referred to as high yield bonds or "junk"), and mortgage and asset backed securities, and (2) track performance of commodities, real estate, infrastructure and currency markets by investing in energy, metals, agriculture, REITs, utilities, roads and bridges or construction/engineering companies. The Adviser may also, on a limited basis, sell short Underlying ETPs.

The Adviser will select Underlying ETPs based on their potential to represent the underlying asset class, sector or strategy to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETPs.

#### Russell Bond ETF

According to the Registration Statement, the Fund will seek total return. The Fund will be a "fund of funds," which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying ETFs that seek to track various fixed income indices.<sup>9</sup> These indices include those that track the performance of fixed income securities issued by governments and corporations in the United States, Europe and Asia, as well as other developed and emerging markets. There is no limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs. The Fund also may invest in other Underlying ETPs.

The Fund will invest, under normal circumstances, such that at least 80% of the value of its net assets are exposed to bonds through Underlying ETPs. The Fund considers bonds to include fixed income equivalent instruments, which may be represented by forwards or

derivatives such as options, futures contracts, or swap agreements.

The Adviser will employ an asset allocation strategy that provides exposure to multiple fixed income asset classes or sectors in a variety of U.S. and non-U.S. markets. The Adviser's allocation strategy will establish a target allocation for the Fund and the Adviser then will implement the strategy by selecting Underlying ETPs that represent each of the desired exposures including asset classes or sectors. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or underweight Underlying ETPs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, financial markets generally and/or relative market valuation of the asset classes or sectors represented by each Underlying ETP.

The Adviser intends to invest in Underlying ETPs that hold government-issued debt, investment grade corporate bonds, below investment grade bonds (generally referred to as high yield bonds or "junk") and mortgage and asset backed securities. Issuers of debt securities may be U.S. or non-U.S. (including developed and emerging markets countries) governments or corporate issuers. The Adviser also intends to select Underlying ETPs based on their exposure to asset class or sectors and the duration and credit quality of their portfolios within broader sectors of a fixed income market. The Adviser may also, on a limited basis, sell short Underlying ETPs.

The Adviser will select Underlying ETPs based on their potential to represent the underlying asset class or sector to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETPs.

#### Russell Real Return ETF

According to the Registration Statement, the Fund will seek a total return that exceeds the rate of inflation over an economic cycle. The Fund will be a "fund of funds," which means that the Fund will seek to achieve its investment objective by investing primarily in shares of Underlying ETFs. In pursuing the Fund's investment objective, the Adviser will normally invest the Fund's assets in Underlying

<sup>8</sup> The terms "normally" and "under normal circumstances" as used herein includes, but is not limited to, the absence of extreme volatility or trading halts in the debt or equities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>9</sup> See note 8, *supra*.

ETFs that seek to track various indices.<sup>10</sup> These indices include indices that track the performance of equity, fixed income (including Treasury Inflation-Protected Securities or "TIPS") and real assets such as real estate, commodities and infrastructure assets. The Fund will invest in Underlying ETFs that invest in U.S. and non-U.S. (including developed and emerging markets) securities. There is no limit on the percentage of Fund assets that may be invested in securities of non-U.S. issuers through Underlying ETFs. The Fund also may invest in other Underlying ETFs.

The Adviser will employ an asset allocation strategy that provides exposure to multiple asset classes in a variety of domestic and foreign markets. The Adviser's allocation strategy will establish a target asset allocation for the Fund and the Adviser will then implement the strategy by selecting Underlying ETFs that represent each of the desired asset classes, sectors or strategies. The Adviser's strategy also will involve periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the strategic allocation and to add value through tactical allocation that may over or underweight Underlying ETFs around the strategic allocation. The Adviser may modify the strategic allocation for the Fund from time to time based on capital markets research. The Adviser also may modify the Fund's allocation based on tactical factors such as the Adviser's outlook for the economy, inflation expectations, financial markets generally and/or relative market valuation of the asset classes, sector or strategies represented by each Underlying ETF.

The Adviser intends to invest in Underlying ETFs that hold equity securities of large, medium and small capitalization companies and fixed income securities, including government issued debt, investment grade corporate bonds, below investment grade bonds and mortgage and asset backed securities issued by companies across the globe including developed countries and emerging countries. The Adviser also intends to invest in Underlying ETFs that hold U.S. inflation-indexed securities and have exposure to commodities, real estate, infrastructure markets and other real assets. A real asset is a tangible or physical asset that typically has intrinsic value. The Adviser may also, on a limited basis, sell short Underlying ETFs.

The Adviser will select Underlying ETFs based on their potential to represent the underlying asset class, sector or strategy to which the Adviser seeks exposure for the Fund. The Fund will only invest in U.S.-listed Underlying ETFs.

#### Other Investments of the Funds

The Funds will not invest in derivatives. The Underlying ETFs in which the Funds invest may, to a limited extent, invest in derivatives; however, the Funds will not invest in Underlying ETFs that use derivatives as a principal investment strategy unless the Underlying ETF uses futures contracts and related options for bona fide hedging, attempting to gain exposure to a particular market, index or instrument, or other risk management purposes. To the extent an Underlying ETF uses futures and/or options on futures, it will do so in accordance with the Commodity Exchange Act<sup>11</sup> and applicable rules and regulations promulgated by the Commodity Futures Trading Commission and the National Futures Association.

Underlying ETFs may enter into swap agreements including interest rate, index, and credit default swap agreements. An Underlying ETF may invest in commodity-linked derivative instruments, such as structured notes, swap agreements, commodity options, futures and options on futures, to gain exposure to commodities markets. Financial futures contracts may be used by an Underlying ETF during or in anticipation of adverse market events such as interest rate changes. An Underlying ETF may purchase a put and/or sell a call option on a stock index futures contract instead of selling a futures contract in anticipation of an equity market decline.

Money market instruments, including repurchase agreements, or funds that invest exclusively in money market instruments, including affiliated money market funds (subject to applicable limitations under the 1940 Act), convertible securities, variable rate demand notes, or commercial paper may be used by a Fund in seeking to meet its investment objective and in managing cash flows.

The Funds expect to invest almost entirely in Underlying ETFs but may also invest in, among other investments, common stocks; sponsored American Depositary Receipts ("ADRs"), American Depositary Shares ("ADSs") and European Depositary Receipts ("EDRs"), Global Depositary Receipts ("GDRs"); short-term instruments

(including money market instruments); U.S. Government Securities; TIPS; commercial paper; and other debt instruments described in the Registration Statement. The Funds and the Underlying ETFs may enter into repurchase and reverse repurchase agreements.

#### Investment Policies and Restrictions

Each Fund will seek to qualify for treatment as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>12</sup>

Each Fund may invest up to an aggregate amount of 15% of its net assets in (a) illiquid securities, and (b) Rule 144A securities. This limitation is applied at the time of purchase. The Commission staff has interpreted the term "illiquid" in this context to mean a security that cannot be sold or disposed of within seven days in the ordinary course of business at approximately the amount at which a Fund has valued such security.<sup>13</sup>

<sup>12</sup> 26 U.S.C. 151. One of several requirements for RIC qualification is that a Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, [sic] payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership ("90% Test"). A second requirement for qualification as a RIC is that a Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership [sic] ("Asset Test").

<sup>13</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

<sup>10</sup> See note 8, *supra*.

<sup>11</sup> 7 U.S.C. 1.

Each Fund may invest in securities of other investment companies, including ETFs, closed end funds and money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act or exemptions granted thereunder.

A Fund may not:

1. (i) With respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.<sup>14</sup>

2. Invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in a particular industry or group of industries; except that, to the extent the underlying index selected for a particular passive Underlying ETF is concentrated in a particular industry or group of industries, the Funds will necessarily be concentrated in that industry or group of industry [sic].<sup>15</sup> This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies, including the Underlying ETPs.

Underlying ETPs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETPs may hold non-U.S. equity securities, the Funds will not invest in non-U.S. listed equity securities. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Funds will not hold leveraged, inverse and inverse leveraged Underlying ETPs. Consistent with the Exemptive Order, the Funds will not invest in options contracts, futures contracts or swap agreements.

#### Creations and Redemptions of Shares

The Funds will offer and issue Shares at their net asset value ("NAV") only in aggregations of a specified number of Shares (each, a "Creation Unit"). The Funds generally will offer and issue Shares in exchange for shares of specified Underlying ETPs ("Deposit

Securities") together with the deposit of a specified cash payment ("Cash Component"). The Trust will reserve the right to permit or require the substitution of a "cash in lieu" amount to be added to the Cash Component to replace any Deposit Security. The Shares will be redeemable only in Creation Unit aggregations, and generally in exchange for portfolio securities and a specified cash payment. A Creation Unit of the Funds will consist of 50,000 Shares.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Trust will be in compliance with Rule 10A-3 under the Exchange Act,<sup>16</sup> as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

#### Availability of Information

The Funds' Web site ([www.russellefts.com](http://www.russellefts.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for the Funds, (1) Daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),<sup>17</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the

business day.<sup>18</sup> The Web site information will be publicly available at no charge.

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange ("NYSE") via the National Securities Clearing Corporation. The basket will represent one Creation Unit of each Fund.

The NAV of each Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), Shareholder Reports and Form N-CSR. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR may be viewed on-screen or downloaded from the Commission's Web site at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. The intra-day and closing values of Underlying ETPs also will be disseminated by the U.S. exchange on which they are listed. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during

<sup>14</sup> The diversification standard is contained in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

<sup>15</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

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

<sup>17</sup> The Bid/Ask Price of the Funds will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

<sup>18</sup> Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

the Core Trading Session.<sup>19</sup> The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Funds on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### 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 Funds.<sup>20</sup> Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, 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.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. 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 may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>21</sup> The Exchange, therefore, will be able to obtain surveillance information from the exchanges trading the Underlying ETPs.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information

regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

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

#### 2. Statutory Basis

The basis under the Exchange 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 Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Underlying ETPs will be listed and traded in the U.S. on a national securities exchange. While the Underlying ETPs may hold non-U.S. equity securities, the Funds will not invest in non-U.S. registered equity securities. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. The Funds will not invest in derivatives, including options, swaps or futures.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser is affiliated with multiple broker-dealers and has implemented a "fire wall" with

<sup>19</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

<sup>20</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

<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 Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds' portfolios. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Funds' portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Fund [sic] will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect

investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

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

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-84 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2011-84. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2011-84 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(12).