

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59835; File No. SR-NYSEArca-2009-30)

April 28, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Adoption of Listing Standards for Managed Trust Securities and the Listing and Trading of Shares of the iShares® Diversified Alternatives Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 9, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 24, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), proposes new NYSE Arca Equities Rule 8.700 (“Managed Trust Securities”). The Exchange also proposes to list and trade shares (“Shares”) of the iShares® Diversified Alternatives Trust (“Trust”) pursuant to this rule. The Exchange also proposes to amend NYSE Arca Equities Rule 7.34 and its Listing Fees to add references to proposed NYSE Arca Equities Rule 8.700. 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 Exchange’s principal office and at the

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

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

Commission's Public Reference Room.<sup>3</sup>

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

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

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

1. Purpose

The Exchange proposes new NYSE Arca Equities Rule 8.700 for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges ("UTP") of Managed Trust Securities issued by a trust that is a commodity pool as defined in the Commodity Exchange Act ("CEA") and regulations thereunder, and that is managed by a commodity pool operator ("CPO") registered with the Commodity Futures Trading Commission ("CFTC") and registered under the Securities Act of 1933, as amended. The trust would hold long and/or short positions in exchange traded futures and/or currency forward contracts as selected by the trust's advisor consistent with the trust's objectives, which would only include exchange traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments as disclosed in the trust's prospectus, as such may be amended from time to time. In

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<sup>3</sup> E-mail from Sudhir Bhattacharyya, Vice President – Legal, NYSE Euronext, to Edward Y. Cho, Special Counsel, Division of Trading and Markets, Commission, dated April 21, 2009 ("Exchange Confirmation").

addition, such shares would be issuable and redeemable continuously in specified aggregate amounts at net asset value (“NAV”).<sup>4</sup> The Exchange also proposes to amend NYSE Arca Equities Rule 7.34 (Trading Sessions) to reference securities described in proposed Rule 8.700 in Rule 7.34(a)(3)(A) relating to hours of the Exchange’s Core Trading Session, in Rule 7.34(a)(4)(A) relating to trading halts for trading pursuant to UTP during the Exchange’s Opening Session, and in Rule 7.34(a)(5) relating to trading halts when the NAV and/or “Disclosed Portfolio” is not being disseminated to all market participants at the same time.<sup>5</sup> In addition, the Exchange proposes to amend its listing fees by incorporating the securities described in proposed Rule 8.700 in the term “Derivative Securities Products.”

Pursuant to this proposed rule change, the Exchange proposes to list and trade the Shares of the Trust. The Shares represent ownership of a fractional undivided beneficial interest in the

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<sup>4</sup> The Commission has previously approved NYSE Arca Equities rules to list and trade products based on or related to commodities. See Securities Exchange Act Release No. 57838 (May 20, 2008), 73 FR 30649 (May 28, 2008) (SR-NYSEArca-2008-09) (approving new NYSE Arca Equities Rule 8.204 “Commodity Futures Trust Shares” for to list and trade the AirShares EU Carbon Allowances Fund); Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12) (approving new NYSE Arca Equities Rule 8.203 “Commodity-Indexed Trust Shares” for trading pursuant to UTP the iShares GSCI Commodity-Indexed Trust); Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132) (approving new NYSE Arca Equities Rule 8.201 “Commodity-Based Trust Shares” for trading pursuant to UTP the iShares COMEX Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (approving listing of shares of iShares COMEX Gold Trust pursuant to NYSE Arca Equities Rule 8.201); Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR-NYSEArca-2006-11) (approving new NYSE Arca Equities Rule 8.300 “Partnership Shares” for trading pursuant to UTP the United States Oil Fund, LP); Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22) (approving new Commentary .02 to NYSE Arca Equities Rule 8.200 “Investment Shares” for trading pursuant to UTP the DB Commodity Index Tracking Fund); Securities Exchange Act Release No. 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR-NYSEArca-2008-73) (approving new NYSE Arca Equities Rule 8.200 “Trust Issued Receipts”).

net assets of the Trust. The Trust will be a commodity pool, as defined in the CEA and the applicable rules of the CFTC, and will be formed as a Delaware statutory trust<sup>6</sup> Barclays Global Investors International, Inc., a Delaware corporation and an indirect subsidiary of Barclays Bank PLC, will serve as Sponsor of the Trust. The Sponsor has been registered under the CEA since October 13, 2005. The Sponsor will serve as the CPO of the Trust. The Sponsor is registered as a CPO under the CEA and is a member of the National Futures Association (“NFA”).

The Shares will conform to the initial and continued listing criteria under proposed Rule 8.700.

The Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares.<sup>7</sup>

#### Proposed Listing Rules

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<sup>5</sup> See Exchange Confirmation, supra note 3.

<sup>6</sup> The Trust is not an investment company registered under the Investment Company Act of 1940, according to the Registration Statement on Form S-1 for the Trust, which was filed with the Commission on August 20, 2008 (File No. 333-153099) (“Registration Statement”). The information in this proposed rule change is based upon representations in the Registration Statement.

<sup>7</sup> 17 CFR 240.10A-3. Rule 10A-3(e)(3) provides that, in the case of a listed limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term “board of directors” means the board of directors of the managing general partner, managing member or equivalent body. The Trust itself has no employees or board of directors and its operations are conducted by the Trustee, subject to the direction of the Sponsor. Accordingly, the Trust has designated a committee of the board of directors of the Sponsor to act as the audit committee of the Trust for Rule 10A-3 purposes. The Sponsor’s role under the governing documents of the Trust makes the Sponsor analogous to the managing member of a limited liability company. The Exchange believes it is reasonable to interpret Rule 10A-3(e)(3) as permitting a trust to utilize a committee of the board of directors of its sponsor as the trust’s audit committee for purposes of compliance with Rule 10A-3, provided that the sponsor’s role with respect to the trust is analogous to the relationship between a managing member and a limited liability company.

Proposed Definition. Proposed Rule 8.700(c)(1) defines a “Managed Trust Security” as a security that is registered under the Securities Act of 1933, as amended (a) is issued by a trust that (i) is a commodity pool as defined in the CEA and regulations thereunder, and that is managed by a CPO registered with the CFTC, and (ii) holds long and/or short positions in exchange-traded futures contracts and/or currency forward contracts selected by the trust’s advisor consistent with the trust’s investment objectives,<sup>8</sup> which would only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments<sup>9</sup> and/or forward contracts on specified currencies, as disclosed in the trust’s prospectus as such may be amended from time to time (b) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value.

Proposed Rule 8.700(c)(2) defines “Disclosed Portfolio” as the identities and quantities of the assets held by the trust that will form the basis for the trust’s calculation of the net asset value at the end of the business day. Proposed Rule 8.700(c)(3) defines “Intraday Indicative Value” as the estimated indicative value of a Managed Trust Security based on current information regarding the value of the assets in the Disclosed Portfolio. Finally, proposed Rule 8.700(c)(4) defines “Reporting Authority” as, in respect of a particular series of Managed Trust

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<sup>8</sup> It should be noted that the trust holdings will be actively managed in accordance with the trust’s investment objectives; therefore, products listed under proposed Rule 8.700 are ineligible for listing under any other existing Exchange rule (e.g., Rules 8.203 and 8.204).

<sup>9</sup> E-mail from Sudhir Bhattacharyya, Vice President – Legal, NYSE Euronext, to Edward Y. Cho, Special Counsel, Division of Trading and Markets, Commission, dated April 8, 2009 (confirming that the trust may only hold exchange-traded futures contracts on sovereign, private, and mortgage- or asset-backed debt and not the debt itself).

Security, the Corporation,<sup>10</sup> an institution, or a reporting or information service designated by the trust or the Corporation or by the exchange that lists a particular series of Managed Trust Security (if the Corporation is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the (i) Intraday Indicative Value, (ii) the Disclosed Portfolio, (iii) the amount of any cash distribution to holders of Managed Trust Security, (iv) net asset value, or (v) other information relating to the issuance, redemption, or trading of Managed Trust Security. A series of Managed Trust Security may have more than one Reporting Authority, each having different functions.

Designation. Proposed Rule 8.700(d) provides that the Corporation<sup>11</sup> may trade, either by listing or pursuant to UTP, Managed Trust Securities that are based on an underlying portfolio of exchange-traded futures and/or currency forward contracts. Each issue of Managed Trust Securities would be designated as a separate trust or series and would be identified by a unique symbol.

Proposed Initial and Continued Listing Criteria. The Managed Trust Securities will be subject to the criteria for listing and trading set forth in proposed Rule 8.700(e).

Proposed Rule 8.700(e)(1) provides that each series of Managed Trust Securities will be listed and traded on the Corporation subject to application of the initial listing criteria. Proposed Rule 8.700(e)(1)(A) provides that the Corporation<sup>12</sup> will establish a minimum number of Managed Trust Securities that will be required to be outstanding at the time of commencement of

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<sup>10</sup> See Exchange Confirmation, supra note 3.

<sup>11</sup> See id.

<sup>12</sup> See id.

trading. In addition, proposed Rule 8.700(e)(1)(B) provides that the Corporation<sup>13</sup> will obtain a representation from the issuer of each series of Managed Trust Securities that the net asset value for the series will be calculated daily and that the net asset value and Disclosed Portfolio will be made available to all market participants at the same time.<sup>14</sup>

Proposed Rule 8.700(e)(2) provides that each series of Managed Trust Securities will be listed and traded subject to application of the following continued listing criteria: (1) the Intraday Indicative Value for Managed Trust Securities will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Trust Securities trade on the Corporation; (2) the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time;<sup>15</sup> and (3) the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.

The proposed continued listing criteria in proposed Rule 8.700(e)(2)(C) provides for the suspension of trading in or removal from listing of the Managed Trust Securities under any of the following circumstances:

- If, following the initial twelve (12) month period beginning upon the commencement of trading of the Shares: (a) the trust has fewer than 50,000 Shares issued and outstanding; or (b) if the market value of all Shares is less than \$1,000,000; or (c) if there are fewer than 50 record and/or beneficial holders of the Shares for 30 consecutive trading days; or

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<sup>13</sup> See id.

<sup>14</sup> See id.

- If the Intraday Indicative Value for the trust is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;
- If the trust issuing the Managed Trust Securities has failed to file any filings required by the Commission or if the Corporation is aware that the trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the trust with respect to the series of Managed Trust Securities; or
- If such other event shall occur or condition exists which in the opinion of the Corporation<sup>16</sup> makes further dealings on the Exchange inadvisable.

Proposed Rule 8.700(e)(2)(D) provides that, if the Intraday Indicative Value of a series of Managed Trust Securities is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Corporation will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on the Corporation pursuant to UTP, the Corporation will halt trading in that series as specified in NYSE Arca Equities Rule 7.34(a), as proposed to be amended. In addition, if the Exchange becomes aware that the NAV or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in

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<sup>15</sup> See id.

<sup>16</sup> See id.



such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.

Proposed Rule 8.700(e)(2)(E) provides that the Corporation will remove the Managed Trust Securities from listing upon termination of the trust.<sup>17</sup>

Proposed Rule 8.700(e)(3) provides that the term of a trust is as stated in the trust's prospectus, but that the trust may be terminated earlier as may be specified in the prospectus.

Proposed Rule 8.700(e)(4) sets forth proposed requirements for the trustee of a trust: (i) the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee, and (ii) no change is to be made in the trustee of a listed issue without prior notice to and approval of the Corporation.

Proposed Rule 8.700(e)(5) provides that voting rights will be as set forth in the applicable trust prospectus.

Proposed Rule 8.700(f) sets forth certain restrictions on ETP Holders acting as registered Market Makers in Managed Trust Securities to facilitate surveillance. Proposed Rule 8.700(f)(2)-(3) requires that the ETP Holder acting as a registered Market Maker in the Managed Trust Securities provide the Corporation with necessary information relating to its trading in the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives.<sup>18</sup> Proposed Rule 8.700(f)(4) prohibits the ETP Holder acting as a registered Market Maker in the Managed Trust Securities from using any material nonpublic information

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<sup>17</sup> See id.

received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying commodity or applicable currency, related futures or options on futures or any other related derivative (including the Managed Trust Securities).<sup>19</sup> In addition, proposed Rule 8.700(f)(1) prohibits the ETP Holder acting as a registered Market Maker in the Managed Trust Securities from being affiliated with a market maker in the underlying commodity or applicable currency, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in Rule 7.26.<sup>20</sup>

Proposed Rule 8.700(g) relates to the Corporation's<sup>21</sup> limitation of liability. Proposed Rule 8.700(h) specifically provides that the Corporation<sup>22</sup> will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934<sup>23</sup> before listing and trading separate and distinct Managed Trust Securities.

Proposed Commentary .01 to Rule 8.700 requires ETP Holders to provide all purchasers of newly issued Managed Trust Securities with a prospectus. Proposed Commentary .02 to Rule 8.700 provides that trading in the Managed Trust Securities will occur during the trading hours specified in NYSE Arca Equities Rule 7.34. Proposed Commentary .03 to Rule 8.700 provides that the Corporation's rules governing the trading of equity securities apply. Proposed Commentary .04 to Rule 8.700 provides that the Corporation will implement written surveillance

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<sup>18</sup> See id.

<sup>19</sup> See id.

<sup>20</sup> See id.

<sup>21</sup> See id.

<sup>22</sup> See id.

<sup>23</sup> 15 U.S.C. 78s(b).

procedures for Managed Trust Securities. Lastly, proposed Commentary .05 to new Rule 8.700 provides that, if the trust’s advisor is affiliated with a broker-dealer, the broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the Disclosed Portfolio. In addition, proposed Commentary .05 further requires that personnel who make decisions on the trust’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the trust’s portfolio.

#### Amendments to NYSE Arca Equities Rule 7.34

The Exchange proposes to amend Rule 7.34(a)(3) to add Managed Trust Securities to the list of securities for which the Core Trading Session on the Exchange concludes at 1:15 p.m., Pacific Time. In addition, Managed Trust Securities would be included under “Derivative Securities Products” for purposes of Rule 7.34(a)(4) relating to trading halts for trading pursuant to UTP of Derivative Securities Products on the Exchange. The Exchange also proposes to amend Rule 7.34(a)(4) to correct the punctuation at the end of the provision. Further, the Exchange proposed to amend Rule 7.34(a)(5) to add Managed Trust Securities to the list of securities for which a trading halt will occur when the NAV and/or “Disclosed Portfolio” is not being disseminated to all market participants at the same time.<sup>24</sup>

#### Amendments to Listing Fees

The Exchange proposes to add Managed Trust Securities to the securities included under the term “Derivative Securities Products” in note 3 of the NYSE Arca Equities listing fee schedule.

#### Description of the Trust

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<sup>24</sup> See Exchange Confirmation, supra note 3.

Barclays Global Investors, N.A., an affiliate of the Sponsor or a successor trustee, will be the trustee (the “Trustee”) of the Trust. The Trust will be governed by the trust agreement (the “Trust Agreement”) among the Sponsor, the Trustee and the Delaware Trustee.<sup>25</sup> The Trust Agreement will set out the rights of the registered holders of the Shares and the rights and obligations of the Sponsor, the Trustee and the Delaware Trustee. The Trustee will be responsible for the day-to-day administration of the Trust, including (1) processing orders for the creation and redemption of Baskets and (2) calculating the net asset value of the Trust on each Business Day. The Trustee will have the authority to delegate some of its responsibilities under the Trust Agreement to a Trust Administrator or agent. Initially, State Street Bank & Trust Company, a banking corporation organized under the laws of Massachusetts, will serve as the Trust Administrator. The Trustee will delegate the valuation of certain assets of the Trust for the purposes of the daily calculation of the net asset value of the Trust and the remainder of its day-to-day administrative responsibilities to the Trust to the Trust Administrator.<sup>26</sup>

Barclays Global Fund Advisors (the “Advisor”) will serve as the commodity trading advisor (“CTA”) of the Trust. The CTA has been registered with the CFTC as a CTA since April 5, 1993, and is a member of the National Futures Association in such capacity.

According to the Registration Statement, the investment objective of the Trust will be to maximize absolute returns from its portfolio of (i) exchange-traded futures contracts involving commodities, currencies, certain eligible stock and/or bond indices, interest rates and sovereign,

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<sup>25</sup> Wilmington Trust Company, a Delaware banking corporation, will serve as the Delaware Trustee of the Trust. The Delaware Trustee will not be entitled to exercise any of the powers, or have any of the duties or responsibilities, of the Trustee. The Delaware Trustee will be a trustee of the Trust for the sole and limited purpose of fulfilling the requirements of the Delaware Statutory Trust Act.

private and mortgage- or asset-backed debt instruments<sup>27</sup> and/or (ii) certain currency forward contracts in the top 25 most liquid or actively traded currencies measured by turnover in the most recent BIS Central Bank Survey, each as disclosed in the Trust's prospectus as such may be amended from time to time, while seeking to reduce the risks and volatility inherent in those investments by taking long and short positions in historically correlated assets. The Trust will also earn interest on the assets used to collateralize its trading positions. The return on assets in the portfolio, if any, is not intended to track the performance of any index or other benchmark. There is no assurance that the Trust will achieve its investment objectives.

At the discretion of the Advisor, the Trust may enter into certain currency forward contracts of the variety described in the prospectus.

At the discretion of the Advisor, the Trust may engage in trading activities with respect to various exchange-traded futures contracts involving commodities, currencies, certain eligible stock and/or bond indices, interest rates and sovereign, private and mortgage- or asset-backed debt instruments<sup>28</sup> as described further in the Registration Statement.

#### Description of the Shares

The Trust will create and redeem Shares from time to time, but only by authorized participants in one or more baskets, with each basket constituting a block of not less than 25,000 Shares. Additional information regarding the Trust and the Shares, including creation and redemption procedures, risks, fees and expenses and procedural matters related to the Shares is included in the Registration Statement.

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<sup>26</sup> Terms relating to operation of the Trust, referred to, but not defined herein, are defined in the Registration Statement.

<sup>27</sup> See supra note 9.

<sup>28</sup> See id.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading.

Dissemination and Availability of Information About the Underlying Assets and the Shares

The Web site for the Trust at [www.iShares.com](http://www.iShares.com), which is publicly accessible at no charge, will contain the following information: (1) the prior business day's NAV per Share<sup>29</sup> and the reported closing price; (2) the mid-point of the bid-ask price in relation to the NAV per Share as of the time the NAV is calculated ("Bid-Ask Price");<sup>30</sup> (3) calculation of the premium or discount of such price against such NAV per Share; (4) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV per Share, within appropriate ranges for each of the four (4) previous calendar quarters; (5) the prospectus and the most recent periodic reports filed with the SEC or required by the CFTC;<sup>31</sup> and (6) other applicable quantitative information.

The Trust's portfolio holdings (i.e. Disclosed Portfolio) will be disclosed on the Trust's Web site daily at [www.iShares.com](http://www.iShares.com). The Trust has informed the Exchange that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the name identifier and number of each futures contract, the amount and currency type of each forward

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<sup>29</sup> The most recent end-of-day NAV of the Trust and NAV per Share will be published by the Sponsor as of 4:00 p.m. ET on Reuters and/or Bloomberg and on the Trust's Web site at [www.iShares.com](http://www.iShares.com). The end-of-day NAV per Share will also be published the following morning on the consolidated tape.

<sup>30</sup> The Bid-Ask Price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV per Share.

<sup>31</sup> Monthly account statements conforming to applicable CFTC and NFA requirements are posted on the Trust's Web site at [www.iShares.com](http://www.iShares.com). Additional reports may be posted on the Trust's Web site in the discretion of the Sponsor or as required by regulatory authorities.

contract and amount of cash held in the portfolio of the Trust. The portfolio holdings will be disclosed to all market participants via the Trust's website at the same time.

As noted above, the Trust's NAV will be calculated and disseminated daily.<sup>32</sup> The Exchange will disseminate for the Trust on a daily basis by means of Consolidated Tape Association CQ High Speed Lines information with respect to the recent Trust NAV, Shares outstanding and the Basket amount. The Exchange will also make available on its Web site daily trading volume, closing prices and the Trust's NAV per Share.

Pricing for futures contracts are available from the relevant exchange on which such futures contracts trade and pricing for forward contracts are available from major market data vendors.

The Intraday Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the Shares trade on the Exchange.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

The current trading price per Share will be published continuously as trades occur throughout each trading day on the consolidated tape, Reuters and/or Bloomberg.

#### Trading Halts

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<sup>32</sup> The Exchange will obtain a representation from the Trust that the net asset value per share for the Shares will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.<sup>33</sup> Trading in the Shares will be halted if the circuit breaker parameters under NYSE Arca Equities Rule 7.12 are reached. Trading may also 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 underlying futures contracts, 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 proposed NYSE Arca Equities Rule 8.700(e)(2)(D), which sets forth circumstances under which trading in the Shares may be halted.

If a series of Managed Trust Securities is trading on the Corporation pursuant to UTP, the Corporation will halt trading in that series as specified in Rule 7.34(a). In addition, if the Exchange becomes aware that the net asset value with respect to a series of Managed Trust Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

#### Trading Rules

Under proposed Rule 8.700(b), Managed Trust Securities are included within the Exchange's definition of "securities." 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. Proposed Commentary .02 to Rule 8.700 provides that transactions in Managed Trust Securities will occur during the trading hours specified in Rule 7.34. Therefore, in accordance with Rule 7.34, the Shares will trade on the NYSE Arca Marketplace

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<sup>33</sup> See Commentary .04 to NYSE Arca Equities Rule 7.12.



from 4:00 a.m. to 8:00 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

### Surveillance

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

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.<sup>34</sup> In addition, the Exchange has an Information Sharing Agreement in place with New York Mercantile Exchange ("NYMEX"), the Kansas City Board of Trade ("KBOT"), ICE Futures and the London Metal Exchange ("LME") for the purpose of providing information in connection with trading in or related to futures contracts traded on NYMEX, KBOT, ICE Futures and LME. In addition, for components traded on exchanges, not more than 10% of the weight of the Trust's portfolio in the aggregate shall

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<sup>34</sup> For a list of current members and affiliate members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all of the components of the Trust may trade on exchanges that are currently members or affiliate members of ISG.

consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its 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 Baskets (and that Shares are not individually redeemable); (2) 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 requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (4) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Intraday Indicative Value<sup>35</sup> will not be calculated or publicly disseminated; and (5) trading information.

In addition, the Bulletin will reference that the Trust is subject to various fees and expenses described in the relevant registration statement.

The Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities and many of the asset classes that the Trust may hold, that the Commission has no jurisdiction over the trading of certain futures contracts.

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<sup>35</sup> See Exchange Confirmation, supra note 3.

The Bulletin will also 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. ET each trading day.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5),<sup>36</sup> in particular, 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 proposal to list and trade the Shares of the Trust will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.<sup>37</sup> In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

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

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

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

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

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

Within 35 days of the date of publication of this notice in the Federal Register or within

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<sup>36</sup> 15 U.S.C. 78f(b)(5).

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

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

#### IV. Solicitation of Comments

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

##### Electronic comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-30 on the subject line.

##### Paper comments

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

All submissions should refer to File Number SR-NYSEArca-2009-30. This file number should be included on the subject line if e-mail 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

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<sup>37</sup> See Exchange Confirmation, supra note 3.

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 inspection and copying 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-2009-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>38</sup> 17 CFR 200.30-3(a)(12).