

up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2015-09 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.
- All submissions should refer to File Number SR-MSRB-2015-09. 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 MSRB. 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-MSRB-2015-09 and should be submitted on or before October 13, 2015.

For the Commission, pursuant to delegated authority.<sup>51</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75930; File No. SR-NYSEArca-2015-73]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Listing and Trading of Shares of the Guggenheim Total Return Bond ETF Under NYSE Arca Equities Rule 8.600

September 16, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 1, 2015, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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. On September 15, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): Guggenheim Total Return Bond ETF. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>51</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> Amendment No. 1 replaces and supersedes the original filing in its entirety.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the Guggenheim Total Return Bond ETF (the "Fund") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.<sup>5</sup> The Shares will be offered by the Claymore Exchange-Traded Fund Trust 2 (the "Trust"),<sup>6</sup> a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>7</sup>

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>6</sup> The Trust is registered under the 1940 Act. On November 25, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Fund (File Nos. 333-135105 and 811-21910) (the "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. 29271 (May 18, 2010) (File No. 812-13534) ("Exemptive Order").

<sup>7</sup> The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. See 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

The investment adviser for the Fund is Guggenheim Partners Investment Management, LLC (“Adviser”). The Bank of New York Mellon is the custodian and transfer agent for the Fund. Guggenheim Funds Distributors, LLC is the distributor for the Fund.<sup>8</sup>

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>9</sup> In addition,

funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR–NYSEArca–2010–86) (order approving listing of Peritus High Yield ETF); 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca–2011–11) (order approving listing of Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF).

<sup>8</sup>The Commission has previously approved a proposed rule change relating to listing and trading of shares of the Guggenheim Enhanced Total Return ETF under NYSE Arca Equities Rule 8.600. See Securities Exchange Act Release Nos. 68488 (December 20, 2012), 77 FR 76326 (December 27, 2012) (SR–NYSEArca–2012–142) (notice of filing of proposed rule change regarding listing and trading of shares of the Guggenheim Enhanced Total Return ETF under NYSE Arca Equities Rule 8.600) (the “Prior Notice”); 68863 (February 7, 2013), 78 FR 10222 (February 13, 2013) (SR–NYSEArca–2012–142) (order approving proposed rule change relating to listing and trading of shares of the Guggenheim Enhanced Total Return ETF under NYSE Arca Equities Rule 8.600) (the “Prior Order” and, together with the Prior Notice, the “Prior Release”). Shares of the Guggenheim Enhanced Total Return ETF have not commenced Exchange listing and trading. The Guggenheim Total Return Bond ETF would replace the Guggenheim Enhanced Total Return ETF as approved in the Prior Release. As set forth in the Registration Statement, the Fund’s investments will differ from those described in the Prior Release. This proposed rule change supersedes the Prior Release in its entirety. In addition, prior to commencement of trading of Shares of the Fund, the Trust will file an amendment to its Registration Statement to change the name of the Guggenheim Enhanced Total Return ETF to the Guggenheim Total Return Bond ETF.

<sup>9</sup>An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and 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 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

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. The Adviser is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. 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 the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### Principal Investment Strategies

According to the Registration Statement, the Fund’s investment objective is to seek maximum total return, comprised of income and capital appreciation. The Fund will normally<sup>10</sup>

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>10</sup>The term “normally” includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund’s investments are made for temporary defensive purposes; 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>11</sup>See “The Fund’s Use of Derivatives,” *infra*. The Fund will invest in the following derivative instruments on Fixed-Income Securities: Foreign exchange forward contracts, exchange-traded futures on securities, indices, currencies and other investments; exchange-traded and OTC options; exchange-traded and OTC options on futures contracts; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps, inflation swaps, and credit default swaps; and options on such swaps.

<sup>12</sup>For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100; and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.*, 2X, -2X, 3X or -3X) ETFs.

invest at least 80% of its assets in “Fixed-Income Instruments” (as defined below) of varying maturities and of any credit quality, which may be represented by certain derivative instruments as discussed below,<sup>11</sup> and exchange-traded funds (“ETFs”)<sup>12</sup> and exchange-traded and over-the-counter (“OTC”) closed-end funds (“CEFs”) (which may include ETFs and CEFs affiliated with the Fund) that invest substantially all of their assets in Fixed-Income Instruments (the “80% Policy”). The Fixed-Income Instruments in which the Fund will invest, as described further below, are the following, bonds, including corporate bonds;<sup>13</sup> other debt securities<sup>14</sup> of U.S. and non-U.S. issuers; securities issued by the U.S. government or its agencies, instrumentalities or sponsored corporations (including those not backed by the full faith and credit of the U.S. government); agency and non-agency mortgage-backed securities (“MBS”) and asset-backed securities (“ABS”);<sup>15</sup> U.S. agency mortgage pass-through securities;<sup>16</sup> repurchase agreements; reverse repurchase agreements; convertible securities;<sup>17</sup>

<sup>13</sup>The Adviser expects that normally the Fund generally will seek to invest at least 75% of its corporate bond assets in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries.

<sup>14</sup>Debt securities and other similar instruments may be of varying maturities and of any credit quality rating.

<sup>15</sup>The MBS in which the Fund may invest may also include residential mortgage-backed securities (“RMBS”), collateralized mortgage obligations (“CMOs”) and commercial mortgage-backed securities (“CMBS”). The ABS in which the Fund may invest include collateralized debt obligations (“CDOs”). CDOs include collateralized bond obligations (“CBOs”), collateralized loan obligations (“CLOs”) and other similarly structured securities. A CBO is a trust which is backed by a diversified pool of high risk, below investment grade fixed income securities. A CLO is a trust typically collateralized by a pool of loans, which may include domestic and foreign senior secured loans, senior unsecured loans, and subordinate corporate loans, including loans that may be rated below investment grade or equivalent unrated loans.

<sup>16</sup>The Fund will seek to obtain exposure to U.S. agency mortgage pass-through securities primarily through the use of “to-be-announced” or “TBA transactions.” “TBA” refers to a commonly used mechanism for the forward settlement of U.S. agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. Most transactions in mortgage pass-through securities occur through the use of TBA transactions. TBA transactions generally are conducted in accordance with widely-accepted guidelines which establish commonly observed terms and conditions for execution, settlement and delivery.

<sup>17</sup>According to the Registration Statement, convertible securities include bonds, debentures, notes, preferred stocks and other securities that may be converted into a prescribed amount of common stock or other equity securities at a specified price and time.

commercial instruments;<sup>18</sup> variable or floating rate instruments and variable rate demand instruments;<sup>19</sup> zero-coupon and pay-in-kind securities;<sup>20</sup> bank instruments, including certificates of deposit (“CDs”), time deposits and bankers’ acceptances from U.S. banks;<sup>21</sup> and participations in and assignments of bank loans or corporate loans, which loans include senior loans, syndicated bank loans, junior loans, bridge loans,<sup>22</sup> unfunded commitments,<sup>23</sup> revolving

<sup>18</sup> Commercial instruments include commercial paper, master notes, asset-backed commercial paper and other short-term corporate instruments. Commercial paper normally represents short-term unsecured promissory notes issued in bearer form by banks or bank holding companies, corporations, finance companies and other issuers. Commercial paper may be traded in the secondary market after its issuance. Master notes are demand notes that permit the investment of fluctuating amounts of money at varying rates of interest pursuant to arrangements with issuers who meet the quality criteria of the Fund. Master notes are generally illiquid and therefore subject to the Fund’s percentage limitations for investments in illiquid securities. Asset-backed commercial paper is issued by a special purpose entity that is organized to issue the commercial paper and to purchase trade receivables or other financial assets.

<sup>19</sup> Variable or floating rate instruments and variable rate demand instruments, including variable amount master demand notes, will normally involve industrial development or revenue bonds that provide that the rate of interest is set as a specific percentage of a designated base rate (such as the prime rate) at a major commercial bank. In addition, the interest rate on these securities may be reset daily, weekly or on some other reset period and may have a floor or ceiling on interest rate changes. The Adviser will monitor the pricing, quality and liquidity of the variable or floating rate securities held by the Fund.

<sup>20</sup> Zero-coupon and pay-in-kind securities are debt securities that do not make regular cash interest payments. Zero-coupon securities are sold at a deep discount to their face value. Pay-in-kind securities pay interest through the issuance of additional securities.

<sup>21</sup> A bankers’ acceptance is a bill of exchange or time draft drawn on and accepted by a commercial bank. A CD is a negotiable interest-bearing instrument with a specific maturity.

<sup>22</sup> Bridge loans are short-term loan arrangements (e.g., maturities that are generally less than one year) typically made by a borrower following the failure of the borrower to secure other intermediate-term or long-term permanent financing. A bridge loan remains outstanding until more permanent financing, often in the form of high yield notes, can be obtained. Most bridge loans have a step-up provision under which the interest rate increases incrementally the longer the loan remains outstanding so as to incentivize the borrower to refinance as quickly as possible. In exchange for entering into a bridge loan, the Fund typically will receive a commitment fee and interest payable under the bridge loan and may also have other expenses reimbursed by the borrower. Bridge loans may be subordinate to other debt and generally are unsecured.

<sup>23</sup> Unfunded commitments are contractual obligations pursuant to which the Fund agrees in writing to make one or more loans up to a specified amount at one or more future dates. The underlying loan documentation sets out the terms and conditions of the lender’s obligation to make the loans as well as the economic terms of such loans. The portion of the amount committed by a lender that the borrower has not drawn down is referred

to as “unfunded.” Loan commitments may be traded in the secondary market through dealer desks at large commercial and investment banks although these markets are generally not considered liquid.

credit facilities (“revolvers”),<sup>24</sup> and participation interests.<sup>25</sup> With respect to Fixed Income Instrument investments, the Fund may invest in restricted securities (Rule 144A securities), which are subject to legal restrictions on their sale. The Fund has no target duration for its investment portfolio.

In addition, with respect to Fixed Income Instrument investments, the Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

The Fund may also use leverage to the extent permitted under the 1940 Act by entering into reverse repurchase agreements and borrowing transactions (principally lines of credit) for investment purposes. The Fund’s exposure to reverse repurchase agreements will be covered by securities having a value equal to or greater than such commitments. Under the 1940 Act, reverse repurchase agreements are considered borrowings. Although there is no limit on the percentage of Fund assets that can be used in connection with reverse repurchase agreements, the Portfolio does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 331/3% of its assets.

#### Other Investments

While the Fund normally will invest at least 80% of its assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

According to the Registration Statement, the Fund may invest in exchange-traded and OTC hybrid instruments, which combine a traditional stock, bond, or commodity with an option or forward contract. Generally, the principal amount, amount payable upon maturity or

to as “unfunded.” Loan commitments may be traded in the secondary market through dealer desks at large commercial and investment banks although these markets are generally not considered liquid.

<sup>24</sup> Revolving credit facilities (“revolvers”) are borrowing arrangements in which the lender agrees to make loans up to a maximum amount upon demand by the borrower during a specified term. As the borrower repays the loan, an amount equal to the repayment may be borrowed again during the term of the revolver. Revolvers usually provide for floating or variable rates of interest.

<sup>25</sup> All or a significant portion of the loans in which the Fund will invest may be below investment grade quality. There will be no minimum par amount outstanding with respect to loans in which the Fund may invest.

redemption, or interest rate of a hybrid is tied (positively or negatively) to the price of some commodity, currency or securities index or another interest rate or some other economic factor (“underlying benchmark”).<sup>26</sup>

According to the Registration Statement, the Fund is permitted to invest in structured notes, which are debt obligations that also contain an embedded derivative component with characteristics that adjust the obligation’s risk/return profile. Generally, the performance of a structured note will track that of the underlying debt obligation and the derivative embedded within it.

According to the Registration Statement, the Fund may invest in credit-linked notes, which are a type of structured note. The difference between a credit default swap and a credit-linked note is that the seller of a credit-linked note receives the principal payment from the buyer at the time the contract is originated. Through the purchase of a credit-linked note, the buyer assumes the risk of the reference asset and funds this exposure through the purchase of the note. The buyer takes on the exposure to the seller to the full amount of the funding it has provided. The seller has hedged its risk on the reference asset without acquiring any additional credit exposure. The Fund has the right to receive periodic interest payments from the issuer of the credit-linked note at an agreed-upon interest rate and a return of principal at the maturity date.

According to the Registration Statement, the Fund may invest in risk-linked securities (“RLS”), which are a form of derivative issued by insurance companies and insurance-related special purpose vehicles that apply securitization techniques to catastrophic property and casualty damages.<sup>27</sup>

<sup>26</sup> According to the Registration Statement, certain hybrid instruments may provide exposure to the commodities markets. These are derivative securities with one or more commodity-linked components that have payment features similar to commodity futures contracts, commodity options, or similar instruments. Commodity-linked hybrid instruments may be either equity or debt securities, and are considered hybrid instruments because they have both security and commodity-like characteristics. A portion of the value of these instruments may be derived from the value of a commodity, futures contract, index or other economic variable. The Fund would only invest in commodity-linked hybrid instruments that qualify, under applicable rules of the Commodity Futures Trading Commission, for an exemption from the provisions of the Commodity Exchange Act (7 U.S.C. 1).

<sup>27</sup> RLS are typically debt obligations for which the return of principal and the payment of interest are contingent on the non-occurrence of a pre-defined “trigger event.” Depending on the specific terms

The Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis to provide liquidity.

The Fund may invest in U.S. and foreign common stocks, both exchange-listed and OTC.

The Fund may gain exposure to commodities through the use of investments in exchange-traded products (“ETPs”)<sup>28</sup> and exchange-traded notes (“ETNs”).<sup>29</sup>

The Fund may invest in the securities of exchange-traded and OTC real estate investment trusts (“REITs”).

#### Investment Restrictions

The Fund may invest up to 20% of its total assets in the aggregate in MBS and ABS that are privately issued, non-agency and non-government sponsored entity (“Private MBS/ABS”), and in asset-backed commercial paper.<sup>30</sup> Such holdings would be subject to the respective limitations on the Fund’s investments in illiquid assets and high yield securities. The liquidity of a security, especially in the case of Private MBS/ABS, will be a substantial factor in the Fund’s security selection process.

The Fund may invest up to 20% of its total assets in the aggregate in junior loans, bridge loans, unfunded commitments, and revolvers. Such holdings would be subject to the respective limitations on the Fund’s investments in illiquid assets and high yield securities. The liquidity of such securities will be a substantial factor in the Fund’s security selection process.

The Fund may invest in debt securities and instruments that are economically tied to emerging market countries.<sup>31</sup>

and structure of the RLS, this trigger could be the result of a hurricane, earthquake or some other catastrophic event. Insurance companies securitize this risk to transfer to the capital markets the truly catastrophic part of the risk exposure. A typical RLS provides for income and return of capital similar to other fixed-income investments, but would involve full or partial default if losses resulting from a certain catastrophe exceeded a predetermined amount.

<sup>28</sup> Such ETPs include 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); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

<sup>29</sup> ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)).

<sup>30</sup> See note 18, *supra*.

<sup>31</sup> See note 13, *supra*. Generally, the Fund considers an instrument to be economically tied to an emerging market country through consideration of some or all of the following factors: (i) Whether the issuer is the government of the emerging market country (or any political subdivision, agency, authority or instrumentality of such government), or is organized under the laws of the emerging market

The Fund may invest without limitation in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers.

The Fund may invest up to 33 $\frac{1}{3}$ % of its total assets in high yield debt securities (“junk bonds”), which are debt securities that are rated below investment grade by nationally recognized statistical rating organizations, or are unrated securities that the Adviser believes are of comparable below investment grade quality. The Fund may invest in defaulted or distressed Private MBS/ABS.

The Fund will be considered non-diversified and can invest a greater portion of assets in securities of individual issuers than a diversified fund.<sup>32</sup>

The Fund may not invest more than 25% of the value of its net assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities.<sup>33</sup>

The Fund’s investments, including investments in derivative instruments, are subject to all of the restrictions under the 1940 Act, including restrictions with respect to illiquid assets. 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, Private MBS/ABS, master notes, loans and loan commitments deemed illiquid by the Adviser,<sup>34</sup> consistent with Commission

country; (ii) amount of the issuer’s revenues that are attributable to the emerging market country; (iii) the location of the issuer’s management; (iv) if the security is secured or collateralized, the country in which the security or collateral is located; and/or (v) the currency in which the instrument is denominated or currency fluctuations to which the issuer is exposed.

<sup>32</sup> A “non-diversified company,” as defined in Section 5(b)(2) of the 1940 Act, means any management company other than a diversified company (as defined in Section 5(b)(1) of the 1940 Act).

<sup>33</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>34</sup> In reaching liquidity decisions with respect to Rule 144A securities, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers willing 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).

guidance.<sup>35</sup> 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 assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>36</sup>

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code.<sup>37</sup>

The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund’s primary broad-based securities benchmark index (as defined in Form N–1A).<sup>38</sup>

#### The Fund’s Use of Derivatives

The Fund proposes to seek certain exposures through derivative transactions as described below. The Fund may invest in the following derivative instruments: Foreign exchange forward contracts; exchange-traded futures on securities, indices, currencies and other investments; exchange-traded and OTC options; exchange-traded and OTC options on

<sup>35</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

<sup>36</sup> See *id.*

<sup>37</sup> 26 U.S.C. 851.

<sup>38</sup> The Fund’s broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund’s first full calendar year of performance.

futures contracts; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps, inflation swaps and credit default swaps; and options on such swaps (“swaptions”).<sup>39</sup> Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.<sup>40</sup> The Fund may also engage in derivative transactions for speculative purposes to enhance total return, to seek to hedge against fluctuations in securities prices, interest rates or currency rates, to change the effective duration of its portfolio, to manage certain investment risks and/or as a substitute for the purchase or sale of securities or currencies.

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund’s investment objective and policies. As described further below, the Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. The Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, the Fund will segregate or “ earmark ” assets determined to be liquid by the Adviser in accordance with procedures established by the Trust’s Board of Trustees (the “ Board ”) and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18

<sup>39</sup> Options on swaps are traded OTC. In the future, in the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

<sup>40</sup> The Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will monitor the financial standing of counterparties on an ongoing basis. This monitoring may include information provided by credit agencies, as well as the Adviser’s credit analysts and other team members who evaluate approved counterparties using various methods of analysis, including but not limited to earnings updates, the counterparty’s reputation, the Adviser’s past experience with the broker-dealer, market levels for the counterparty’s debt and equity, the counterparty’s liquidity and its share of market participation.

of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund’s use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>41</sup> Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

The Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that the Fund would otherwise purchase. For example, the Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (e.g., differences in yields).

The Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (e.g., interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or “ tail risks ”) in the Fund.

The Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by “ selling protection ” against default or other credit events, or to hedge broad market credit risk by “ buying protection ”. Single name credit default swaps (CDS) can be used to allow the Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. The Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total

<sup>41</sup> To mitigate leveraging risk, the Adviser will segregate or “ earmark ” liquid assets or otherwise cover the transactions that may give rise to such risk.

return swap may be more efficient than buying underlying securities of an index, potentially lowering transaction costs.

The Fund may attempt to reduce foreign currency exchange rate risk by entering into contracts with banks, brokers or dealers to purchase or sell foreign currencies at a future date (“ forward contracts ”).<sup>42</sup>

The Adviser believes that the use of derivatives will allow the Fund to selectively add diversifying sources of return from selling options. Option purchases and sales can also be used to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Option strategies can generate income or improve execution prices (i.e., covered calls).

In addition to the Fund’s use of derivatives in connection with its 80% Policy, under the proposal the Fund would seek to invest in derivative instruments not based on Fixed-Income Instruments, consistent with the Fund’s investment restrictions relating to exposure to those asset classes.

#### Valuation Methodology for Purposes of Determining Net Asset Value

According to the Registration Statement, the net asset value (“ NAV ”) of the Fund’s Shares will be determined by dividing the total value of the Fund’s portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding. Fund Shares will be valued as of the close of regular trading (normally 4:00 p.m., Eastern time (“ E.T. ”)) (the “ NYSE Close ”) on each day NYSE Arca is open (“ Business Day ”). Information that becomes known to the Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day. The Fund reserves the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be determined on the basis of last reported sales prices, or if no sales are reported,

<sup>42</sup> A foreign currency forward contract is a negotiated agreement between the contracting parties to exchange a specified amount of currency at a specified future time at a specified rate. The rate can be higher or lower than the spot rate between the currencies that are the subject of the contract.

based on quotes obtained from a quotation reporting system, established market makers, or pricing services. Domestic and foreign fixed income securities and non-exchange-traded derivatives will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics. Exchange-traded options and options on futures will generally be valued at the settlement price determined by the applicable exchange.

Derivatives for which market quotes are readily available will be valued at market value. Local closing prices will be used for all instrument valuation purposes. Futures will be valued at the last reported sale or settlement price on the day of valuation. Swaps traded on exchanges such as the Chicago Mercantile Exchange (“CME”) or the Intercontinental Exchange (“ICE-US”) will use the applicable exchange closing price where available.

Foreign currency-denominated derivatives will generally be valued as of the respective local region’s market close.

With respect to specific derivatives:

- Currency spot and forward rates from major market data vendors<sup>43</sup> will generally be determined as of the NYSE Close.
- Exchange-traded futures will generally be valued at the settlement price of the relevant exchange.
- A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.
- Equity total return swaps will generally be valued using the actual underlying equity at local market closing, while bank loan total return swaps will generally be valued using the evaluated underlying bank loan price minus the strike price of the loan.
- Exchange-traded non-equity options, (for example, options on bonds, Eurodollar options and U.S. Treasury options), index options, and options on futures will generally be valued at the

official settlement price determined by the relevant exchange, if available.

- OTC and exchange-traded equity options will generally be valued on a basis of quotes obtained from a quotation reporting system, established market makers, or pricing services or at the settlement price of the applicable exchange.
- OTC foreign currency (FX) options will generally be valued by pricing vendors.

- All other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, and CDX/CDS will generally be valued by pricing services.

Exchange-traded equity securities (including common stocks, ETPs, ETFs, ETNs, CEFs, exchange-traded convertible securities, REITs and preferred securities) will be valued at the official closing price or the last trading price on the exchange or market on which the security is primarily traded at the time of valuation. If no sales or closing prices are reported during the day, exchange-traded equity securities will generally be valued at the mean of the last available bid and ask quotation on the exchange or market on which the security is primarily traded, or using other market information obtained from quotation reporting systems, established market makers, or pricing services. Investment company securities that are not exchange-traded will be valued at NAV. Equity securities traded OTC will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Structured notes, exchange-traded and OTC hybrids and RLS will be valued based on prices obtained from an independent pricing vendor such as IDC or Reuters or on the basis of prices obtained from brokers and dealers. Fixed Income Instruments will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers.

If a foreign security’s value has materially changed after the close of the security’s primary exchange or principal market but before the NYSE Close, the security will be valued at fair value based on procedures established and approved by the Board. Foreign securities that do not trade when the NYSE is open will also be valued at fair value.

The Board has adopted policies and procedures for the valuation of the Fund’s investments (the “Valuation Procedures”). Pursuant to the Valuation Procedures, the Board has delegated to a valuation committee, consisting of representatives from Guggenheim’s

investment management, fund administration, legal and compliance departments (the “Valuation Committee”), the day-to-day responsibility for implementing the Valuation Procedures, including, under most circumstances, the responsibility for determining the fair value of the Fund’s securities or other assets. Valuations of the Fund’s securities are supplied primarily by pricing services appointed pursuant to the processes set forth in the Valuation Procedures. The Valuation Committee convenes monthly, or more frequently as needed and will review the valuation of all assets which have been fair valued for reasonableness. The Fund’s officers, through the Valuation Committee and consistent with the monitoring and review responsibilities set forth in the Valuation Procedures, regularly review procedures used by, and valuations provided by, the pricing services.

Debt securities with a maturity of greater than 60 days at acquisition will be valued at prices that reflect broker/dealer supplied valuations or are obtained from independent pricing services, which may consider the trade activity, treasury spreads, yields or price of bonds of comparable quality, coupon, maturity, and type, as well as prices quoted by dealers who make markets in such securities. Short-term securities with remaining maturities of 60 days or less will be valued at market price, or if a market price is not available, at amortized cost, provided such amount approximates market value. Money market instruments will be valued at net asset value.

Generally, trading in foreign securities markets is substantially completed each day at various times prior to the close of the NYSE. The values of foreign securities are determined as of the close of such foreign markets or the close of the NYSE, if earlier. All investments quoted in foreign currency will be valued in U.S. dollars on the basis of the foreign currency exchange rates prevailing at the close of U.S. business at 4:00 p.m. E.T. The Valuation Committee will determine the current value of such foreign securities by taking into consideration certain factors which may include those discussed above, as well as the following factors, among others: The value of the securities traded on other foreign markets, closed-end fund trading, foreign currency exchange activity, and the trading prices of financial products that are tied to foreign securities. In addition, under the Valuation Procedures, the Valuation Committee and the Adviser are authorized to use prices and other information supplied

<sup>43</sup> Major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation or other major data vendors.

by a third party pricing vendor in valuing foreign securities.

Investments for which market quotations are not readily available will be fair valued as determined in good faith by the Adviser, subject to review by the Valuation Committee, pursuant to methods established or ratified by the Board. Valuations in accordance with these methods are intended to reflect each security's (or asset's) "fair value." Each such determination will be based on a consideration of all relevant factors, which are likely to vary from one pricing context to another. Examples of such factors may include, but are not limited to: (i) The type of security, (ii) the initial cost of the security, (iii) the existence of any contractual restrictions on the security's disposition, (iv) the price and extent of public trading in similar securities of the issuer or of comparable companies, (v) quotations or evaluated prices from broker-dealers and/or pricing services, (vi) information obtained from the issuer, analysts, and/or the appropriate stock exchange (for exchange traded securities), (vii) an analysis of the company's financial statements, and (viii) an evaluation of the forces that influence the issuer and the market(s) in which the security is purchased and sold (e.g., the existence of pending merger activity, public offerings or tender offers that might affect the value of the security).

Investments initially valued in currencies other than the U.S. dollar will be converted to the U.S. dollar using exchange rates obtained from pricing services. As a result, the NAV of the Fund's Shares may be affected by changes in the value of currencies in relation to the U.S. dollar. The value of securities traded in markets outside the United States or denominated in currencies other than the U.S. dollar may be affected significantly on a day that the NYSE is closed. As a result, to the extent that the Fund holds foreign (non-U.S.) securities, the NAV of the Fund's Shares may change when an investor cannot purchase, redeem or exchange shares.

#### Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each Business Day, before commencement of trading in Fund Shares on NYSE Arca, the Fund will disclose on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, the NYSE Arca or a market data vendor will disseminate every 15 seconds through the facilities of the Consolidated Tape Association or other widely disseminated means an updated Intra-day Indicative Value ("IIV") for the Fund as calculated by a third party market data provider.

A third party market data provider will calculate the IIV for the Fund. For the purposes of determining the IIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Interest rate swaps and cross-currency swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.
- Index credit default swaps (such as, CDX/CDS) may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options and swaptions may be valued intraday through option valuation models (e.g., Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

#### Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these

positions intraday. On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

#### Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a "cash in lieu" amount when the Fund processes purchases or redemptions of creation units in-kind.

#### Creations and Redemptions of Shares

Investors may create or redeem in Creation Unit size of 100,000 Shares or aggregations thereof ("Creation Unit") through an Authorized Participant, as described in the Registration Statement. The size of a Creation Unit is subject to change. In order to purchase Creation Units of the Fund, an investor must generally deposit a designated portfolio of securities (the "Deposit Securities") (and/or an amount in cash in lieu of some or all of the Deposit Securities) per each Creation Unit constituting a substantial replication, or representation, of the securities included in the Fund's portfolio as selected by the Adviser ("Fund Securities") and generally make a cash

payment referred to as the “Cash Component.” The list of the names and the amounts of the Deposit Securities will be made available by the Fund’s custodian through the facilities of the National Securities Clearing Corporation (“NSCC”) immediately prior to the opening of the NYSE Arca Core Trading Session (9:30 a.m. to 4:00 p.m. E.T. The Cash Component will represent the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.

Shares may be redeemed only in Creation Unit size at their NAV on a day the NYSE Arca is open for business. The Fund’s custodian will make available immediately prior to the opening of the NYSE Arca Core Trading Session, through the facilities of NSCC, the list of the names and the amounts of the Fund Securities that will be applicable that day to redemption requests in proper form. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to purchases of Creation Units. The creation/redemption order cut-off time for the Fund will be 4:00 p.m. E.T.

#### Availability of Information

The Fund’s Web site ([www.guggenheiminvestments.com](http://www.guggenheiminvestments.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 Fund’s Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (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 (the “Bid/Ask Price”),<sup>44</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 Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund’s calculation of NAV at the end of the Business Day.<sup>45</sup>

<sup>44</sup> The Bid/Ask Price of Shares of the Fund will be determined using the mid-point 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 its service providers.

<sup>45</sup> Under accounting procedures to be followed by the Fund, trades made on the prior Business Day

In addition, a basket composition file, which will include 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 NYSE via NSCC. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Fund’s Shareholder Reports, and Form N-CSR and Form N-SAR, filed twice a year. The Trust’s SAI and Shareholder Reports are 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](http://www.sec.gov). Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, U.S. exchange-traded common stocks, hybrid instruments, REITs, CEFs, ETFs, ETPs and ETNs will be available via the Consolidated Tape Association (“CTA”) high-speed line. Price information for OTC REITs, OTC common stocks, OTC CEFs, OTC options, money market instruments, forwards, structured notes, RLS, OTC derivative instruments and OTC hybrid instruments will be available from major market data vendors. Intra-day and closing price information for exchange-traded options and futures will be available from the applicable exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options is available from the Options Price Reporting Authority. Quotation information from brokers and dealers or independent pricing services will be available for Fixed Income Instruments. 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.<sup>46</sup> The dissemination of the

(“T”) will be booked and reflected in NAV on the current Business Day (“T+1”). 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.

<sup>46</sup> Currently, it is the Exchange’s understanding that several major market data vendors display and/

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 provide a close estimate of that value throughout the trading day.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>47</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. 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.

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 Fund will be in compliance with Rule 10A-3<sup>48</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of

or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

<sup>47</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

<sup>48</sup> 17 CFR 240.10A-3.

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 will be made available to all market participants at the same time.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>49</sup>

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

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) with other markets or other entities that are members of the Intermarket Surveillance Group (“ISG”),<sup>50</sup> and FINRA may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from markets or other

entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>51</sup> 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”).

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

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 Units (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 and the Disclosed Portfolio 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.

<sup>51</sup> Certain of the exchange-traded equity securities in which the Fund may invest may trade in markets that are not members of ISG.

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 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 Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>52</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 federal securities laws applicable to trading on the Exchange.

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 a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the 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. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) with other markets or other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including

<sup>49</sup> 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.

<sup>50</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>52</sup> 15 U.S.C. 78f(b)(5).

ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, certain exchange-traded options and futures, certain exchange-traded equities (including ETFs, ETPs, ETNs, CEFs, certain common stocks and certain REITs) from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. Price information for the debt and equity securities held by the Fund will be available through major market data vendors and on the applicable securities exchanges on which such securities are listed and traded. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. 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 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 ETP 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. Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that primarily holds fixed income securities, which may be represented by certain derivative instruments as discussed above, which 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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-2015-73 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-73. 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 Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also 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-2015-73 and should be submitted on or before October 13, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>53</sup>

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75925; File No. 10-222]

### Investors' Exchange, LLC; Notice of Filing of Application, as Amended, for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

September 15, 2015.

On August 21, 2015, Investors' Exchange, LLC ("IEX") submitted to the Securities and Exchange Commission ("Commission") a Form 1 application under the Securities Exchange Act of

1934 ("Exchange Act"), seeking registration as a national securities exchange under Section 6 of the Exchange Act.<sup>1</sup> On September 9, 2015, IEX submitted Amendment No. 1 to its Form 1 application.<sup>2</sup> IEX's Form 1 application, as amended, provides detailed information on how it proposes to satisfy the requirements of the Exchange Act.

The Commission is publishing this notice to solicit comments on IEX's Form 1 application, as amended. The Commission will take any comments it receives into consideration in making its determination about whether to grant IEX's request to register as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to IEX are satisfied.<sup>3</sup>

IEX currently operates an alternative trading system ("ATS") for the trading of equity securities. If the Commission approves IEX's application to become a national securities exchange, IEX would transition trading in each symbol to the exchange and ultimately close its ATS. IEX would operate a fully automated electronic book for orders to buy or sell securities with a continuous, automated matching function. IEX would not have a physical trading floor. Liquidity would be derived from orders to buy and orders to sell submitted to IEX electronically by its registered broker-dealer members from remote locations, as well as from quotes submitted electronically by members that chose to register under IEX rules as market makers on IEX and be subject to certain specified requirements and obligations. One notable feature of IEX's proposed trading rules is the proposed "Midpoint Price Constraint" price sliding process for non-displayed orders, which would prevent non-displayed limit orders from posting at a price more aggressive than the midpoint of the national best bid and offer.<sup>4</sup> In addition, IEX is proposing

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

<sup>2</sup> In Amendment No. 1, IEX submitted updated portions of its Form 1 application, including revised exhibits, a revised version of the proposed IEX Rule Book, and revised Addenda C-2, C-3, C-4, D-1, D-2, F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-10, F-11, F-12, F-13.

<sup>3</sup> See 15 U.S.C. 78s(a). Alternatively, if the Commission does not grant the registration, it will institute proceedings to determine whether registration should be approved or denied. See 15 U.S.C. 78s(a)(1)(B).

<sup>4</sup> See proposed IEX Rule 11.190(h)(2). See also Exhibit E to IEX's Form 1 submission, at 17. Specifically, a non-displayed order on IEX with a limit price more aggressive than the midpoint of the NBBO would be priced at the midpoint, and the price would automatically be adjusted in response to changes in the NBBO to be equal to the less

a discretionary peg order type, which, if unexecuted upon entry, would post non-displayed and would exercise discretion only when IEX does not consider that the national best bid or national best offer for a particular security is in the process of changing based on a pre-determined set of conditions described in IEX's proposed rule.<sup>5</sup>

IEX would be wholly owned by its parent company, IEX Group, Inc. ("IEXG"), which would appoint IEX's initial Board of Directors. If approved by the Commission, within 90 days after the date of its approval to operate as a national securities exchange, IEX would undertake a petition process by which members could elect Member Representative Directors to the Board, as specified in the proposed Amended and Restated Operating Agreement of IEX.<sup>6</sup>

A description of the manner of operation of IEX's proposed system can be found in Exhibit E to IEX's Form 1 application. The proposed rulebook for the proposed IEX exchange can be found in Exhibit B to IEX's Form 1 application, and the governing documents for both IEX and IEXG can be found in Exhibits A and C, respectively. A listing of the officers and directors of IEX can be found in Exhibit J to IEX's Form 1 application. IEX's Form 1 application, as amended, including all of the Exhibits referenced above, is available online at [www.sec.gov/rules/other.shtml](http://www.sec.gov/rules/other.shtml) as well as at the Commission's Public Reference Room.

Interested persons are invited to submit written data, views, and arguments concerning IEX's Form 1, as amended, including whether the application is consistent with the Exchange 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 10-222 on the subject line.

aggressive of the order's limit price or the midpoint of the NBBO. See also proposed IEX Rule 11.230(a)(4)(D) (concerning the "Book Recheck" functionality), and Exhibit E to IEX's Form 1 submission, at 19 (describing the "Book Recheck" functionality).

<sup>5</sup> See proposed IEX Rule 11.190(b)(10) (concerning the discretionary peg order type) and 11.190(g) (concerning quote stability). See also Exhibit E to IEX's Form 1 submission, at 14-15.

<sup>6</sup> See IEX Amended and Restated Operating Agreement Article III, Section 4(g). See also Exhibit J to IEX's Form 1 submission, at 37.

<sup>53</sup> 17 CFR 200.30-3(a)(12).