

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days after the date of the filing.<sup>12</sup> However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Without a waiver of 30-day operative delay, CBOE's Pilot Program will expire before the extension of the Pilot Program is operative. The Commission believes that waiving the 30-day operative delay for the instant filing is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed

rule change as operative upon filing with the Commission.<sup>14</sup>

**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-C2-2017-020 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-C2-2017-020. 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-C2-2017-020 and should be submitted on or before July 5, 2017.

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80885; File No. SR-NYSEArca-2017-44]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade of Shares of the IQ Municipal Insured ETF, IQ Municipal Short Duration ETF, and IQ Municipal Intermediate ETF Under NYSE Arca Equities Rule 8.600**

June 8, 2017.

**I. Introduction**

On April 20, 2017, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares ("Shares") of the IQ Municipal Insured ETF, IQ Municipal Short Duration ETF, and IQ Municipal Intermediate ETF (each a "Fund," and collectively, the "Funds") under NYSE Arca Equities Rule 8.600. The Commission published notice of the proposed rule change in the **Federal Register** on May 9, 2017.<sup>3</sup> On May 9, 2017, the Exchange filed Amendment No. 1 to the proposed rule change and on May 31, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission received no

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 80584 (May 3, 2017), 82 FR 21573.

<sup>4</sup> In Amendment No. 1, which replaced the original filing in its entirety, the Exchange: (1) Clarified that each of the Adviser (as defined herein) and Subadviser (as defined herein) is not a registered broker-dealer but each is affiliated with a broker-dealer and each will maintain a "fire wall" with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio; (2) clarified that cash creations and redemptions will be the default mechanism for creation and redemption of Shares, and provided additional information relating to creation and redemption of Shares when a Fund utilizes in-kind creations and redemptions; (3) represented that upon the commencement of operations of a Fund, a copy of the Funds' prospectus will be available on the Funds' Web site in a form that may be downloaded; (4) provided additional information

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

comments on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto.

## II. The Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the IndexIQ Active ETF Trust ("Trust"), which is registered with the Commission as an open-end management investment company.<sup>5</sup> Each Fund is a series of the Trust. The investment adviser to each Fund will be IndexIQ Advisors LLC ("Adviser"), and MacKay Shields LLC will be each Fund's sub-adviser ("Subadviser").<sup>6</sup>

regarding publicly available information relating to the Shares and each Fund's underlying investments; (5) clarified that less than 75% of the weight of a Fund's portfolio may consist of components with \$100 million or more minimum original principal amount outstanding; (6) represented that trading in the Shares of the Funds will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted; and (7) made other non-substantive, technical amendments. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-44/nysearca201744-1745942-151492.pdf>. In Amendment No. 2, which replaced Amendment No. 1 in its entirety, the Exchange: (1) Clarified that each of the Adviser and Subadviser has implemented and will maintain a "fire wall" with respect to its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio; (2) represented that the quantitative information on the Funds' Web site relating to the Shares and relating to the underlying portfolio securities and other assets held by the Funds will be publicly available at no charge; (3) represented that trade price and other information relating to Municipal Bonds (as defined below) is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system; and (4) made other clarifying and technical amendments. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-44/nysearca201744-1780627-152846.pdf>. Because Amendment Nos. 1 and 2 do not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment Nos. 1 and 2 are not subject to notice and comment.

<sup>5</sup> According to the Exchange, on February 24, 2017, the Trust filed with the Commission a registration statement on Form N-1A under the Securities Act of 1933 and the Investment Company Act of 1940 ("1940 Act") relating to the Funds (File Nos. 333-183489 and 811-22739) ("Registration Statement"). According to the Exchange, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30198 (September 10, 2012) (File No. 812-13956).

<sup>6</sup> According to the Exchange, neither the Adviser nor Subadviser is a registered broker-dealer; however, each is affiliated with a broker-dealer. Each of the Adviser and Subadviser has implemented and will maintain a "fire wall" with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio. In the event (a) the Adviser or Subadviser becomes

ALPS Distributors, Inc. will serve as the distributor of each Fund's Shares on an agency basis and the Bank of New York Mellon will serve as each Fund's administrator, custodian, transfer agent, and securities lending agent ("Administrator").

The Exchange has made the following representations and statements in describing the Funds and their investment strategies, including each Fund's portfolio holdings and investment restrictions.<sup>7</sup>

### A. The Exchange's Description of the Principal Investments of the Funds

According to the Exchange, for purposes of the filing, the term "Municipal Bonds" as applied to each of the Funds means the following:

- Municipal lease obligations (and certificates of participation in such obligations);
- municipal general obligation bonds (including industrial development bonds issued pursuant to federal tax law), which are issued for either project or enterprise financings in which the bond issuer pledges to the bondholders the revenues generated by the operating projects financed from the proceeds of the bond issuance;
- limited obligation bonds, which are payable only from the revenues derived from a particular facility or class of facilities or, in some cases from the proceeds of a special excise or other specific revenue source;
- municipal revenue bonds (which are typically secured by revenues generated by the issuer), including revenue anticipation notes;
- municipal bond anticipation notes (which are normally issued to provide interim financial assistance until long-term financing can be arranged);
- municipal bonds that feature credit enhancements, such as lines of credit, letters of credit, municipal bond insurance, and standby bond purchase agreements;

registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, the applicable adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

<sup>7</sup> The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value ("NAV"), fees, distributions, and taxes, among other things, is included in the proposed rule change, as modified by Amendment Nos. 1 and 2, and the Registration Statement, as applicable. See Amendment No. 2 and Registration Statement, *supra* notes 4 and 5, respectively.

- discount municipal bonds (which may be originally issued at a discount to par value or sold at market price below par value);
- premium municipal bonds, which are sold at a premium to par value;
- zero coupon municipal bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity;
- taxable municipal bonds, including Build America Bonds;
- municipal notes;
- municipal cash equivalents;
- private activity bonds (including without limitation industrial development bonds);
- pre-refunded and escrowed to maturity municipal bonds; and
- securities issued by entities whose underlying assets are Municipal Bonds (*i.e.*, tender option bond trusts and custodial receipts trusts and variable rate demand notes that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates).

For each Fund, the Subadviser's investment process will begin with an assessment of macro factors that may impact the municipal bond market, as well as other regulatory, tax, governmental, and technical factors that may impact the municipal bond market. Following the assessment of these factors, the Subadviser will develop an investment strategy to position a Fund among various sectors of the municipal bond market and different states. The Subadviser then will employ a fundamental, "bottom-up" credit research analysis to select individual Municipal Bonds.

### (i) Principal Investments of the IQ Municipal Insured ETF

According to the Exchange, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions,<sup>8</sup> will invest

<sup>8</sup> The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues (*e.g.*, systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.*, the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.*, rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of a Fund's net assets as of the opening of business on the first day of such periods), a Fund

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at least 80% of its assets in Municipal Bonds that are covered by insurance policies that guarantee the timely payment of principal and interest. The Fund generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Insured Index.<sup>9</sup>

(ii) Principal Investments of the IQ Municipal Short Duration ETF

According to the Exchange, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds. The Fund generally will maintain a dollar-weighted average portfolio duration of three years or less.

(iii) Principal Investments of the IQ Municipal Intermediate ETF

According to the Exchange, the Fund will seek current income exempt from federal income tax. The Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds. The Fund generally will maintain a dollar-weighted average duration within plus or minus two years of the dollar-weighted average duration of the S&P Municipal Bond Intermediate Index.

*B. The Exchange's Description of the Other Investments of the Funds*

With respect to each of the Funds, while a Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, as described above, a Fund may invest its remaining assets in other assets and financial instruments, as described below.

Each Fund may invest in shares of exchange-traded funds ("ETFs") and money market funds.<sup>10</sup> In addition, each

may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objectives. A Fund may adopt a defensive strategy when the Adviser believes securities in which a Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

<sup>9</sup>Municipal bonds are issued by or on behalf of the District of Columbia, states, territories, commonwealths, and possessions of the United States and their political subdivisions and agencies, authorities, and instrumentalities. Municipal securities, which may be issued in various forms, including bonds and notes, are issued to obtain funds for various public purposes.

<sup>10</sup>For purposes of the filing, ETFs 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). The ETFs all will be listed and traded in the U.S. on registered exchanges.

Fund may invest, directly and indirectly, in fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; repurchase agreements; and commercial paper; and may purchase securities on a when-issued basis or for settlement at a future date (forward commitment), if a Fund holds sufficient liquid assets to meet the purchase price (collectively, "Other Investments").

*C. The Exchange's Description of the Funds' Investment Restrictions*

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance. Each 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 a 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.

Each Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Each Fund may invest more than 25% of its total assets in Municipal Bonds that are related in such a way that an economic, business or political development or change affecting one such security could also affect the other securities. However, a Fund's investments will be diversified among a minimum of ten different sectors of the municipal bond market.<sup>11</sup>

A Fund's investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state.

<sup>11</sup>According to the Exchange, the IQ Municipal Insured ETF's investments in Municipal Bonds will include investments in state and local (e.g., county, city, town) and authority-issued Municipal Bonds relating to such sectors as the following: State general obligation, local general obligation, education, hospital, housing, industrial development revenue/pollution control revenue, power, resource recovery, transportation, water/sewer, leasing, special tax, and pre-refunded bonds.

Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio, and the five highest weighted securities will not, in the aggregate, account for more than 50% of the weight of a Fund. No Municipal Bond held by a Fund will exceed 5% of the weight of a Fund's portfolio and no single Municipal Bond issuer will account for more than 8% of the weight of a Fund's portfolio. A Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.<sup>12</sup>

*D. The Exchange's Description of the Application of the Generic Listing Requirements to the Funds*

The Exchange states that it is submitting the proposed rule change because the portfolios for the Funds will not meet all of the "generic" listing requirements of Commentary .01 to NYSE Arca Equities Rule 8.600 applicable to the listing of Managed Fund Shares. The Exchange states that each Fund's portfolio will meet all the requirements set forth in Commentary .01 to NYSE Arca Equities Rule 8.600 except for those set forth in Commentary .01(b)(1), which requires that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

**III. Discussion and Commission Findings**

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the Exchange's rules be 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 a national market

<sup>12</sup>For purposes of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor, if any, will be treated as separate issuers of Municipal Bonds.

<sup>13</sup>In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup>15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>15</sup> which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares and the underlying ETFs will be available via the Consolidated Tape Association ("CTA") high-speed line, and from the national securities exchange on which they are listed.

The approximate value of each Fund's investments on a per-Share basis, the Indicative Intra-Day Value ("IIV") (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)), will be disseminated every 15 seconds during the Exchange's Core Trading Session (ordinarily 9:30 a.m. to 4:00 p.m., Eastern Time) by one or more major market data vendors.<sup>16</sup> On each business day, before commencement of trading in Shares on the Exchange, each Fund will disclose on its Web site the identities and quantities of the portfolio securities and other assets held by each Fund (each Fund's "Disclosed Portfolio," as defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis for the calculation of NAV at the end of the business day.<sup>17</sup> In addition, with respect to each Fund, the Administrator, through the National Securities Clearing Corporation, 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 designated portfolio of securities and estimated cash component, if applicable, per each creation unit that will be applicable to

creation and redemption requests on that day. The NAV of Shares of each Fund will normally be determined as of the close of the Core Trading Session on the Exchange (ordinarily 4:00 p.m., Eastern Time) on each 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. Information regarding the previous day's closing price and trading volume information for the Shares will be publicly available and published daily in the financial section of newspapers. Quotation information from brokers and dealers or pricing services will be available for Municipal Bonds and Other Investments. Price information for money market funds will be available from the applicable investment company's Web site and from market data vendors. Pricing information regarding Municipal Bonds and Other Investments (other than money market funds) will generally be available through nationally recognized data service providers through subscription agreements. Trade price and other information relating to Municipal Bonds is available through the Municipal Securities Rulemaking Board's EMMA system. Upon the commencement of operations of a Fund, a copy of the Funds' prospectus will be available on the Funds' Web site ([www.IQetfs.com](http://www.IQetfs.com)) in a form that may be downloaded. In addition, the Funds' Web site will include additional data relating to NAV and other applicable quantitative information relating to the Shares.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for each Fund will be calculated daily and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time.<sup>18</sup> Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.<sup>19</sup> Trading in the Shares will

be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which Shares of the Funds may be halted.

The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. In addition, Commentary .06 to NYSE Arca Equities Rule 8.600 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, non-public information regarding the open-end fund's portfolio. The Exchange represents that the Adviser and Sub-Adviser are not registered as broker-dealers; however, each of the Adviser and the Sub-Adviser is affiliated with a broker-dealer, and each of the Adviser and Sub-Adviser has implemented and will maintain a fire wall with respect to their relevant personnel and each such broker-dealer affiliate regarding access to information concerning the composition of, and/or changes to, a portfolio.<sup>20</sup>

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. 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, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>21</sup> The Commission believes that the Exchange's initial and continued listing requirements, combined with the Funds' investment criteria and restrictions that would apply to Municipal Bonds in the portfolio, are designed to mitigate the potential for price manipulation of the Shares.

The Exchange represents that it 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.

discretion to halt or suspend trading in the Shares of a Fund.

<sup>20</sup> See *supra* note 6. The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

<sup>21</sup> The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>15</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>16</sup> The Exchange represents that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds. According to the Exchange, the IIV for a Fund will be calculated by an independent third party calculator by dividing the "Estimated Fund Value" as of the time of the calculation by the total number of outstanding Shares of that Fund. "Estimated Fund Value" is the sum of the estimated amount of cash held in a Fund's portfolio, the estimated amount of accrued interest owed to a Fund, and the estimated value of the securities held in a Fund's portfolio, minus the estimated amount of a Fund's liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Funds' Web site.

<sup>17</sup> On a daily basis, the Funds will disclose the information required under NYSE Arca Equities Rule 8.600 (c)(2) to the extent applicable. The Web site information will be publicly available at no charge.

<sup>18</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>19</sup> With respect to trading halts, the Exchange may consider all relevant factors in exercising its

In support of this proposal, the Exchange has made the following additional representations:

(1) The Shares of each Fund will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, or by regulatory staff 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.

(4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and ETFs with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and ETFs from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and ETFs from markets and 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 a Fund reported to FINRA's Trade Reporting and Compliance Engine. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss: (a) The procedures for purchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c)

the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV and the Disclosed Portfolio is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information. In addition, the Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

(6) For initial and continued listing, a Fund will be in compliance with Rule 10A-3 under the Act,<sup>22</sup> as provided by NYSE Arca Equities Rule 5.3.

(7) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

(8) Each Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

(9) Under normal market conditions, each Fund will invest at least 80% of its assets in Municipal Bonds.

(10) Each Fund's investments will be diversified among a minimum of ten different sectors of the Municipal Bond market.

(11) Each Fund's investments will be diversified among at least 15 different states, with no more than 30% of a Fund's securities invested in municipal securities from a single state.

(12) Under normal market conditions, no security (excluding Treasury securities) will represent more than 25% of the weight of the portfolio of a Fund, and the five highest weighted securities will not, in the aggregate, account for more than 50% of the weight of a Fund.

(13) No Municipal Bond held by a Fund will exceed 5% of the weight of that Fund's portfolio, and no single Municipal Bond issuer will account for more than 8% of the weight of a Fund's portfolio.

(14) Each Fund will hold Municipal Bonds of a minimum of 25 non-affiliated issuers.

(15) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance. Each 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 a Fund's net assets are held in illiquid assets.

(16) The ETFs in which a Fund may invest will be listed and traded in the U.S. on registered exchanges.

The Exchange has represented that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in the filing shall constitute continued listing requirements for listing the Shares of a Fund on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>23</sup> If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment Nos. 1 and 2, and the Exchange's description of the Funds. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>24</sup> and the rules and regulations thereunder applicable to a national securities exchange.

<sup>23</sup> The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Funds' compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 17 CFR 240.10A-3.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-NYSEArca-2017-44), as modified by Amendment Nos. 1 and 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Eduardo A. Aleman,

Assistant Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80890; File No. SR-MSRB-2017-03]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G-26, on Customer Account Transfers, To Modernize the Rule and Promote a Uniform Customer Account Transfer Standard

June 7, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 26, 2017 the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The MSRB filed with the Commission a proposed rule change to amend MSRB Rule G-26, on customer account transfers, to modernize the rule and promote a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers (collectively, "dealers") ("proposed rule change").<sup>3</sup> The MSRB requests that the

proposed rule change be effective three months from the date of Commission approval.

The text of the proposed rule change is available on the MSRB's Web site at [www.msrb.org/Rules-and-Interpretations/SEC-Filings/2017-Filings.aspx](http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2017-Filings.aspx), at the MSRB's principal office, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

The purpose of the proposed rule change is to modernize Rule G-26 and promote a uniform customer account transfer standard for all dealers. The MSRB believes that, by including certain provisions parallel to the customer account transfer rules of other SROs, particularly FINRA Rule 11870, in current Rule G-26, as outlined below, the transfer of customer securities account assets will be more flexible, less burdensome, and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.

##### Current Rule G-26

Rule G-26 requires dealers to cooperate in the transfer of customer accounts and specifies procedures for carrying out the transfer process. Such transfers occur when a customer decides to transfer an account from one dealer, the carrying party (*i.e.*, the dealer from which the customer is requesting the account be transferred) to another, the receiving party (*i.e.*, the dealer to which the customer is requesting the account be transferred). The rule establishes specific time frames within which the carrying party is required to transfer a customer account; limits the reasons for which a receiving party may take exception to an account transfer instruction; provides for the

establishment of fail-to-receive and fail-to-deliver contracts;<sup>4</sup> and requires that fail contracts be resolved in accordance with MSRB close-out procedures, established by MSRB Rule G-12(h). In addition, the current rule requires the use of the automated customer account transfer service in place at a registered clearing agency registered with the Commission when both dealers are direct participants in the same clearing agency.<sup>5</sup> Finally, the rule contains a provision for enhancing compliance by requiring submission of transfer instructions to the enforcement authority with jurisdiction over the dealer carrying the account, if the enforcement authority requests such submission.<sup>6</sup>

The MSRB adopted Rule G-26 in 1986 as part of an industry-wide initiative to create a uniform customer account transfer standard by applying a customer account transfer procedure to all dealers that are engaged in municipal securities activities.<sup>7</sup> The uniform standard for all customer account transfers (*i.e.*, automated and manual processes) is largely driven by the National Securities Clearing Corporation's ("NSCC") Automated Customer Account Transfer Service ("ACATS"). The MSRB adopted Rule G-26 in conjunction with the adoption of similar rules by other self-regulatory organizations ("SROs")—New York Stock Exchange ("NYSE") Rule 412 and Financial Industry Regulatory Authority ("FINRA") Rule 11870.<sup>8</sup> Those rules are not applicable to certain accounts at dealers, particularly municipal security-only accounts and accounts at bank dealers.<sup>9</sup> Current Rule G-26 governs the municipal security-only customer account transfers performed by those

<sup>4</sup> Fail-to-receive and fail-to-deliver contracts are records maintained by the receiving party and the carrying party, respectively, when a customer account transfer fails.

<sup>5</sup> See Rule G-26(h).

<sup>6</sup> See Rule G-26(i).

<sup>7</sup> See Exchange Act Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR-MSRB-86-2) (proposing Rule G-26). See also Exchange Act Release Nos. 22663 (Nov. 27 1985) (SR-NYSE-85-17) (approving NYSE Rule 412); 22941 (Feb. 24, 1986) (SR-NASD-29) (approving NASD/FINRA Rule 11870).

<sup>8</sup> In 2007, FINRA was created through the consolidation of the National Association of Securities Dealers ("NASD") and the member regulation, enforcement and arbitration operations of the NYSE. Current NYSE Rule 412 cross-references NASD/FINRA Rule 11870 for the purpose of incorporating it into the NYSE rulebook.

<sup>9</sup> See Exchange Act Release No. 22810 (Jan. 17, 1986), 51 FR 3287 (Jan. 24, 1986) (SR-MSRB-86-2) ("Currently certain municipal securities brokers or municipal securities dealers, particularly those with municipal security-only accounts and bank dealers, will not be covered by the standards governing the rest of the securities industry.").

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> For clarity and ease of reference, current provisions of Rule G-26 will be cited herein as "Rule G-26," and proposed amendments to Rule G-26 will be cited herein as "proposed Rule G-26".