For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76472; File No. SR–NYSEArca–2015–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether To Approve or Disapprove Proposed Rule Change Relating To Implementation of a Fee on Securities Lending and Repurchase Transactions With Respect to Shares of the CurrencyShares® Euro Trust and the CurrencyShares® Japanese Yen Trust

November 18, 2015.

On July 30, 2015, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to implementation of a fee on securities lending and repurchase transactions with respect to shares of the CurrencyShares® Euro Trust and the CurrencyShares® Japanese Yen Trust, which are currently listed and trading on the Exchange under NYSE Arca Equities Rule 8.202. The proposed rule change was published for comment in the **Federal Register** on August 20, 2015.[3] On September 18, 2015, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has not received any comments on the proposal.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.

I. Description of the Exchange's Proposal [8]

A. Background

The Exchange currently lists and trades shares (''Shares'') of the CurrencyShares® Euro Trust (''Euro Trust'' or ''FXE'') and the CurrencyShares® Japanese Yen Trust (''Yen Trust'' or ''FXY,'' and together with the Euro Trust, collectively, ''Trusts'') under NYSE Arca Equities Rule 8.202.[9]

FXE and FXY hold euros and Japanese yen, respectively, and issue Shares in baskets (''Baskets'') of 50,000 Shares in exchange for deposits of euros or yen, respectively. Each Trust redeems Baskets of Shares and distributes euros or yen, respectively. The Shares of FXE and FXY represent units of fractional undivided beneficial interests in the assets held by the relevant Trust. The investment objective of each Trust is for the Trust's shares to reflect the price in U.S. dollars (''USD'') of the foreign currency held by the Trust, plus accrued interest and minus the expenses and liabilities of such Trust. According to the Exchange, the Shares are intended to provide institutional and retail investors with economic exposure to a particular foreign currency so that they can, for example, hedge foreign currency risk in other portfolio assets or hedge against USD fluctuations more generally.

The Exchange represents that, as sponsor of the Trusts, Guggenheim Specialized Products, LLC (''Guggenheim'' or ''Sponsor'') receives a management fee that is intended to compensate Guggenheim for its service as Sponsor and to cover certain Trust expenses. The management fee is paid monthly out of a Trust's assets and is calculated as a percentage of the currency held by each Trust. Guggenheim's fee accrues daily at an annual nominal rate of 0.40% of the foreign currency held by the trust.

According to the Exchange, because the accrued but unpaid management fee is subtracted from the assets in calculating each fund's net asset value (''NAV'') on a daily basis,[10] the value of the Shares decreases at a predictable rate independent of the value of the currency held by each Trust. The Exchange refers to the rate at which the value of a Trust falls as a result of the management fee as the ''Management Fee Decay.''

Like other equity securities, Shares may be loaned by shareholders to other market participants. This securities lending activity can facilitate short selling of Shares, as well as other investment strategies.[11] Once loaned, the Shares may be (i) redeemed by the borrower for underlying Trust assets, or (ii) sold.

B. The Exchange's Description of the ''Strategy'' Allegedly Used by Some Market Participants to Profit From Management Fee Decay

According to the Exchange, the Sponsor claims to have identified a strategy (''Strategy'') that permits certain market participants (''Traders'') to profit from the reduction in the NAV of the Shares over time associated with Management Fee Decay, to the purported detriment of the value of the Shares held by shareholders who do not engage in the Strategy. Pursuant to the Strategy, a Trader borrows Shares and then either (1) sells the borrowed Shares, taking a short position in the Shares, or (2) redeems the borrowed Shares for euros or yen, as applicable.

According to the Exchange, the number of units of foreign currency

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75698 (Aug. 14, 2015), 80 FR 50701 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 75945, 80 FR 57645 (Sept. 24, 2015). The Commission designated a longer period within which to take action on the proposed rule change and designated November 18, 2015, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] Although the Commission has not yet received comments on the proposal, the Exchange represents that it issued a Regulatory Bulletin on this proposal on August 21, 2013 (regulatory bulletin available at *http://www.sec.gov/rules/sro/nysearca/2015/34-75698-ex2a.pdf*) and received two comment letters in response. *See* Notice, *supra* note 3, 80 FR at 50705 n.22. *See also* Letter from Daniel J. McCabe, President, Precidian Investments, to John Carey, Vice President-Legal, NYSE (Sept. 20, 2013) (supporting the proposed rule change); Letter from Theodore R. Lazo, Associate General Counsel, and Kyle Brandon, Managing Director, SIFMA, to John Carey, Vice President-Legal (Sept. 23, 2013) (opposing the proposal) (both letters available at *http://www.sec.gov/rules/sro/nysearca/2015/34-75698-ex2b.pdf*).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] A complete description of the proposal can be found in the Notice. *See* Notice, *supra* note 3 (available at: *http://www.sec.gov/rules/sro/nysearca/2015/34-75698.pdf*).

[9] Shares of the Trusts initially were approved for listing and trading on the New York Stock Exchange, Inc. *See* Securities Exchange Act Release Nos. 52843 (Nov. 28, 2005), 70 FR 72486 (Dec. 5, 2005) (SR–NYSE–2005–65) (order approving listing and trading of Shares of FXE); and 55268 (Feb. 9, 2007), 72 FR 7793 (Feb. 20, 2007) (SR–NYSE–2007–03) (order approving listing and trading of Shares of FXY).

[10] To calculate NAV, the Trustee adds to the amount of euros/yen in the Trusts at the end of the preceding business day, accrued but unpaid interest, euros/yen receivable under pending purchase orders and the value of other Trust assets, and subtracts the accrued but unpaid management fee, euros/yen payable under pending redemption orders and other Trust expenses and liabilities, if any. *See* Notice, *supra* note 3, at 3, 80 FR at 50701.

[11] A short sale is any sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. Short sales are normally settled by the delivery of a security borrowed by or on behalf of the investor. The investor later closes out the position by returning the borrowed security to the stock lender, typically by purchasing securities on the open market.

underlying the Shares the Trader has sold short is reduced over time because of the Management Fee Decay. Therefore, when the Trader unwinds its short position in the Shares by creating Shares through delivery of the currency it held as a hedge, or when the Trader purchases Shares and sells the currency held as a hedge, it will do so at lower cost than when it sold (or purchased) the Shares. According to the Exchange, the Trader's profit from this Strategy is equal to the Management Fee Decay attributable to the Shares sold short, plus or minus the net cost of borrowing the Shares and other transaction costs.

According to the Exchange, the following two examples—one in which the Trader sells the borrowed Shares short, and the other in which the Trader redeems the borrowed Shares—explain how the Strategy functions.

Example 1—Selling Short FXE

Before the trade, there are 100 euros in the Euro Trust for each outstanding Share. Assuming a USD/euro exchange rate of $1.10, FXE would be trading at $110 per Share. A Trader borrows 50,000 Shares of FXE and sells them for $5.5 million to obtain a short position of 50,000 Shares. At the same time, to hedge the short exposure to euros, the Trader obtains a long position in euros by entering into a forward contract to purchase in one year 4.98 million euros for $5.478 million. The Trader holds these positions for a year, by which time the FXE has predictably decayed by the 40 basis point management fee, regardless of the change in the USD/euro exchange rate.

Payment of the management fee by the Trust results in the sale of euros, causing the number of euros per Share to fall from 100 euros for each Share to 99.6 euros for each Share. As a result, the Trader can now create 50,000 Shares by depositing only 4.98 million euros, which the Trader can purchase for $5.478 million, and return the borrowed Shares. The $20,000 difference in cost to create 50,000 Shares one year after selling short 50,000 Shares for $5.5 million is profit. The Trader's transaction costs would be the cost of the forward contract, commissions, and any fees charged by the lender.

Example 2—Redeeming FXE

Before the trade, there are 100 euros in the Euro Trust for each outstanding Share. Assuming a USD/euro exchange rate of $1.10, FXE would be trading at $110 per Share. A Trader borrows 50,000 Shares of FXE and redeems them in exchange for 5 million euros. The Trader uses the proceeds of the redemption as collateral for the stock borrow. The Trader holds this position for a year. Regardless of whether the USD/euro exchange rate rises or falls, the amount of euros per Share held by the Trust will fall because of the Management Fee Decay.

When the Trader redeemed the Shares, there were one hundred euros in the Euro Trust for each outstanding Share. During the year, the Euro Trust has had to sell euros to pay management fees, and therefore there are now only 99.6 euros per outstanding Share in the Euro Trust. As a result, the Trader will only have to deposit 4.98 million euros to create 50,000 Shares of FXE. The 20,000 euros difference between the 5 million euros received from redeeming 50,000 Shares and the 4.98 million euros cost to create 50,000 Shares one year later is the Trader's profit. The Trader's transaction costs would be commissions and any fees charged by the lender.

C. The Exchange's Description of the Alleged Harm Caused by the ''Strategy''

According to the Exchange, shareholders who do not lend their Shares to Traders subsidize the Strategy employed by the lenders and Traders. The long holder of Shares agrees to pay a management fee for exposure to the underlying currency. When a shareholder lends its Shares, it retains the benefit of exposure to the euros or yen in a Trust. However, according to the Exchange, a Trader that borrows the Shares and redeems or sells its borrowed Shares deprives a Trust of the assets against which the management fee is assessed. The lender retains a long position in the Shares even though the assets reflecting its long position are no longer in a Trust and thus do not bear a proportional cost of managing the assets in a Trust. In this way, according to the Exchange, lenders and Traders that engage in the Strategy are subsidized by long holders of the Shares that do not lend their Shares.[12]

The Exchange represents that the Sponsor continues to bear the cost of providing shareholder services to shareholders that lend Shares to Traders, even though, because Traders sell or redeem these borrowed Shares, there are no assets associated with these borrowed Shares against which a management fee is assessed to support these services. Long holders of Shares that do not lend to Traders are, according to the Exchange, bearing the costs associated with lenders' long positions in Shares that Traders redeem or sell. Through the loan arrangement, the Exchange alleges, the lender and Trader share the economics of the predictable fall in the value of the Shares due to the Management Fee Decay. Long holders of Shares that do not lend their Shares are subsidizing this Strategy through their assets against which the management fee is assessed.

According to the Exchange, this Strategy is not available with asset classes other than exchange-traded products because shares of operating companies do not charge management fees or provide investors with the ability to redeem their shares in exchange for the underlying assets. Thus, shares of a company do not have a decay that is extrinsic to the value of the company or a structure that provides the ability for the holder of a short interest to perfectly hedge its short position.

According to the Exchange, the Strategy discussed above is detrimental to liquidity in the Shares. The Exchange asserts that, because of the large outstanding short positions in the Shares, it is difficult to borrow Shares, particularly for market participants that are not Authorized Participants[13] that are seeking to engage in short selling for trading strategies other than the Strategy. According to the Exchange, the availability of the Strategy provides an incentive for third parties to short the Shares of the Trusts, thereby depleting the pool of Shares potentially available to be borrowed by market participants that are not Authorized Participants. This activity, according to the Exchange, impedes the ability of market makers that are not Authorized Participants to provide liquidity by taking short positions in the Shares, potentially resulting in market makers' public quotes being wider than would be the case if Shares were more readily borrowable. A lack of liquidity and

[12] According to the Exchange, an amendment to the depositary trust agreement (''Trust Agreement'') states that the impact on ''Beneficial Owners'' (as defined in each Trust Agreement) is that they may be subsidizing short positions to their disadvantage. The Trust Agreement defines ''Beneficial Owner'' consistent with Article 8 of the Uniform Commercial Code as ''any Person owning, through DTC, a DTC Participant, or an Indirect Participant, a Share.'' The lender of Shares would be the Beneficial Owner and would be required to pay the ''ETF Loan Fee,'' as described below. If the borrower sells the Shares, the buyer would be a Beneficial Owner under this definition. Because the loan would also be recorded on the books of Depository Trust Company (''DTC''), the borrower also is a Beneficial Owner when the Beneficial Owner takes delivery of the Shares.

[13] An ''Authorized Participant'' is a DTC Participant that is a registered broker-dealer or other securities market participant such as a bank or other financial institution that is not required to register as a broker-dealer to engage in securities transactions and has entered into a Participant Agreement with the Trustee. Only Authorized Participants may place orders to create or redeem Baskets.

wider spreads harms all investors through higher costs to buy and sell Shares.

D. The Exchange's Proffered Justification for the Proposed Rule Change

The Exchange has filed this proposed rule change to reflect a proposed fee (''ETF Loan Fee'') to be imposed on securities lending and repurchase transactions with respect to the Shares. The Sponsor would receive the proceeds of the ETF Loan Fee, minus an amount equal to 20 percent of the fee, which would be paid to Precidian Investments, LLC (''Precidian'' or ''Loan Fee Administrator''). Precidian has in turn engaged BNY Mellon to act as ''Loan Fee Collection Agent'' on its behalf. The Loan Fee Collection Agent would be paid by Precidian and would not further reduce the proceeds paid to the Sponsor. According to the Exchange, Guggenheim would use the net proceeds from the ETF Loan Fee to offset management fees otherwise payable to it by the Trusts or to pay other Trust-related expenses.

According to the Exchange, the Sponsor believes, and has advised the Trustee, that it is in the best interest of the Beneficial Owners to impose an ''ETF Loan Fee.'' [14] The Sponsor believes the ETF Loan Fee would benefit the Trusts and Beneficial Owners because ETF Loan Fee proceeds received (net of amounts retained by the Loan Fee Administrator) would be used to offset management fees. The Exchange believes that the ETF Loan Fee would compensate for the loss of a management fee against long positions held by lenders of Shares to Traders. Because Traders redeem or sell borrowed Shares, no assets relating to the borrowed Shares remain in the Trusts against which the management fee can be assessed. Nevertheless, the lender retains a long position in the Shares. Thus, according to the Exchange, the ETF Loan Fee is intended to fairly reflect the cost to a Trust and Beneficial Owners of the Strategy.

The procedures proposed by the Trusts would prohibit any shareholder from lending any Shares to another person (''Loan Transaction''), or selling any Shares to another person subject to an agreement to repurchase Shares (''Repurchase Transaction'' and, together with a Loan Transaction, collectively, ''Permissible Stock Loan''), unless the shareholder notifies the custodian or its designee of the transaction on or prior to the inception of the Permissible Stock Loan. A shareholder engaging in a Permissible Stock Loan (''Loaning Shareholder'') also would be required to notify the custodian or its designee of the termination of the Permissible Stock Loan on or prior to the termination of such transaction. For the pendency of the Permissible Stock Loan, the Loaning Shareholder would be obligated to pay the custodian the ETF Loan Fee with respect to that transaction. For these Loan Transactions, the ETF Loan Fee would accrue from the effective date of the ETF Loan Fee until the Loan Transaction is terminated.

Upon the ETF Loan Fee Effective Date, holders of Shares would be prohibited from lending Shares or selling Shares subject to an agreement to repurchase, without notifying the Loan Fee Collection Agent [15] and agreeing to pay the ETF Loan Fee. Self-reporting to the Loan Fee Collection Agent would be made by a shareholder's custodian, broker-dealer, or lending agent via a web portal and would not require identification of the individual shareholder.

According to the Exchange, the ETF Loan Fee is expected to equal Guggenheim's management fee on a per Share basis.[16] The Exchange states that Guggenheim has asserted that it is not permitted to contribute revenue collected via the ETF Loan Fee to the Trusts, but has stated that it intends to offset all fees received against management fees otherwise owed to it by the Trusts.

According to the Exchange, once the ETF Loan Fee Collection Agent is notified of a transaction subject to the ETF Loan Fee, it would convey such information to Precidian, which would accrue the ETF Loan Fee on a daily basis and report it to each Trust. On a monthly basis, Precidian or its agent would bill Depository Trust & Clearing Corporation participants based on their loan transactions or the loan transactions of their clients and distribute the net ETF Loan Fee to Guggenheim.[17]

The Exchange represents that, because the proposed ETF Loan Fee is equal to the annual management fee, the proposed ETF Loan Fee should not affect the market in the Shares, including market makers' ability to arbitrage. According to the Exchange, if, for example, FXE Shares are trading at a premium to euros, an arbitrageur, in an attempt to profit from the difference between the price of a euro and a Share of FXE, could sell FXE short, simultaneously buy euros, exchange euros for one or more Baskets of 50,000 FXE Shares, and then close out the short position with the Basket or Baskets of FXE Shares. To minimize market risk, an arbitrageur typically would not carry a position in to the next trading day. Thus, because the short position was closed out the same day, the arbitrageur would not incur the ETF Loan Fee. If FXE Shares are trading at a discount to euros, an arbitrageur could buy one or more Baskets of FXE Shares and simultaneously sell euros short, redeem the FXE Shares for euros at the end-of-day NAV, and close out the euro short position with the euros received on redemption. In this case, because the arbitrageur did not acquire a short position in FXE Shares, no ETF Loan Fee would be incurred. The Exchange also notes that market makers can create new Shares and redeem Shares if needed to facilitate market making activity.

The Exchange believes that the Strategy has had a negative impact on shareholders who do not lend their Shares because lenders of Shares maintain a long exposure to the Trust while profiting from a Strategy that eliminates the assets in trust against which a management fee is assessed. According to the Exchange, these lenders are freeriding on the

[14] According to the Exchange, the term ''ETF Loan Fee'' means that amount, accrued daily and payable monthly, equal to the annual management fee, which is an annual nominal rate of 0.40% (or such lower annual nominal rate as may be determined by the Sponsor from time to time) of the aggregate market value of the Shares involved in the ''Permissible Stock Loan'' (as defined below) based on the closing price each day from the inception date of such transaction through the termination of such transaction. The Exchange states that, based on current market valuations, the ETF Loan Fee for Shares of the Euro Trust would be approximately 1/8 cent per Share per day, and for Shares of the Yen Trust would be approximately 1/11 cent per Share per day as of March 27, 2015. The Exchange states that the proposed ETF Loan Fee would be implemented upon effectiveness of amendments to the Trust Agreements and approval of this proposed rule change and after sixty days' notice to shareholders (''ETF Loan Fee Effective Date''). The ETF Loan Fee would apply to any Shares loaned or sold subject to an agreement to repurchase after the sixty day notification period.

[15] Holders will be required to notify the Loan Fee Collection Agent at the inception and termination of all Share lending and repurchase transactions. Each Trust's Web site will specify the form and manner of delivery for notices to the Loan Fee Collection Agent.

[16] According to the Exchange, Guggenheim has informed the Exchange that it expects the ETF Loan Fee to be 40 basis points per annum.

[17] According to the Exchange, the administration and collection of the ETF Loan Fee, as a fee of the Trusts, would be the responsibility of the Sponsor, the Loan Fee Administrator and the Loan Fee Collection Agent. The Exchange would have no role in the administration or collection and would not monitor the billing, collection, or payment of the ETF Loan Fee with respect to any market participant.

management fee paid by those shareholders that do not lend Shares.

The Exchange represents that, as a consequence of the Strategy, the issuer cannot achieve economies of scale necessary to reduce management fees charged to shareholders, which are being paid only by those shareholders who do not lend their Shares. Assessing the ETF Loan Fee would have a positive impact on shareholders that do not lend their Shares because the ETF Loan Fees would be used to offset Trust expenses, bringing down the management fee.

The Exchange states that the ETF Loan Fee would eliminate the economic incentive for market participants to engage in the Strategy. Market participants could still sell FXE and FXY short, but the Traders who borrow those Shares would not be subsidized by those shareholders who do not lend their Shares. According to the Exchange, eliminating the economic distortion created by the Strategy would facilitate pricing of FXE and FXY on parity with the underlying asset (*i.e.,* euros or yen).

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2015–68 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [18] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[19] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [20]

[18] 15 U.S.C. 78s(b)(2)(B).

[19] *Id.*

[20] 15 U.S.C. 78f(b)(5).

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[21]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by December 15, 2015. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 29, 2015. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[22] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. In general, do commenters believe that the proposal is consistent with the requirements of Section 6 of the Act applicable to a national securities exchange, and in particular, Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, 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 system, and, in general, to protect investors and the public interest and Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act?

2. According to the Exchange, ''a Trader that borrows the Shares and redeems or sells its borrowed Shares deprives a Trust of the assets against which the management fee is assessed.'' [23] Do commenters agree with this assertion? What, if any, broader policy implications do commenters think this assertion raises?

3. The Exchange states: ''Long holders of Shares that do not lend to Traders are bearing the costs associated with lenders' long position in Shares that Traders redeem or sell.'' Do commenters agree with this assertion? What, if any, broader policy implications do commenters think this assertion raises?

4. According to the Exchange, the Strategy permits certain Traders to profit from the reduction in the NAV of the Shares over time associated with Management Fee Decay, to the detriment of the value of the Shares held by shareholders who do not engage in the Strategy. The Exchange further represents that, as a consequence of the Strategy, the issuer cannot achieve economies of scale necessary to reduce management fees charged to shareholders, which are being paid only by those shareholders who do not lend their Shares. Assessing the ETF Loan Fee would, the Exchange asserts, have a positive impact on shareholders that do not lend their Shares because the ETF Loan Fees would be used to offset Trust expenses, bringing down the management fee. Do commenters agree with the Exchange's assertions? What, if any, broader policy implications do commenters think these assertions raise?

5. The Exchange asserts that the Strategy discussed above is detrimental to liquidity in the Shares and that the Strategy potentially results wider spreads, harming all investors through higher costs to buy and sell Shares. Based on the trading history of the Shares, do commenters agree with the Exchange's assertions? Are these assertions by the Exchange consistent with the Exchange's statement elsewhere in the Notice that it ''believes that imposition of the ETF Loan Fee would not materially impact trading of the Shares''? [24]

6. The Exchange states that eliminating the economic distortion allegedly created by the Strategy would facilitate pricing of FXE and FXY on parity with the underlying asset (*i.e.,* euros or yen). Based on past and current spreads between the market price per

[21] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[22] *See supra* note 3.

[23] *See* Notice, *supra* note 3 at 7, 80 FR at 50702.

[24] *See id.* at 15, 80 FR at 50705.

Share for the Trusts and their respective NAVs, do commenters agree with the Exchange's assertions? Have commenters observed any problems with respect to the trading or valuation of FXE or FXY? For example, do commenters believe that the markets prices for these products closely track the underlying values of their portfolios?

7. Have commenters observed the Strategy being employed with respect to FXE or FXY, and if so, have commenters observed any deleterious effects of the Strategy?

8. The Exchange asserts that the Strategy is not available with asset classes other than exchange-traded products.[25] Do commenters agree with this assertion? If commenters believe that the Strategy is available for exchange-traded products, do commenters believe that certain exchange-traded products or types of exchange-traded products are more susceptible to the Strategy than others? For example, would an exchange-traded product be susceptible to Management Fee Decay if the returns on its portfolio exceeded its management fee? Does the nature of the assets held by an exchange-traded product affect its vulnerability to the alleged Strategy?

9. The Exchange states that the sponsor represents that, ''because of large outstanding short positions in the shares . . . it is difficult to borrow shares, particularly for market participants that are not Authorized Participants that are seeking to engage in short selling for trading strategies other than the Strategy.'' [26] What are commenters' views of these assertions?

10. What are the prevailing securities lending rates that commenters have observed for shares of FXE and FXY? Do commenters have a view regarding whether the Strategy is viable under these observed securities lending rates?

11. The Exchange states that, according to the sponsor, ''the ETF Loan Fee is not expected to negatively affect short selling generally, but rather only affect certain types of short selling activities conducted by certain market participants (namely the Strategy) at the expense of long investors.'' [27] What are commenters' views concerning this assertion? For example, what are commenters' views about the effect of the proposed rule change on investors who wish to express a bearish view on either the euro or the yen, or to hedge a long position in euros or yen, by holding a short position in shares of the Trusts over some period of time?

12. The proposal would prohibit any holder of the Shares from lending its shares or from entering into an agreement to repurchase the shares unless the holder (a) self-reports to an agent of the sponsor of the Trusts and (b) remits a fee to that agent equal to the sponsor's management fee. What are commenters' views regarding the policy implications of permitting an issuer of securities to place such restrictions on the transfer of shares that it has issued in a public offering and that are listed and traded on a national securities exchange? In particular, are such restrictions consistent with Sections 6(b)(5) and 6(b)(8) of the Act? What are commenters' views on whether a fee based on self-reporting of lending or repurchase activity can be administered in a manner consistent with Section 6(b)(5) of 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.* Please include File Number SR–NYSEArca–2015–68 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 Numbers SR–NYSEArca–2015–68. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–68 and should be submitted on or before December 15, 2015. Rebuttal comments should be submitted by December 29, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

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[25] *See id.* at 7, 80 FR at 50703.

[26] *See id.* at 8, 80 FR at 50703.

[27] *See id.* at 16, 80 FR at 50705.

[28] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31905; 812–14451]

ETF Series Solutions and U.S. Global Investors, Inc.; Notice of Application November 18, 2015

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under Section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(a) of the Act and Rule 18f–2 under the Act, as well as from certain disclosure requirements in Rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: ETF Series Solutions (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and U.S. Global Investors, Inc., a Texas corporation registered as an investment adviser under the Investment Advisers Act of 1940 (''the ''Adviser,'' and, collectively with the Trust, the ''Applicants'').