

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57297; File No. SR-Amex-2008-02)

February 8, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Managed Fund Shares, Fees Applicable to Managed Fund Shares, and the Listing and Trading of Shares of the Bear Stearns Current Yield Fund

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 7, 2008, the American Stock Exchange LLC (“Amex” 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 substantially 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: (1) adopt new Amex Rules 1000B, 1001B, 1002B, and 1003B to permit the listing and trading of securities (“Managed Fund Shares”) issued by an actively managed, open-end investment management company; (2) list and trade the shares (“Shares”) of the Bear Stearns Current Yield Fund (“Fund”), an investment portfolio of the Bear Stearns Active ETF Trust (“Trust”), pursuant to those rules; and (3) amend its original listing and annual listing fees to include Managed Fund Shares and make certain other changes. The text of the proposed rule change is available at Amex, the Commission’s Public Reference Room, and www.amex.com.

¹ 15 U.S.C. 78s(b)(1).

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.

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

1. Purpose

The Exchange proposes to add new Amex Rules 1000B, 1001B, 1002B, and 1003B to permit the listing and trading of Managed Fund Shares. Pursuant to these new rules, the Exchange proposes to list and trade the Shares. Amex states that the Shares will conform to the initial and continued listing criteria under proposed Amex Rules 1000B, 1001B, and 1002B. The Exchange also proposes to amend its original listing and annual listing fees in Sections 140 and 141 of the Amex Company Guide to include Managed Fund Shares and make certain other conforming changes in the Amex rules to incorporate references to the new Amex rules proposed herein.

Background – Exchange-Traded Funds

In 1993, the Exchange listed the first exchange-traded fund (“ETF”), the SPDR Trust, Series 1 (“SPDRs”). Amex’s rules currently permit the listing of ETFs pursuant to Amex Rule 1000-AEMI, Rules 1001 to 1006, Rule 1000A-AEMI, and Rules 1001A to 1005A. Amex Rule 1000-AEMI and Rules 1001 to 1006 allow for the listing and trading on the Exchange of

² 17 CFR 240.19b-4.

portfolio depositary receipts (“PDRs”), which represent interests in a unit investment trust (“UIT”) registered under the Investment Company Act of 1940 (“1940 Act”) that operates on an open-end basis and holds securities that comprise an underlying index or portfolio. Amex Rule 1000A-AEMI and Rules 1001A to 1005A provide standards for the listing and trading of Index Fund Shares (“IFSs,” and together with PDRs, collectively, “Index ETFs”), which are securities issued by an open-end management investment company (“open-end fund”) based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield or total return performance of a specified foreign or domestic stock index, fixed income securities index, or combination thereof.

To qualify for listing, shares of Index ETFs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value (“NAV”). When aggregated in the same specified minimum number, Index ETF shares must be redeemed by the issuer for the specified securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day based on the assets held in the Index ETF fund at the close of the previous trading day and the value of those assets at the close of the current trading day.

The Exchange notes that Index ETFs are no longer novel products. More than 500 of these products are actively traded on Amex and other national securities exchanges.³ In 2006, the average daily trading volume for ETFs in the U.S. was in excess of 508 million shares, and

³ The Exchange states that, as of November 30, 2007, there were 629 ETFs listed on U.S. exchanges.

as of December 31, 2006, the 376 ETFs then listed on U.S. markets had total assets of \$431 billion.

The Exchange also notes that, during the past decade, the degree of portfolio management used by Index ETFs has progressed from the strict replication methods followed by the early UIT products, such as SPDRs and DIAMONDS, to the portfolio sampling and optimization methods used by investment company products such as certain iShares and Vanguard ETFs. The portfolio of an Index ETF that uses a sampling strategy may consist of a subset of the component securities in the index rather than replicating the index, with a view to tracking the benchmark index as effectively as possible.⁴ Further, Amex states that the underlying indices have evolved over time, with many of the more recently-listed products being based on indices such as the Intellidex indices that are designed to incorporate quantitative strategies, and alternatively-weighted indices, such as the fundamentally-weighted indices of Wisdom Tree.

While Managed Fund Shares will be structured very similarly to Index ETFs, Managed Fund Shares will be managed like traditional actively managed, open-end investment companies (“Managed Mutual Funds”) and will have specified investment goals and objectives. Unlike Index ETFs, those goals and objectives will not involve seeking to replicate, or provide investment results that correspond generally to, the price and yield or total return performance of a specified index.

⁴ The Exchange states that an Index ETF may also use sampling techniques. For example, if one of the securities in the benchmark index comprises more than 25% of the index, the Index ETF would be restricted from holding the securities in proportion to its representation in the index without running afoul of Subchapter M of the Internal Revenue Code.

Proposed Listing Rules

Proposed new Amex Rules 1000B, 1001B (for initial listing), and 1002B (for continued listing) define and establish listing standards for Managed Fund Shares. Proposed Amex Rule 1000B(b) sets forth the relevant definitions. In particular, proposed Amex Rule 1000B(b)(1) defines “Managed Fund Share” as a security that: (a) represents an interest in a registered open-end fund that invests in a portfolio of securities selected by the open-end fund’s investment adviser consistent with the open-end fund’s investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined NAV; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder’s request for a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

Proposed Amex Rule 1000B(b)(2) defines Disclosed Portfolio as the securities in the open-end fund’s portfolio. The term “Portfolio Indicative Value,” set forth in proposed Amex Rule 1000B(b)(3), is defined as the estimated indicative value of a Managed Fund Share based on updated information regarding the value of the securities in the Disclosed Portfolio. Lastly, proposed Amex Rule 1000B(b)(4) defines “Reporting Authority” to mean the Exchange, a subsidiary of the Exchange, or an institution or service designated by the Exchange or its subsidiary as the official source for determining and reporting the information relating to a series of Managed Fund Shares, including, but not limited to, the Portfolio Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Fund Shares, NAV, or other information relating to the issuance, redemption, or trading of Managed Fund Shares.

Proposed Commentaries .01 through .05 to proposed Amex Rule 1000B substantially

mirror Commentaries .05, .02(j), .06, .08, and .09 to current Amex Rule 1000A-AEMI, respectively. Specifically, proposed Commentaries .01(a), (b), (c), and (d) are substantively identical to Commentaries .05(d), (f), (e), and (c), respectively, to Amex Rule 1000A-AEMI. The proposed Commentary provisions relate to minimum price variation, hours of trading, listing fees, and surveillance procedures. In addition, the substance of Commentary .05(a) to Amex Rule 1000A-AEMI is set forth in proposed Amex Rule 1000B(b)(3) in connection with the dissemination of information.

Proposed Commentary .02 to Amex Rule 1000B is substantively identical to existing Commentary .02(j) to Amex Rule 1000A-AEMI, which relates to international or global portfolio creations/redemptions. With respect to a Managed Fund Share based on an international or global portfolio, this provision requires that the statutory prospectus or the application for exemption from provisions of the 1940 Act for the series of Managed Fund Shares state that such series will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

Proposed Commentary .03 to Amex Rule 1000B is substantively identical to Commentary .06 to Amex Rule 1000A-AEMI in connection with Exchange obligations for those Managed Fund Shares that receive an exemption from certain prospectus delivery requirements under Section 24(d) of the 1940 Act. Proposed Commentary .04 to Amex Rule 1000B, relating to the limitation of entering multiple limit orders by members and member organizations, is also substantively identical to Commentary .09 to Amex Rule 1000A-AEMI. Lastly, proposed Commentary .05 to Amex Rule 1000B relating to “trading ahead” is substantively identical to

Commentary .09 to Amex Rule 1000A-AEMI.

With respect to the initial listing standards for Managed Fund Shares, proposed Amex Rule 1001B(i) provides that the Exchange will establish a minimum number of shares outstanding at the time of commencement of trading. In addition, proposed Amex Rule 1001B(ii) requires that the Exchange obtain a representation from the issuer of each series of Managed Fund Shares that the NAV per share for the series will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Proposed Commentary .01 to Amex Rule 1001B specifically provides that each series of Managed Fund Shares, prior to listing and/or trading, is required to submit for Commission review and approval, a proposed rule change pursuant to Section 19(b) of the Act. Accordingly, each series of Managed Fund Shares will require Commission review and approval prior to listing and trading.

The proposed continued listing criteria set forth in proposed Amex Rule 1002B(iii) provides for the delisting of the Shares under any of the following circumstances:

- If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of the Managed Fund Shares for 30 or more consecutive trading days;
- If the value of the Portfolio Indicative Value 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 has not filed, on a timely basis, any required filings with the Commission, or if the Exchange becomes aware that the Trust is not in compliance with the

conditions of any exemptive order or no-action relief granted by the Commission to or otherwise applicable to the Trust; or

- If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

Proposed Amex Rule 1002B also sets forth the continued listing criteria relating to the Portfolio Indicative Value and the Disclosed Portfolio. Specifically, proposed Amex Rule 1002B(i) requires that the Portfolio Indicative Value for a Managed Fund Share be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the Managed Fund Shares are traded on the Exchange. Proposed Amex Rule 1002B(ii)(a) provides that the Disclosed Portfolio be disseminated at least once daily to all market participants at the same time. Further, proposed Amex Rule 1002B(ii)(b) requires that the Reporting Authority for the Disclosed Portfolio implement and maintain, or be subject to, “firewall” procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Disclosed Portfolio.

Pursuant to proposed Amex Rule 1002B(iv), the Exchange will halt trading under the following circumstances:

- If the circuit breaker parameters of Amex Rule 117 have been reached, the Exchange will halt trading in a series of Managed Fund Shares.
- If the Portfolio Indicative Value of the Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the

- trading day in which it occurred, the Exchange 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 Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series if the primary listing market halts trading in that series of Managed Fund Shares because the Portfolio Indicative Value applicable to that series of Managed Fund Shares is not being disseminated as required.
 - If the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Fund Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in such Managed Fund Shares. The Exchange may resume trading in the Managed Fund Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants at the same time.
 - Finally, in exercising its discretion to halt or suspend trading in Managed Fund Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b), in addition to other factors that may be relevant.

Proposed Amex Rule 1003B would limit Exchange liability in connection with potential claims, damages, losses, or expenses regarding a Managed Fund Share. The Exchange states that proposed Amex Rule 1003B is substantially similar to current Amex Rule 1003A.

Original and Annual Listing Fees

The Exchange seeks to amend its rules relating to listing fees to include Managed Fund Shares. As proposed, Amex's original listing fee applicable to the listing of series of Managed Fund Shares will be \$5,000, but may be deferred, waived, or rebated upon transfer to Amex from another marketplace. In addition, the annual listing fee applicable under Section 141 of the

Amex Company Guide will be based upon the year-end aggregate number of Shares outstanding at the end of each calendar year. In connection with Section 140 of the Company Guide, the Exchange proposes to make a technical revision so that “Trust Units” are also included among the types of securities whose initial listing fees may be deferred, waived, or rebated upon transfer to Amex from another marketplace.

Key Features of Managed Fund Shares

Registered Investment Company. A Managed Fund Share means a security that represents an interest in an investment company registered under the 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, the open-end investment company that issues IFSs 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.

1940 Act Exemptive Relief. The 1940 Act contemplates two categories of investment companies: those which issue redeemable securities, i.e., open-end investment companies; and those which do not, i.e., closed-end investment companies. Index ETF shares are redeemable, but only in large blocks of shares (not individually), so it is not certain whether they are considered redeemable under the 1940 Act. Because Index ETFs do not fit neatly into either the open-end category or the closed-end category, Index ETFs have had to seek exemptive relief from the Commission to be registered as an open-end investment company. Managed Fund Shares share key structural features with Index ETFs, such as creation and redemption in large blocks of shares being the most important one, that result in the need for exemptive relief, and therefore, Managed Fund Shares will require relief from the same provisions of the 1940

Act.⁵

Intraday Trading. Like Index ETFs, Managed Fund Shares will be listed and traded on a national securities exchange and, therefore, will be available for sale and purchase on an intraday-basis, like other listed securities. In contrast, shares of Managed Mutual Funds may only be purchased and sold (issued and redeemed) in direct transactions with the fund, once each day.

Creations and Redemptions of Shares. Managed Fund Shares will be issued and redeemed on a daily basis at NAV, as with Index ETFs. And like Index ETFs, creations and redemptions for Managed Fund Shares must be in large specified blocks of shares called “Creation Units.” Purchases and sales of shares in amounts smaller than the number of shares required for a Creation Unit may be effected only in the secondary market and not directly with the fund.

Managed Fund Shares are only redeemable in Creation Units, and only “Authorized Participants” may purchase or redeem Managed Fund Shares directly from the fund.⁶ Retail investors will not qualify to be Authorized Participants and typically would not have the resources to buy and sell Creation Units. Therefore, they will be unable to purchase or redeem Managed Fund Shares directly from the fund. Rather, retail investors will purchase Managed Fund Shares in the secondary market with the assistance of a broker and will be subject to customary brokerage commissions or fees.

Managed Fund Shares may use one or more of the following three approaches to

⁵ Bear Stearns Asset Management, Inc. and the Trust have requested exemptions from various provisions of the 1940 Act.

creations and redemptions: (1) “in kind” creation and redemption using a Portfolio Deposit that reflects the composition of the fund; (2) cash creation and redemption; or (3) “in kind” creation and redemption using a Portfolio Deposit consisting of securities that do not reflect the composition of the fund, but instead investments in other securities including, for example, specified Index ETFs.⁷

Portfolio Disclosure. One common feature of Index ETFs is disclosure of the contents of the Portfolio Deposit on a daily basis. The components of the Portfolio Deposit reflect, but are not necessarily identical to, the components of the underlying benchmark index on which the Index ETF is based. Aside from providing the information required for daily creations and redemptions, the Portfolio Deposit gives market participants a basis for estimating the intraday value of the fund, and thus, providing a basis for the arbitrage that keeps the market price of Index ETFs generally in line with the NAV of the Index ETF. While Managed Fund Shares may use an in-kind or cash creation and redemption mechanism, as noted above, each series of Managed Fund Shares will disclose daily all of the portfolio securities (i.e., Disclosed Portfolio) of the fund.

⁶ “Authorized Participant” is a participant in the Depository Trust Company, which has signed a “Participant Agreement” with the distributor for the Fund, ALPS Distributors, Inc.

⁷ For most Index ETFs, the creation and redemption process is effected “in kind.” Creation “in kind” typically means that the investor – usually a brokerage house or large institutional investor – purchases the Creation Unit with a “Portfolio Deposit” equal in value to the aggregate NAV of the shares in the Creation Unit. The Portfolio Deposit generally consists of a basket of securities that reflects the composition of the Index ETF’s portfolio. Similarly, an investor redeeming shares in the Index ETF receives in exchange for shares in the Index ETF the securities in the “Redemption Basket,” which is usually the same as the Portfolio Deposit and consists of securities that reflect the composition of the Index ETF’s portfolio. The Portfolio Deposit often includes a small cash component to make the value of the deposit or basket exactly equal to the aggregate

Indicative Value Disclosure. In order to provide updated information relating to each Index ETF listed on the Exchange for use by investors, professionals and persons wishing to create or redeem shares in Index ETFs, the Exchange disseminates at least every 15 seconds throughout the trading day a calculation of the estimated NAV of a share of an Index ETF, commonly known as the Intraday Indicative Value or “IIV,” as calculated by a third party calculator. Similarly, for each series of Managed Fund Shares, an estimated value, defined in the proposed rules as the “Portfolio Indicative Value,” that reflects an estimated intraday value of the fund portfolio will be disseminated at least every 15 seconds. This Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a series of Managed Fund Shares on a daily basis and provide a close estimate of that value throughout the trading day.

Description of the Fund

The Fund, an exchange-traded fund, is the sole investment portfolio of the Trust. The Trust is organized as a Delaware statutory trust and is an open-end fund registered under the 1940 Act.⁸ The investment objective of the Fund is to seek as high a level of current income as is consistent with the preservation of capital and liquidity. The Fund will be actively managed by its portfolio manager, who will have discretion to choose securities for the Fund’s portfolio consistent with the Fund’s investment objective.⁹ The Fund’s portfolio manager seeks to attain

NAV. Most Index ETFs also permit cash creations and redemptions under specified and limited circumstances.

⁸ The Exchange states that the Fund is not a “money market fund” and is not subject to certain rules and regulations under the 1940 Act governing money market funds.

⁹ The Exchange states that the Fund’s investment objective may be changed without shareholder approval upon 30 days’ written notice to shareholders.

the Fund's objective by investing primarily in short-term debt obligations, including U.S. government securities, bank obligations, corporate debt obligations, mortgage-backed and asset-backed securities, municipal obligations, foreign bank obligations (U.S. dollar denominated), foreign corporate debt obligations (U.S. dollar denominated), repurchase agreements, and reverse repurchase agreements.

The Exchange proposes to list and trade the Fund Shares pursuant to proposed Amex Rules 1000B, 1001B, and 1002B. Amex represents that the Shares will conform to the initial and continued listing criteria under such proposed rules.¹⁰

The Registration Statement, including the Prospectus and Statement of Additional Information ("SAI"), provides a detailed description of the Fund including, but not limited to, the structure of the Fund, cash-only creation and redemption processes, investment objective and policies, characteristics, tax status, and distributions.¹¹

Availability of Information Regarding the Fund and the Shares

The daily NAV for the Fund will be calculated and disseminated publicly each Business Day¹² to all market participants at the same time. In addition, prior to the opening each Business Day, the Fund will make publicly available on its Web site the Disclosed Portfolio, which is the file of all the portfolio securities held by the Fund and the quantities thereof, including, as applicable, the specific types and amounts of short-term debt securities and the amount of cash held in the portfolio of the Fund, as of the close of business on the prior

¹⁰ The Exchange represents that, for initial and/or continued listing, the Shares must also be in compliance with Section 803 of the Amex Company Guide and Rule 10A-3 under the Act (17 CFR 240.10A-3).

¹¹ See the Trust's Form N-1A/A filed with the Commission on August 6, 2007 (File Nos. 333-141421 and 811-22038).

Business Day, reflecting all securities bought and sold on such prior Business Day.¹³ This information will be available to all investors and market participants at the same time and will form the basis for the Fund’s calculation of NAV as of the close of regular trading on the Exchange (ordinarily 4:00 p.m. Eastern Time).

Amex will disseminate at least every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association (“CTA”), the Portfolio Indicative Value. An independent pricing service will calculate the Portfolio Indicative Value during the hours of trading on the Exchange by dividing the “Estimated Fund Value” as of the time of the calculation by the total Shares outstanding. “Estimated Fund Value” is the sum of the estimated amount of cash held in the Fund’s portfolio, the estimated value of the securities held in the Fund’s portfolio, and the estimated amount of accrued interest, minus the estimated amount of liabilities.¹⁴

The Web site for the Fund will display the Prospectus, the SAI, and additional quantitative information that is updated on a daily basis, including, among other things, the following information, on a per-Share basis: (a) the prior Business Day’s NAV, the reported mid-point of the bid-ask spread at the time of NAV calculation (“Bid-Ask Price”), and a

¹² “Business Day” is defined as a day in which the Trust will sell and redeem Creation Units of the Fund.

¹³ The Exchange states that the Trust will comply with its obligations to disclose in its SAI its policies and procedures with respect to the Disclosed Portfolio and state in its Prospectus that a description of the Fund’s policies and procedures is available in the SAI. See Investment Company Act Release No. 26418 (April 16, 2004), 69 FR 22300 (April 23, 2004).

¹⁴ The Exchange states that the methodology used to calculate the Portfolio Indicative Value for the Fund is similar to those used by some existing ETFs listed on the Exchange that track fixed-income securities indices, as well as numerous fixed-income mutual funds.

calculation of the premium or discount of the Bid-Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Amex also intends to disseminate a variety of data with respect to the Shares on a daily basis, by means of CTA and Consolidated Quotation High Speed Lines, including quotation and last sale data, information of the previous day's close with respect to NAV, and the number of Shares outstanding. In addition, as with other ETFs, information regarding secondary market prices and volume of the Shares will be broadly available in real-time throughout the trading day.

Arbitrage

The Exchange believes that the Shares will not trade at a material discount or premium to the value of the assets held by the Trust based on potential arbitrage opportunities. Due to the fact that the Shares can be created and redeemed only in Creation Units at NAV,¹⁵ the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time. Given that the creation and redemption process of the Trust and its Fund is substantially similar to that of Index ETFs, the Exchange believes that market professionals will have the ability to arbitrage Shares of the Fund in a manner similar to Index ETFs. The availability of the Disclosed Portfolio and the Portfolio Indicative Value and other pricing information about portfolio holdings will permit arbitrageurs to identify when the market price of the Shares is higher or lower than the value of the portfolio. As a result, these market professionals will buy Shares when they are priced lower than the portfolio and sell Shares when they are priced higher than the portfolio, thereby moving prices

¹⁵ The Exchange states that creations and redemptions of the Shares will be in cash only.

back in line with the value of the portfolio. Actual and potential arbitrage of this nature should help the secondary market prices of the Shares to remain close to NAV.

Trading Rules

The Shares are equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, specialist responsibilities, account opening, and customer suitability (Amex Rule 411). Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205-AEMI) will also apply. Specialist transactions of the Shares made in connection with the creation and redemption of Shares will not be subject to the prohibitions of Rule 190.¹⁶

Amex notes that the Amex Rule 154-AEMI(c)(ii) (“Election by Quotation of Stop and Stop Limit Orders”) and Amex Rule 126A-AEMI (“Protected Bids and Offers of Away Markets”) will apply to the trading of the Shares. In addition, Exchange members and member organizations will be subject to proposed Commentary .04 to Amex Rule 1000B prohibiting such member or member organizations from entering into the Exchange’s order routing system multiple limit orders as agent (i.e., customer agency orders). Further, proposed Commentary .05 to Rule 1000B provides that it may be considered inconsistent with just and equitable principles of trade for a member or person associated with a member to “trade ahead” of a related customer order in Managed Fund Shares based on material, non-public information obtained from such customer order.

Information Circular

¹⁶ Commentary .04 to Amex Rule 190 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market. See Commentary .04 to Amex Rule 190.

The Exchange will distribute an Information Circular to Exchange members and member organizations prior to the commencement of trading of the Shares that describes the prospectus delivery requirements and, as relevant, the application of proposed Commentary .03 to Amex Rule 1000B. The Exchange notes that investors purchasing Shares directly from the Fund by delivery of a Creation Unit will receive a Prospectus.

In addition, the Information Circular will inform Exchange members and member organizations that procedures for purchases and redemptions of Shares in Creation Units are described in the Fund's Prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Units or multiples thereof. The Exchange will also inform members and member organizations of the characteristics of the Fund and the Shares and of applicable Exchange rules, as well as of the suitability requirements of Amex Rule 411 (Duty to Know and Approve Customers).¹⁷

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing IFSSs. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

¹⁷ The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member. See Amex Rule 411.

the Act,¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the ability to list and trade an actively managed ETF pursuant to the rules proposed herein is consistent with Section 6(b) of the Act, and furthers the objectives of Section 6(b)(5) of the Act by promoting and facilitating transactions in securities while at the same time protecting investors and the public interest. The Exchange further believes that offering investors additional investment alternatives helps to promote competition between similar product classes, thereby benefiting the markets and investors.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no 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

The Exchange states that 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 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

¹⁸ 15 U.S.C. 78f(b).

Amex consents, the Commission will:

- A. by order approve 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 e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2008-02 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Amex-2008-02. 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 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

¹⁹ 15 U.S.C. 78f(b)(5).

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-Amex-2008-02 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.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).