

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the 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 from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will promote fair competition among the exchanges by allowing the Exchange to treat QOS in ETF options in the same manner as QOS in index options at the same time as NYSE Arca and NYSE MKT. The Exchange also stated that the proposal would allow the Exchange to meet investor demand for an expanded number of QOS in ETF options, allowing investors to meet investment objectives, including hedging securities positions, currently unavailable because of the limited number of QOS in ETF options available. For these reasons, the Commission believes that the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.¹⁸

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2013-57 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-BOX-2013-57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-BOX-

2013-57 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70994; File No. SR-NYSEArca-2013-132]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of Merk Hard Currency ETF Under NYSE Arca Equities Rule 8.600

December 5, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 22, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): Merk Hard Currency ETF. The text of the proposed rule change is available on the Exchange's Web site at 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.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 shares ("Shares") of Merk Hard Currency ETF (the "Fund") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares⁴ on the Exchange.⁵ The Shares will be offered by Forum ETF Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁶ Forum Investment Advisors, LLC ("Investment Manager") is the investment manager of the Fund. Merk Investments, LLC ("Investment Adviser") is the investment adviser of the Fund.⁷ Foreside Fund Services LLC

("Distributor") is the Fund's principal underwriter and distributor of the Fund's Shares. Atlantic Fund Administration, LLC ("Administrator"), an affiliate of the Investment Manager, serves as the administrator for the Fund. The Bank of New York Mellon Corporation serves as custodian and transfer agent for the Fund.

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.⁸ 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. Neither the Investment Manager nor the Investment Adviser is a broker-dealer or is affiliated with a broker-dealer. In the event (a) the Investment

Manager or the Investment Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new investment adviser is or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

According to the Registration Statement, the Fund's investment objective is to seek to profit from a rise in hard currencies relative to the U.S. dollar. The Fund will not be an index fund. The Fund will be actively managed and does not seek to replicate the performance of a specified index.

According to the Registration Statement, under normal market conditions,⁹ the Fund will invest at least 80% of the value of its net assets (plus borrowings for investment purposes) in a basket of hard currency denominated investments composed of high quality, short-term¹⁰ debt instruments, including sovereign debt, physical gold and gold-related securities.¹¹

According to the Registration Statement, the term "hard currencies" is used to describe currencies of countries pursuing what the Investment Adviser believes to be "sound" monetary policy and gold.¹² Sound monetary policy is

⁴ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁵ The Securities and Exchange Commission (the "Commission") has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 58564 (September 17, 2008), 73 FR 55194 (September 24, 2008) (SR-NYSEArca-2008-86) (order approving Exchange listing and trading of WisdomTree Dreyfus Emerging Markets Fund).

⁶ The Trust is registered under the 1940 Act. On April 12, 2013, the Trust filed with the Commission an amended Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("1933 Act"), and under the 1940 Act relating to the Fund (File Nos. 333-180250 and 811-22679) ("Registration Statement"). The description of the operation of the Trust and the Fund 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. 30549 (June 4, 2013) (File No. 812-13915-01) ("Exemptive Order").

⁷ The Investment Adviser will be responsible for the day-to-day portfolio management of the Fund and, as such, will make all investment decisions for the Fund and is responsible for implementing the Fund's investment strategy. The Investment Manager will develop the overall investment program for the Fund (which includes working with the Investment Adviser to define principal

investment strategies) and will be responsible for overseeing and reporting to the Board of the Trust regarding the Investment Adviser.

⁸ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Investment Manager and Investment Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

⁹ The term "under normal market conditions" includes, but is not limited to, the absence of adverse market, economic, political or other conditions including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

¹⁰ According to the Fund, it will define "short-term" based upon an instrument's remaining maturity period, not the initial maturity period. For example, a twenty year bond with three months remaining until maturity will be considered to be a short-term debt instrument.

¹¹ According to the Registration Statement, "gold-related securities" are exchange-traded products ("ETPs") that invest directly in gold bullion. ETPs that hold gold, physically or indirectly, are not regulated under the 1940 Act and are not afforded the protections afforded thereunder.

¹² Provided that the Investment Adviser deems the following currencies to be backed by sound monetary policy, "hard currencies" include, without limitation: Argentine Peso (ARS), Australian Dollar (AUD), Brazilian Real (BRL), British Pound (GBP), Canadian Dollar (CAD), Chilean Peso (CLP), Chinese Renminbi (CNY), Colombian Peso (COP), Czech Koruna (CZK), Danish Krone (DKK), Euro (EUR), Hong Kong Dollar (HKD), Hungarian Forint (HUF), Iceland Krona

defined by the Investment Adviser as a monetary policy providing an environment fostering long-term price stability. The Investment Adviser considers gold to be the only currency with intrinsic value and, as such, qualifies as a hard currency.

According to the Registration Statement, the term "high quality" refers to debt instruments rated in the top three ratings by a U.S. nationally recognized ratings service, or that the Investment Adviser considers comparable in quality to debt instruments rated in the top three ratings.¹³

According to the Registration Statement, the Investment Adviser will determine currency allocations based on an analysis of monetary policies pursued by central banks and economic environments. The Investment Adviser will search for currencies that, in the Investment Adviser's opinion, are backed by sound monetary policy or gold. Once this determination has been made, money market or other debt instruments will be selected to create a liquid portfolio of short duration and high credit quality.

According to the Registration Statement, the Fund will specifically seek the currency risk of select countries pursuing what the Investment Adviser believes are sound monetary policies. As long-term price stability is unlikely to be achieved by most currencies, if any, the Investment Adviser will focus on a country's monetary policy that fosters such stability. The Investment Adviser will invest in a basket of hard currency denominated investments that may include physical gold and gold-related securities to reduce the Fund's exposure to the risks of any one currency. The Investment Adviser may adapt the currency allocations as its analysis of monetary policies and economic environments evolves.

(ISK), Indian Rupee (INR), Indonesian Rupiah (IDR), Israeli Shekel (ILS), Japanese Yen (JPY), Malaysian Ringgit (MYR), Mexican Peso (MXN), New Zealand Dollar (NZD), Norwegian Krone (NOK), Pakistani Rupee (PKR), Peruvian New Sol (PEN), Philippine Peso (PHP), Polish Zloty (PLN), Russian Ruble (RUB), Singapore Dollar (SGD), South African Rand (ZAR), South Korean Won (KRW), Swedish Krona (SEK), Swiss Franc (CHF), Taiwanese Dollar (TWD), Thai Baht (THB), Thai Baht Onshore (THO), Turkish Lira (TRY), U.S. Dollar (USD), and successor currencies of the aforementioned currencies, if any.

¹³ In determining which instruments are comparable in quality to instruments rated in the top three ratings, the Investment Adviser will evaluate the relative creditworthiness of issuers and the relative credit quality of debt issues. Consideration may be given to an issuer's financial strength, capacity for timely payment and ability to withstand adverse financial developments as well as any ratings assigned to other instruments issued by that issuer.

According to the Registration Statement, the Investment Adviser may sacrifice yield in return for high credit quality of debt securities. The Investment Adviser may limit or exclude currencies if, in the Investment Adviser's opinion, the potential for appreciation is not backed by sound monetary policy.

According to the Registration Statement, if the Investment Adviser deems a currency crisis likely, it is possible that the Fund will restrict its investments to a few currencies that meet the Investment Adviser's investment criteria for sound monetary policies and practices.

Investments

As noted above, according to the Registration Statement, under normal market conditions,¹⁴ the Fund will invest at least 80% of the value of its net assets (plus borrowings for investment purposes) in "hard currency" denominated investments. The Fund normally will invest in a basket of hard currency denominated investments composed of high quality, short-term debt instruments,¹⁵ including sovereign debt, physical gold and gold-related securities.

According to the Registration Statement, to try to reduce interest rate and credit risk to its portfolio, the Fund will seek to maintain a weighted average portfolio maturity of less than eighteen months, although the Fund may maintain a weighted average portfolio maturity of greater than eighteen months at any given time. In addition, the Fund will only buy money market or other short-term debt instruments that are rated in the top three ratings by U.S. nationally recognized ratings services or that the Investment Adviser considers comparable in quality to instruments rated in the top three ratings.¹⁶

According to the Registration Statement, the high quality, short term debt instruments in which the Fund will primarily invest include: U.S. dollar and non-U.S. dollar denominated money market instruments and similar securities; debt obligations issued by the U.S. and foreign national, provincial, state or municipal governments or their political subdivisions or agencies, central banks, sovereign entities, supranational organizations or special purpose entities organized or backed by any of the foregoing entities ("Special Purpose Entities"); debt instruments issued by U.S. and foreign

corporations¹⁷; and debt obligations issued by entities that the Investment Adviser considers to be comparable to entities in the categories enumerated above.

According to the Registration Statement, money market instruments in which the Fund may invest include short-term government securities, floating and variable rate notes, CDs, time deposits, bankers' acceptances, commercial paper and other short-term liquid instruments.

According to the Registration Statement, securities issued by the U.S. Government in which the Fund may invest include short-term U.S. Treasury obligations and short-term debt obligations. The Fund may also purchase certificates not issued by the U.S. Department of the Treasury, which evidence ownership of future interest, principal or interest and principal payments on obligations issued by the U.S. Department of the Treasury. The Fund may invest in obligations issued or guaranteed by U.S. Government agencies.¹⁸ The Fund may also invest in separated or divided U.S. Government Securities.¹⁹ Foreign government securities may include direct obligations, as well as obligations guaranteed by the foreign government and obligations issued by Special Purpose Entities.

According to the Registration Statement, the Fund may invest in U.S. and foreign corporate debt obligations. Corporate debt obligations include

¹⁷ The Fund will typically invest only in debt instruments that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally a debt instruments must have \$100 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be considered sufficiently liquid at the time of investment. The Fund may invest up to 25% of its total assets in debt instruments having a lower par amount outstanding to the extent the Investment Adviser determines such an investment to be appropriate. In any such determination, the Investment Advisor will evaluate the relative creditworthiness of issuers and the relative credit quality of debt issues. Consideration may be given to an issuer's financial strength, capacity for timely payment and ability to withstand adverse financial developments.

¹⁸ Obligations issued or guaranteed by U.S. Government agencies include: (1) Obligations issued or guaranteed by U.S. Government agencies and instrumentalities that are backed by the full faith and credit of the U.S. Government and (2) securities that are guaranteed by agencies or instrumentalities of the U.S. Government but are not backed by the full faith and credit of the U.S.

¹⁹ These instruments represent a single interest, or principal, payment on a U.S. Government Security that has been separated from all the other interest payments as well as the security itself. While the components of such instruments are drawn from U.S. Government Securities, separated or divided securities may be formed by non-governmental institutions.

¹⁴ See note 9, *supra*.

¹⁵ See note 10, *supra*.

¹⁶ See note 13, *supra*.

corporate bonds, debentures, notes, commercial paper and other similar corporate debt instruments. In addition, the Fund also may invest in corporate debt securities registered and sold in the U.S. by foreign issuers (sometimes called Yankee bonds) and those sold outside the U.S. by foreign or U.S. issuers (sometimes called Eurobonds).

According to the Registration Statement, the Fund may invest in investment grade debt securities and non-investment grade debt securities. Investment grade means rated in the top four long-term rating categories, or unrated and determined by the Investment Adviser to be of comparable quality. The Fund may invest up to 5% of its total assets in non-investment grade debt securities, including defaulted securities, however the Fund does not expect to invest up to 5% in defaulted securities.

According to the Registration Statement, the Fund may invest in physical gold and gold-related securities. To the extent that the Fund invests in gold, it may do so by investing directly in physical gold or indirectly by investing through U.S.-listed ETPs²⁰ that invest in gold bullion.

Other Investments

According to the Registration Statement, in addition to the principal investments in hard currency denominated investments described above, the Fund may make certain other investments.

According to the Registration Statement, in addition to the U.S. listed ETPs that the Fund may use as an indirect investment in gold, the Fund may invest in other ETPs, including Exchange Traded Funds ("ETFs")²¹ and Exchange Traded Notes ("ETNs").²²

According to the Registration Statement, the Fund may enter into repurchase agreements. If the Fund enters into a repurchase agreement, it will maintain possession of the purchased securities and any underlying collateral. The Fund may

also enter into reverse repurchase agreements. A counterparty to a reverse repurchase agreement must be a primary dealer that reports to the Federal Reserve Bank of New York or one of the largest 100 commercial banks in the United States.

According to the Registration Statement, the Fund may invest in exchange-listed common and preferred stock, and warrants; however, according to the Fund, it will not generally invest in such investments. The Fund will not invest in any non-U.S. equity securities.

According to the Registration Statement, the Fund may invest in sponsored American Depositary Receipts ("ADRs"), European Depositary Receipts ("EDRs"), Global Depositary Receipts ("GDRs"), New York Registered Shares ("NYRs") or American Depositary Shares ("ADSs").²³ The Fund may invest in sponsored, exchange traded depositary receipts in order to obtain exposure to foreign securities markets.²⁴

According to the Registration Statement, the Fund may invest in convertible securities. Convertible securities include debt securities, preferred stock or other securities that may be converted into or exchanged for a given amount of common stock of the same or a different issuer during a specified period and at a specified price in the future.

According to the Registration Statement, the Fund may invest in variable amount master demand notes. All variable amount master demand notes acquired by the Fund will be payable within a prescribed notice period not to exceed seven days.

According to the Registration Statement, the Fund may hold cash in bank deposits in foreign currencies. The

Fund may conduct foreign currency exchange transactions either on a spot (cash) basis at the spot rate prevailing in the foreign exchange market or by entering into a forward foreign currency contract. The Fund may enter into forward contracts in order to "lock in" the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.

According to the Registration Statement, for the purpose of hedging, efficient portfolio management, generating income and/or enhancement of returns, the Fund may, from time to time, enter into forward currency contracts,²⁵ including currency forwards and cross currency forwards. The Fund may enter into forward currency contracts to hedge against risks arising from securities the Fund owns or anticipates purchasing, or the U.S. dollar value of interest and dividends paid on those securities.²⁶ The Fund may invest in a combination of forward currency contracts and U.S. dollar-denominated instruments in an attempt to obtain an investment result that is substantially the same as a direct investment in a foreign currency-denominated instrument. For hedging purposes, the Fund may invest in forward currency contracts to hedge either specific transactions (transaction hedging) or portfolio positions (position hedging).²⁷

According to the Registration Statement, in order to respond to adverse market, economic, political or other conditions, the Fund may assume a temporary defensive position that is inconsistent with its principal investment strategies and invest, without limitation, in cash or cash equivalents (including commercial paper, certificates of deposit, banker's acceptances and time deposits) which may be U.S. dollar denominated.

²⁰ Such ETPs may include the following securities: Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200) and Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201). The Fund may invest in ETPs which are not registered under the 1940 Act. The Fund may invest in ETPs sponsored by the Investment Adviser or its affiliates.

²¹ For purposes of this proposed rule change, ETFs are securities that are registered pursuant to the 1940 Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rules 5.2(j)(3), 8.100 and 8.600.

²² For purposes of this proposed rule change, ETNs are securities that are registered pursuant to the 1933 Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(6).

²³ ADRs typically are issued by a U.S. bank or trust company, evidence ownership of underlying securities issued by a foreign company, and are designed for use in U.S. securities markets. EDRs are issued by European financial institutions and typically trade in Europe and GDRs are issued by European financial institutions and typically trade in both Europe and the United States. NYRs, also known as Guilder Shares since most of the issuing companies are Dutch, are U.S. dollar-denominated certificates issued by foreign companies specifically for the U.S. market. ADSs are shares issued under a deposit agreement that represents an underlying security in the issuer's home country. (An ADS is the actual share trading, while an ADR represents a bundle of ADSs.)

²⁴ The depositary receipts and NYRs in which the Fund may invest will be limited to securities listed on markets that are members of the Intermarket Surveillance Group ("ISG"), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will not invest in any depositary receipts or NYRs that the Investment Adviser deems to be illiquid or for which pricing information is not readily available.

²⁵ A forward currency contract is an obligation to purchase or sell a specific currency at a future date, which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract.

²⁶ To the extent the Fund retains various U.S. fixed-income instruments to settle derivative contracts, the Investment Adviser expects such instruments to generate income for the Fund. The value of such investments (to the extent used to cover the Fund's net exposure under the forward foreign currency contracts and similar instruments) and forward contracts and other instruments that provide investment exposure to currencies will be counted for purposes of the Fund's 80% policy.

²⁷ The Investment Adviser seeks to mitigate counterparty risk associated with forward currency contracts by employing multiple brokers to execute trades and by monitoring the creditworthiness of counterparties through analysis of credit ratings available through U.S. nationally recognized ratings services.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Investment Adviser consistent with Commission guidance,²⁸ and master demand notes.²⁹ The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

According to the Registration Statement, the Fund may not purchase a security if, as a result, more than 25% of its total assets would be invested in securities of issuers conducting their principal business activities in the same industry.³⁰ For purposes of this limitation, there is no limit on investments in U.S. Government Securities and repurchase agreements

covering U.S. Government Securities. With respect to foreign government securities, the Fund treats each foreign government or sovereign as its own industry.

Although the Fund intends to invest in a variety of securities and instruments, the fund will be considered "non-diversified" for the purposes of the 1940 Act, which means that it may invest more of its assets in the securities of a smaller number of issuers than if it were a diversified fund.³¹

According to the Registration Statement, the Fund will use leveraged investment techniques only when the Investment Adviser believes that the leveraging and the returns available to the Fund from investing the cash will provide investors with a potentially higher return. Such leveraged investment techniques include borrowing, repurchase agreements, reverse repurchase agreements and securities lending. The Fund will not invest in leveraged or inverse leveraged ETPs. Such investments will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective.

The Fund will not directly invest in options contracts, futures contracts or swap agreements.

According to the Registration Statement, the Fund intends, for each taxable year, to qualify for treatment as a "regulated investment company" under Subchapter M of the Internal Revenue Code of 1986, as amended.³²

The Fund will not invest in any non-U.S. equity securities, except for exposure to those that may underlie a depositary receipt or NYR.³³

Net Asset Value

The Fund will calculate its net asset value ("NAV") as of the close of trading on the Exchange (normally 4:00 p.m., Eastern Time) on each weekday except on days when the Exchange is closed. The NAV will be determined by taking the market value of the total assets of the Fund, subtracting the liabilities of the Fund, and then dividing the result (net assets) by the number of outstanding shares of the Fund. Because the Fund will invest in instruments that trade on foreign markets on days when the Exchange is closed, the value of the Fund's investments may change on days on which shareholders will not be able to purchase Fund shares.

The Fund will value securities for which market quotations are readily available at current market value, except for money-market instruments with a maturity of sixty days or less, which may be valued at amortized cost. Securities for which market quotations are readily available will be valued using the last reported sales price provided by independent pricing services as of the close of trading on the Exchange. In the absence of sales, such securities will be valued at the mean of the last bid and asked price. Non-exchange traded securities for which quotations are readily available will be valued at the mean between the current bid and asked price. Debt securities may be valued at prices supplied by the Fund's pricing agents based on broker or dealer supplied valuations or matrix pricing, a method of valuing securities by reference to the value of other securities with similar characteristics such as rating, interest rate and maturity. Forward currency contracts will be valued at the mean of bid and ask prices for the time period interpolated from rates reported by an independent pricing service for proximate time periods. Investments in open-end registered investment companies will be valued at their NAV. Investments in other ETPs will be valued using market price.

Market quotations may not be readily available or may be unreliable if, among other things, (1) the exchange on which the security is principally traded closes early, (2) trading in a security was halted during the day and did not resume prior to the time the Fund calculates its NAV or (3) events occur after the close of the securities markets on which the securities primarily trade but before the time the Fund calculates its NAV.

If market prices are not readily available or the Fund reasonably believes that they are unreliable, such as in the case of a security value that has been materially affected by events occurring after the relevant market closes, the Fund will be required to value the securities at fair value as determined in good faith using procedures approved by the Board of Trustees of the Trust ("Board") and in accordance with the 1940 Act. The Board has delegated day-to-day responsibility for fair value determinations to a Valuation Committee, members of which are appointed by the Board. Fair valuation may be based on subjective factors and, as a result, the fair value price of a security may differ from that security's market price and may not be the price at which the security may be sold. Fair

²⁸ In reaching liquidity decisions, the Investment Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

²⁹ See Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A) (stating that Guide 4 "permit[s] a fund to invest up to 15% of its assets in illiquid securities"). 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 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"). 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 1933 Act).

³⁰ 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).

³¹ The diversification standard is set forth in Section 5(b)(2) of the 1940 Act, (15 U.S.C. 80a-5(b)(2)).

³² 26 U.S.C. 851.

³³ See note 26, *supra* [sic].

valuation could result in a different NAV than a NAV determined by using market quotes.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will offer and issue shares in aggregations of Shares ("Creation Units") on a continuous basis, at the net asset value per share ("NAV")³⁴ next determined after receipt of an order in proper form on any business day. A Creation Unit is currently an aggregation of 50,000 Shares. Creation Units may only be purchased or redeemed by certain large institutional investors who have entered into agreements with the Fund's Distributor ("Authorized Participants").

The consideration for a Creation Unit of the Fund is the "Fund Deposit." The Fund Deposit will consist of a specified all-cash payment ("All-Cash Payment") or a basket of securities to be deposited to purchase a Creation Unit (the "In-Kind Creation Basket") and a specified cash payment (the "Cash Component") as determined by the Investment Adviser to be in the best interest of the Fund. Any positions in the Fund's portfolio that cannot be transferred in kind will be represented by cash in the Cash Component and not in the In-Kind Creation Basket. The Fund expects that Fund Deposits will typically consist of All-Cash Payments. The Cash Component will typically include a "Balancing Amount" reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the In-Kind Creation Basket.

Fund Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form on a business day. The redemption proceeds for a Creation Unit will consist of a basket of securities to be received upon redemption of a Creation Unit (the "In-Kind Redemption Basket") and a specified cash payment (the "Cash Redemption Amount") or an All-Cash Payment, in all instances equal to the value of a Creation Unit. The Fund expects that Fund redemptions will typically consist of In-Kind Redemption Baskets and a Cash Redemption Amount. The Cash Redemption Amount

will typically include a Balancing Amount reflecting the difference, if any, between the NAV of a Creation Unit and the market value of the securities in the In-Kind Redemption Basket.

The Investment Manager or the Investment Adviser, through the National Securities Clearing Corporation ("NSCC"), will make available on each business day,³⁵ immediately prior to the opening of business on the Exchange (currently 9:30 a.m., E.T.), (a) the All-Cash Payment for the Fund for that day (based on information about the Fund's portfolio at the end of the previous business day) (subject to amendment or correction); (b) in the event the Fund requires an In-Kind Creation Basket and Cash Component, a list of names and the required quantity of each security in the In-Kind Creation Basket to be included in the current Fund Deposit for the Fund (based on information about the Fund's portfolio at the end of the previous business day) (subject to amendment or correction) and the estimated Cash Component, effective through and including the previous business day, per Creation Unit; and (c) if different from the In-Kind Creation Basket and All-Cash Payment, the composition of the In-Kind Redemption Basket and/or an amount of cash that will be applicable to redemption requests (subject to possible amendment or correction). According to the Investment Adviser, this information may be subject to amendment or correction as the values of the instruments in the Fund's portfolio change, or the instruments in the Fund's portfolio change. Creations and redemptions will be at the next determined NAV.

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 Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Availability of Information

The Fund's Web site (www.merkfunds.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis,

including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),³⁶ 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 Session³⁷ on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio")³⁸ held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.³⁹ The Web site and information will be publicly available at no charge.

On a daily basis, the Fund will disclose for each portfolio security and other financial instrument of the Fund the following information: Ticker symbol (if applicable), name or description of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of securities and financial instruments in the portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio.

³⁶ The Bid/Ask Price of the Fund 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 Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and/or its service providers.

³⁷ The Core Trading Session is 9:30 a.m. to 4:00 p.m. E.T.

³⁸ The Exchange notes that NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) provides that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

³⁹ Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund 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.

³⁴ The Fund will calculate its NAV as of the close of trading on the Exchange (normally 4:00 p.m., Eastern time ("E.T.,")) on each weekday except days when the Exchange is closed. The NAV will be determined by taking the market value of the total assets of the Fund, subtracting the liabilities of the Fund, and then dividing the result (net assets) by the number of outstanding Shares of the Fund. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

³⁵ Orders from Authorized Participants to create or redeem Creation Units will only be accepted on a business day.

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 the Core Trading Session.⁴⁰ 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 Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site at 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 and underlying U.S. exchange-traded equities, including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depository receipts, and NYRs, will be available via the Consolidated Tape Association ("CTA") high-speed line. Quotation information from brokers and dealers or pricing services will be available for fixed income securities, other money market instruments, and repurchase and reverse repurchase agreements held by the Fund. Price information for the Fund's portfolio securities and other instruments is generally readily available through major market data vendors, automated quotation systems, published or other public sources and/or, for listed securities, the securities exchange on which they are listed and traded. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites

delayed information regarding the spot price of gold, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. ICAP plc provides an electronic trading platform called EBS for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the daily London noon Fix is publicly available at no charge at www.thebulliondesk.com.

Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A-3⁴¹ under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

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. Shares of the Fund will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading 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 the 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 Fund 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. E.T. 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 represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁴² 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 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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depository receipts, NYRs and any other exchange-traded products) with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without

⁴⁰ 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.

⁴¹ See 17 CFR 240.10A-3.

⁴² FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁴³ The ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts and NYRs in which the Fund may invest all will be listed and traded on an exchange which is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

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 Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued

Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. 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)⁴⁴ 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. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) with other markets and other entities that are members of ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying equity securities (including, without limitation, ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts, NYRs and any other exchange-traded products) from markets that are members of ISG or with which

the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. The ETPs (including ETFs and ETNs), common and preferred stock and warrants, depositary receipts and NYRs in which the Fund may invest all will be listed and traded on an exchange which is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. According to the Registration Statement, the Fund normally will invest in a basket of hard currency denominated investments composed of high quality, short-term debt instruments, including sovereign debt, and in gold and gold-related securities. The Fund will typically maintain a weighted average portfolio maturity of less than eighteen months and only buy money market or other short-term debt instruments that are rated in the top three ratings by U.S. nationally recognized ratings services or that the Investment Adviser considers comparable in quality to instruments rated in the top three ratings. The Fund will typically invest only in debt instruments that the Investment Adviser deems to be sufficiently liquid at time of investment. Generally a debt instrument must have \$100 million (or an equivalent value if denominated in a currency other than U.S. dollars) or more par amount outstanding and significant par value traded to be sufficiently liquid at the time of investment. The Fund may invest up to 25% of its total assets in debt instruments having a lower par amount outstanding to the extent the Investment Adviser determines such an investment to be appropriate. Leveraged investment techniques will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective. The Fund will not invest in leveraged or inverse leveraged ETPs. The Fund will not hold in the aggregate illiquid assets, including Rule 144A Securities deemed illiquid by the Investment Adviser consistent with Commission guidance, and master demand notes, in excess of 15% of its net assets.⁴⁵ The Fund will not invest in any non-U.S. equity securities. The Fund will not directly invest in options contracts, futures contracts or swap agreements.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that neither the

⁴³ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

⁴⁴ 15 U.S.C. 78f(b)(5).

⁴⁵ See note 28, *supra*.

Investment Adviser nor the Investment Manager is or is affiliated with a broker-dealer. In the event (a) the Investment Manager or Investment Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new investment adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. 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 Fund and the Shares, thereby promoting market transparency. Price information for the debt instruments, gold-related securities, and other instruments, including securities of other investment companies, common and preferred stock, warrants, depositary receipts and NYRs held by the Fund will be available through major market data vendors and/or the securities exchange on which they are listed and traded. Moreover, 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 the Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's 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 will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund 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 Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's 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 Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. In addition, the London AM Fix and London PM Fix are publicly available at no charge at www.thebulliondesk.com. The Trust's daily (or as determined by the Investment Manager in accordance with the amended and restated trust agreement) NAV is posted on the Trust's Web site as soon as practicable.

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 Exchange Act. The Exchange notes that the proposed rule change 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.

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days after publication (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. Please include File Number SR-NYSEArca-2013-132 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-2013-132. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–2013–132 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013–29492 Filed 12–10–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70997; File No. SR–NYSE–2013–78]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Specify the Exclusion of Odd Lot Transactions From Consolidated Average Daily Volume Calculations for a Limited Period of Time for Purposes of Certain Transaction Pricing on the Exchange Through January 31, 2014

December 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that, on November 22, 2013, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Price List to specify the exclusion of odd lot transactions from consolidated average daily volume (“CADV”) calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. The text of the proposed rule change is available on the Exchange's Web site at 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 amend its Price List to specify the exclusion of odd lot transactions from CADV calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. The Exchange proposes to implement the Price List change on December 9, 2013.

The Exchange provides a member or member organization with the opportunity to qualify for one or more pricing tiers based on its level of activity during a particular month. Each tier has a corresponding fee or credit that applies to the member's or member organization's transactions during the month. Generally, a qualifying member or member organization would be subject to a lower transaction fee or a higher transaction credit, depending on the particular tier. Many of these tiers use a specific percentage of CADV in NYSE-listed securities (*i.e.*, Tape A securities) during the billing month (“NYSE CADV”) as a threshold that a

member's or member organization's activity must meet or exceed in order to qualify for the particular tier. For example, in order to qualify for a reduced fee of \$0.00055 per share for executions of market at-the-close (“MOC”) and limit at-the-close (“LOC”) orders, a member or member organization must execute an average daily volume (“ADV”) of MOC/LOC activity on the Exchange during the month that is at least 0.375% of NYSE CADV. As an additional example, transaction pricing for a member or member organization that is a Designated Market Maker (“DMM”) can depend on whether the security is considered “More Active” or “Less Active.” Such a determination is based on the CADV for the security in the previous month.³

CADV is a measure of transactions in Tape A, Tape B and Tape C securities reported to the consolidated tape. NYSE CADV is a measure of transactions only in Tape A securities reported to the consolidated tape. Transactions in Tape A securities that are not reported to the consolidated tape are not included in NYSE CADV for purposes of the Price List. An odd lot transaction, which is generally an execution of less than 100 shares, is not currently reported to the consolidated tape and is therefore not currently included in NYSE CADV.⁴ Beginning December 9, 2013, odd lot transactions will be reported to the consolidated tape.⁵ The Exchange proposes to amend the Price List to specify that odd lot transactions

³ A “More Active” security is one with CADV in the previous month equal to or greater than one million shares. A “Less Active” security is one with CADV in the previous month of less than one million shares.

⁴ See NYSE Rule 55. A round lot is generally an execution of 100 shares or a multiple thereof.

⁵ See Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR–CTA–2013–05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). See also Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7–24–89) (Order Approving Amendment No. 30 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis). See also Securities Exchange Act Release No. 70898 (November 19, 2013), 78 FR 70386 (November 25, 2013) (SR–NYSE–2013–75). See also announcements regarding December 9, 2013 implementation date, available at <https://cta.nyxdata.com/cta/popup/news/2385> and <http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11>. If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

⁴⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.