

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76530; File No. SR-NYSEArca-2015-114]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating To Listing and Trading of Shares of the Market Vectors Dynamic Put Write ETF Under NYSE Arca Equities Rule 8.600

November 30, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 16, 2015, 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 the Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Equities Rule 8.600: Market Vectors Dynamic Put Write 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.

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

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

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

##### 1. Purpose

The Exchange proposes to list and trade the shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange:<sup>4</sup> Market Vectors Dynamic Put Write ETF (“Fund”). The Shares will be offered by Market Vectors ETF Trust (“Trust”). The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A with the Commission on behalf of the Fund.<sup>5</sup>

Van Eck Absolute Return Advisers Corporation will serve as the investment adviser (“Adviser”) to the Fund. Van Eck Absolute Return Advisers will also be the administrator for the Fund (the “Administrator”), and The Bank of New York Mellon will be the custodian (“Custodian” or “Transfer Agent”) of the Fund’s assets and provide transfer agency and fund accounting services to the Fund. Van Eck Securities Corporation will be the distributor of the Fund’s Shares (“Distributor”).

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.<sup>6</sup> Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer whose primary function is to serve as distributor and placement agent for its products. The Adviser has implemented controls with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or 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.

<sup>6</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 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>4</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>5</sup> The Trust is registered under the 1940 Act. On August 19, 2015, the Trust filed with the Commission a registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333-123257 and 811-10325) (“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. 29496 (November 3, 2010) (File No. 812-13605) (“Exemptive Order”).

<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.

## Principal Investments

According to the Registration Statement, the Fund's investment objective will be to seek a positive total return and income.

The Fund, under normal circumstances,<sup>7</sup> will seek to achieve its investment objective by selling only exchange-listed, uncovered out-of-the-money put options, that typically expire between 30 and 60 days, on (i) the S&P 500 Index,<sup>8</sup> (ii) futures on the S&P 500 Index and/or (iii) e-mini futures on the S&P 500 Index.<sup>9</sup>

The Fund will seek a positive total return with both income and capital appreciation by collecting premiums on options sold and investing cash in excess of the amount necessary to fulfill option margin requirements in cash and cash equivalents, including U.S. Treasury bills. The Fund will seek to generate a positive total return by selling options based on a predetermined strike price calculation and roll schedule. The strike price is the price at which the contract can be exercised. Rolling an option contract, in reference to this Fund, refers to the process of buying existing contracts to close them out and selling new put option contracts. The strike price calculation is designed to adjust the strike prices based on the risk of the equity market by taking into account the underlying asset's price, price volatility

and dividend yield and the yield of U.S. Treasury bills. The roll schedule is designed to stagger the put option contracts on a weekly basis to have varying option strike prices and option expiration dates at any given time. The value of put option contracts in the market are primarily determined by the options' distance in or out of the money, time to expiration, and the volatility of the underlying asset.

The aggregate notional value (*i.e.*, the underlying value) of the put option contracts will be approximately 200% of the Fund's net assets.

If the Fund receives additional inflows (and issues more Shares accordingly in large aggregations known as "Creation Units," as defined below) in between scheduled put option rolls, the Fund will sell additional listed put options, allocated on a pro rata basis based on the holdings of the Fund. However, if the trading costs exceed the potential premium received, the Fund will keep that portion of the Creation Unit in cash until the next scheduled option roll. Conversely, if the Fund redeems Shares in Creation Unit size in between scheduled put option rolls, the Fund will terminate the appropriate portion of the options it has sold on a pro rata basis.

## Other Investments

While the Fund, under normal circumstances, will seek to achieve its investment objective by selling primarily exchange-listed, uncovered out-of-the-money put options, as described above, the Fund may invest its remaining assets in other securities and financial instruments, as described below.

The Fund may hold cash and cash equivalents, including the following: U.S. Treasury Bills, repurchase agreements, money market instruments, or investment companies and exchange-traded funds ("ETFs")<sup>10</sup> that invest principally in money market instruments.

While the Fund will primarily sell put option contracts on (i) the S&P 500 Index, (ii) futures on the S&P 500 Index and/or (iii) e-mini futures on the S&P 500 Index with an aggregate notional value of approximately 200% of the Fund's net assets, the Fund also may invest in other U.S. exchange-traded

stock index options, options on stock index futures contracts, options on the Fund (if available) or exchange-traded pooled investment vehicles,<sup>11</sup> to the extent such investments are considered suitable for the Fund by the Adviser.

## Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and sell Shares only in "Creation Units" on a continuous basis through the Distributor at their NAV next determined after receipt, on any business day, of an order in proper form. The consideration for a purchase of Creation Units is cash. To the extent in-kind creations are effected for the Fund, Creation Units of the Fund will consist of cash and/or the in-kind deposit of a designated portfolio of securities (the "Deposit Securities") and an amount of cash computed as described below (the "Cash Component"). The Cash Component together with the Deposit Securities, as applicable, are referred to as the "Fund Deposit", which represents the minimum initial and subsequent investment amount for Shares. The Cash Component represents the difference between the NAV of a Creation Unit and the market value of Deposit Securities and may include a "Dividend Equivalent Payment". The Dividend Equivalent Payment will enable the Fund to make a complete distribution of dividends on the next dividend payment date, and is an amount equal, on a per Creation Unit basis, to the dividends on all the securities held by the Fund ("Fund Securities") with ex-dividend dates within the accumulation period for such distribution (the "Accumulation Period"), net of expenses and liabilities for such period, as if all of the Fund Securities had been held by the Trust for the entire Accumulation Period. The Accumulation Period begins on the ex-dividend date for the Fund and ends on the next ex-dividend date.

The Administrator, through the National Securities Clearing Corporation ("NSCC"), will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security to be included in the current

<sup>7</sup> The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the domestic equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>8</sup> Options on the S&P 500 Index are traded on the Chicago Board Options Exchange ("CBOE"). Options on futures on the S&P 500 Index and options on e-mini futures on the S&P 500 Index are traded on the Chicago Mercantile Exchange ("CME").

<sup>9</sup> Put option contracts give the owners of the puts the right, but not the obligation, to sell the underlying asset, at a specified price, by a predetermined date. Put options on the S&P 500 Index, futures on the S&P 500 Index, and e-mini futures on the S&P 500 Index are similar in that they are linked to the S&P 500 Index, marked-to-market daily, settled in cash at expiration, and are liquid. Options on the S&P 500 Index are European-style and options on futures, and e-mini futures, on the S&P 500 Index are American-style. An "American style" put option gives the option holder the right to sell the underlying security to the option seller (*i.e.*, the Fund) at the option exercise price at any time prior to the expiration of the option. A "European style" put option gives the option holder the right to sell the underlying security to the option seller at the option exercise price only on the option expiration date. The decision whether to sell a put option on the S&P 500 Index or on futures, or e-mini futures, on the S&P 500 would be based on, among other things, liquidity and transaction costs.

<sup>10</sup> The ETFs in which the Fund may invest will be registered under the 1940 Act and include 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). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

<sup>11</sup> Exchange-traded pooled investment vehicles 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).

Fund Deposit (based on information at the end of the previous business day) as well as the Cash Component for the Fund. Such Fund Deposit is applicable, subject to any adjustments as described below, in order to effect creations of Creation Units of the Fund until such time as the next-announced Fund Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund will change as rebalancing adjustments and corporate action events are reflected from time to time by the Adviser with a view to the investment objective of the Fund. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the securities constituting the Index. In addition, the Trust reserves the right to accept a basket of securities or cash that differs from Deposit Securities or to permit or require the substitution of an amount of cash (*i.e.*, a “cash in lieu” amount) to be added to the Cash Component to replace any Deposit Security under specified circumstances.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through the NSCC, also will make available on each business day, the Dividend Equivalent Payment, if any, and the estimated Cash Component effective through and including the previous business day, per outstanding Share of the Fund.

To be eligible to place orders with the Distributor to create Creation Units of the Fund, an entity or person either must be (1) a “Participating Party,” *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (2) a Depository Trust Company (“DTC”) Participant; and, in either case, must have executed an agreement with the Distributor and the Transfer Agent with respect to creations and redemptions of Creation Units (“Participant Agreement”) (discussed below). A Participating Party and DTC Participant are collectively referred to as an “Authorized Participant.”

All orders to create Creation Units must be placed in multiples of 50,000 Shares (*i.e.*, a Creation Unit). All orders to create Creation Units, must be received by the Distributor no later than the closing time of the regular trading session on NYSE Arca (“Closing Time”) (ordinarily 4:00 p.m. Eastern time) on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the Fund as determined on such date.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor, only on a business day and only through a Participating Party or DTC Participant who has executed a Participant Agreement. The Trust will not redeem Shares in amounts less than Creation Units.

Redemptions generally will be effected for cash. To the extent redemptions are effected in-kind, the Administrator, through NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time) on each day that the Exchange is open for business, the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day.

To the extent redemptions are effected in-kind, the redemption proceeds for a Creation Unit generally will consist of Fund Securities as announced by the Administrator on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less the redemption transaction fee and certain variable fees. Should the Fund Securities have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. The Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Fund Securities.

#### 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), consistent with Commission guidance. 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>12</sup>

For temporary defensive purposes, the Fund may hold cash and cash equivalents, including U.S. Treasury bills and/or invest without limit in money market instruments, repurchase agreements, or other funds which invest exclusively in money market instruments. The Fund may take temporary defensive positions in anticipation of or in an attempt to respond to adverse market, economic, political or other conditions.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company (a “RIC”) under Subchapter M of the Internal Revenue Code.<sup>13</sup>

The Fund’s investments, including the sale of options and options on futures, will be consistent with the Fund’s investment objective and may be used to enhance leverage.<sup>14</sup> As described above, the Fund may sell S&P 500 Index put options, and put options on futures and e-mini futures on the S&P 500 Index, which will have an aggregate notional value of approximately 200% of the Fund’s net assets. While the Fund will be permitted to borrow as permitted under the 1940

<sup>12</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 Securities Act).

<sup>13</sup> 26 U.S.C. 851 *et seq.*

<sup>14</sup> Investments in derivative instruments by the Fund will be made in accordance with the 1940 Act and consistent with the Fund’s investment objective and policies. To limit the potential risk associated with transactions in derivatives, the Fund will segregate or “ earmark ” assets determined to be liquid by the Adviser in accordance with procedures that will be established by the Trust’s Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures will be adopted consistent with Section 18 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’s Shares to be more volatile than if they had not been leveraged.

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 a broad-based equity market index.

#### Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees, including the management fee, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m., Eastern Time) on the New York Stock Exchange. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

The Fund currently expects that the values of the Fund's put options and cash and cash equivalents will be based on the securities' closing prices on local markets, when available. In the absence of a last reported sales price, or if no sales were reported, and for other assets for which market quotes are not readily available, values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service.

ETFs and pooled investment vehicles will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the mean between the last quoted bid and asked price on the primary market or exchange on which they are traded. Investment company securities (other than ETFs) will be valued at NAV.

Money market instruments and repurchase agreements will be valued based on evaluations or price quotations obtained from a third-party pricing service or from a broker-dealer who makes markets in such securities, and such investments that are short-term investments (that is, having a maturity of 60 days or less) will be valued at amortized cost.

Prices obtained by an outside independent pricing service may use information provided by market makers or estimates of market values obtained from yield data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in

determining what it believes is the fair value of the portfolio securities. If a market quotation for a security is not readily available or the Adviser believes it does not otherwise accurately reflect the market value of the security at the time the Fund will calculate its NAV, the security will be fair valued by the Adviser in accordance with the Trust's valuation policies and procedures approved by the Board of Trustees. The Fund expects that it may also use fair value pricing in a variety of circumstances, including but not limited to, situations where the value of a security in the Fund's portfolio has been materially affected by events occurring after the close of the market on which the security is principally traded (such as a corporate action or other news that may materially affect the price of a security) or trading in a security has been suspended or halted. Accordingly, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices at the time the exchanges on which they principally trade close.

#### Availability of Information

The Fund's Web site ([www.vaneck.com](http://www.vaneck.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 at the time of calculation of such NAV (the "Closing Price"), and a calculation of the premium and discount of the Closing Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Closing 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 (9:30 a.m. to 4:00 p.m., Eastern time), the Fund's Web site will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>15</sup>

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 option); 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.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of Shares of the Fund will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. Eastern time) on each business day.

Authorized Participants may refer to the basket composition file for information regarding securities and financial instruments that may comprise the Fund's basket on a given day.

In order to provide investors with a basis to gauge whether the market price of the Shares on the Exchange is approximately consistent with the current value of the assets of the Fund on a per Share basis, an updated Indicative Per Share Portfolio Value will be disseminated every 15 seconds during the Exchange's Core Trading Session by major market data vendors.<sup>16</sup> Indicative Per Share Portfolio Values will be based on the most recently reported prices of Fund Securities.

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](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers'

<sup>15</sup> 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"). 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>16</sup> Currently, the Exchange understands that several major market data vendors display and/or make widely available Indicative Per Share Portfolio Values (or Portfolio Indicative Values) taken from the Consolidated Tape Association ("CTA") or other data feeds.

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, ETFs and pooled investment vehicles will be available via the Consolidated Tape Association ("CTA") high-speed line. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Intra-day and closing price information regarding exchange-traded options (including options on futures) will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding money market instruments, repurchase agreements, cash and cash equivalents, including U.S. Treasuries, will be available from major market data vendors. Price information for non-exchange-traded investment company securities will be available from major market data vendors and from the Web site of the applicable investment company.

In addition, the Indicative Per Share Portfolio Value, which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Exchange's Core Trading Session by one or more major market data vendors. The dissemination of the Indicative Per Share Portfolio 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 will 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>17</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.

If the Indicative Per Share Portfolio Value is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser, as the Reporting Authority, will 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 Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>18</sup> under the 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 will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

#### 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. ET 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 the trading in the Shares will be subject to the existing trading surveillances, administered by regulatory staff of the Exchange or the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>19</sup> 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.

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, or the regulatory staff of the Exchange, will communicate as needed regarding trading in the Shares, options contracts and options on futures contracts 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, options contracts, and options on futures contracts from such markets and other entities. In addition, the regulatory staff of the Exchange may obtain information regarding trading in the Shares, options contracts, and options on futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>20</sup> All options on futures and options held by the Fund will be traded on U.S. exchanges, all of which are members of ISG or are exchanges with which the

<sup>19</sup> FINRA surveils certain trading activity on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>20</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>17</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

<sup>18</sup> 17 CFR 240.10A-3.

Exchange has in place 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 of Shares in the Fund, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV or Index value will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio will be disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the 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., Eastern time 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>21</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 on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The

Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or the regulatory staff of the Exchange, which are designed to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA and the regulatory staff of the Exchange, as applicable, may each obtain information via ISG from other exchanges that are members of ISG, and in the case of the Exchange, from other market or entities with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Adviser is not a registered broker-dealer but is affiliated with a broker-dealer whose primary function is to serve as distributor and placement agent for Van Eck products. Van Eck has implemented controls with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Fund's investments will be consistent with its investment objective. 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 a broad-based equity market index.

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 Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily every day the NYSE is open, and that the NAV will be made available to all market participants at the same time. In addition, a large amount of publicly available information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV 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 the Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the 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 quotations and last sale information will be available via the CTA high-speed line. Quotation and last sale information for the Shares will be available via the CTA high-speed line,

and from the Exchange. Quotation and last sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Intra-day and closing price information regarding exchange-traded options (including options on futures) will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding money market instruments; repurchase agreements; cash and cash equivalents also will be available from major market data vendors.

The Web site for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to 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 the Shares inadvisable. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Fund's 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 exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Shares will be subject to the existing trading surveillances, administered by the regulatory staff of the Exchange or FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The regulatory staff of the Exchange, or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, options contracts and options on futures contracts with other markets and other entities that are members of the ISG, and the regulatory staff of the Exchange, or FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, options contracts, and options on futures contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the

<sup>21</sup> 15 U.S.C. 78f(b)(5).

Shares, options contracts, and options on futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, 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 ETF that holds options or options on futures and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer time period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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

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

#### *Electronic Comments*

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

NYSEArca-2015-114 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-2015-114. 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-2015-114 and should be submitted on or before December 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-30609 Filed 12-3-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76527; File No. SR-BX-2015-075]

### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees and Rebates Related to Order Exposure**

November 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 20, 2015, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Options Pricing at Chapter XV Section 2, entitled "BX Options Market—Fees and Rebates," which governs pricing for BX members using the BX Options Market ("BX Options"). The Exchange proposes to adopt fees and rebates related to order exposure.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

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

<sup>22</sup> 17 CFR 200.30-3(a)(12).